CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 317 OF 2012

[Arising out of OIO-KDL/COMMR/27/2012-13 dated 24/09/2012 passed by Commissioner of CUSTOMS-KANDLA]

SANJAY GANDHI **Appellant**
61a, Apnanagar, Gandhidham,
Kutch, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-KANDLA **Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

Appearance:
Shri Vikas Mehta, Consultant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM:
HON'BLE. Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10647/2025

Date of Hearing : 30.06.2025
Date of Decision : 14.08.2025

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned order dated 24th September, 2012 passed by the learned Commissioner, Customs House, Kandla through which he imposed penalty of Rs. 20,00,000/- on the appellant Shri Sanjay Gandhi, Manager of CHA M/s. Shri Maruti Shipping Services under Section 112 (a) of Customs Act, 1962.

2. The facts of the case in brief are that on the basis of intelligence, DRI Mumbai investigated the import of 208 MT of HDPE valued at Rs. 54,07,418/- (CIF) involving total duty liability of Rs. 40,96,119/- made by M/s. R. K. Exports under four Bills of Entry No. 4921 to 4924 dated 22nd June, 1995. The Bills of Entry were filed in the name of M/s. R. K. Exports and name of the importer was amended to the name of high seas buyer as M/s. Roha Dye Chem Pvt Ltd. The goods were cleared against advance license no. 0332748 dated 20th March, 1995. During the course of investigation, the business premises of M/s. More Overseas, More International, M/s. M. K. Exports and Imports, M/s. Hindustan National Bag and Burlap Company Pvt Ltd. and M/s. R. K. Exports were searched on 25th and 26th March, 1998. These establishments were managed and controlled by Shri Ashwani Kumar More. The above mentioned four Bills of Entries showing 13 Bills of lading were scrutinized and it was revealed that the name and address of party has been shown as R. K. Exports Calcutta and Bank of India Overseas Calcutta and port of discharge was mentioned as Kandla. All the Bills of Entry were signed by Shri Ashwani Kumar More for M/s. R. K. Exports and Shri Ramakant for M/s. Roha Dye Chem Pvt Ltd.

2.1 On reference by the DRI, DGFT Mumbai vide their letter dated 29th May, 1998 informed that the advance license no. 0332748 dated 28th March, 1995 was issued to M/s. Somaiya Organo Chemicals Pvt Ltd Mumbai. The Deputy Commissioner of Customs Mumbai vide letter dated 13th May, 2000 confirmed that no Transfer Release Advice (TRA) had been issued by them against the said advance license. Enquiry with M/s. Somaiya Organo Chemicals Pvt Ltd revealed that the said license was issued for the import of Acetic Acid Glacial and their company had not made any import against the said license and the same was surrendered to DGFT, Mumbai on 1st of September, 1999.

2.2 On reference by DRI, Chief Manager Syndicate Bank informed vide their letter dated 24th July, 2000 that M/s. Roha Dye Chem Ltd was not their import client. During inquiry, it was also revealed that there is no such firm as M/s. Roha Dye Chem Pvt Ltd in existence. However, a firm M/s. Roha Dye Chem Ltd was existing wherein Shri Ramakant J Tibrevala was found to be the Director. Shri Ramakant stated that they had not imported or cleared the goods under Bills of Entry no. 4921 to 4924 dated 22nd June, 1995 and their company had not entered into any High Sea Sale contract (HSS) with M/s. R. K. Exports Culcutta for the import of HDPE and the signature of Shri Ramakant which appeared on the Bills of Lading and on HSS contract were not his nor the stamp of M/s. Roha Dye Chem Pvt Ltd which appeared on the said documents were of his company. He did not know any such company by the name of M/s. R.K. Exports. The Authorised Representative of M/s. Roha Dye Chem Pvt Ltd stated that they had not imported HDPE against advance license no. 0332748 nor they had purchased the said license from the market.

2.3 Statement of Shri Ashwani Kumar More, Shri Raju Mohta and Shri Sanjay Gandhi, Manager of CHA M/s. Shri Maruti Shipping Services were recorded. Shri Ashwani Kumar More stated in his statement that he was Director / Partner of M/s. M. K. Exports & Import and he had appointed Shri Raju Mohta to get his goods cleared from Kandla for which he gave him a commission. Shri Raju Mohta stated in his statement that he was a broker / dealer in Import – Export license and he had sold Advance License to Shri Ashwani Kumar More and he was handling all Customs Clearance Work of all goods imported by More Group of Industries. Shri Sanjay Gandhi, Manager of

CHA M/s. Maruti Shipping Services stated that Shri Pankaj Joshi of M/s. Kandla Clearing Agency Pvt Ltd and Shri Raju Mohta, working for More Group of Companies had handed over all the documents including the Advance License no. 0332478 dated 20th March, 1995 and High Seas Sale contract for processing / clearance of goods from Kandla Port and Shri Raju Mohta informed him that the goods were to be cleared in the name of M/s. Roha Dye Chem Pvt Ltd and after clearance from Customs department, the goods were to be delivered to the transporter appointed by More Group of Companies as per the instructions of Shree Raju Mohta.

2.4 On completion of investigation DRI Mumbai issued Show Cause Notice no. DRI / BZU / G / 4 / 98 / Roha Dye Chem date 12th September, 2000. The Show Cause Notice was adjudicated by the then Commissioner of Customs, Kandla vide Order-in-Original dated 30th October, 2001. He upheld the allegations made in the Show Cause Notice and imposed penalty of Rs. 5,00,000/- on Shri Sanjay Gandhi, Manager of Shri Maruti Shipping Services under Section 112 (b) of the Customs Act, 1962. On being aggrieved by the Order-in-Original dated 30th October, 2001, Shri Sanjay Gandhi filed appeal before the Hon'ble CESTAT Mumbai. The Tribunal vide its order dated 30th June, 2006, set aside the order passed by the Commissioner and remanded the case back for *de novo* adjudication, as the appeal of the main appellant had already been remanded for fresh decision.

2.5 As per the directions of CESTAT order dated 30th June, 2006 the case was decided by the then Commissioner who imposed penalty of Rs. 5,00,000/- on Shri Sanjay Gandhi under Section 112 (a) of the Customs Act, 1962 vide Order-in-Original. Being aggrieved by the said order, Shri Sanjay Gandhi again filed appeal before CESTAT and CESTAT by its order dated 16th June, 2011, set aside the Order-in-Original dated 30th March, 2009 and remanded back the case for *de novo* adjudication. The learned Commissioner vide impugned order dated 24.09.2012 imposed penalty of Rs. 20,00,000/- on the appellant. Feeling aggrieved from the impugned order dated 24.09.2012 passed by the learned Commissioner, the appeal has been filed before this Tribunal.

3. The learned consultant for the appellant submitted that the impugned order is not sustainable on the primary ground that quantum of penalty cannot be enhanced over that imposed in earlier adjudication order, as duly held by the Tribunal in the case of **M/s. Sarjoo Sahakari Chini Mills Limited** 2008 (226) ELT 211 (Tri.-Del.) and **Ritu Minerals** 1999 (113) ELT 1005 (T).

3.1 The learned Consultant also submitted that the appellant is not liable to pay any penalty considering the contradictory findings by learned Commissioner in earlier round of adjudication. In Order-in-Original dated 30th October, 2001, the learned Commissioner observed that there is no evidence to imposed penalty on M/s. Shree Maruti Shipping Service. He exonerated M/s. Maruti Shipping Services. However, in remand proceedings, that were conducted on appeal filed by the appellant, the succeeding Commissioner vide Order-in-Original dated 24th September, 2021 observed that Shri Sanjay Gandhi and the Customs House Agent Co. M/s. Shree Maruti Shipping Services had aided and abetted the fraud and thereby enhanced the penalty on appellant from Rs. 5,00,000/- to Rs. 20,00,000/- though it was not permissible.

3.2 The learned consultant also submitted that the impugned order dated 24th September, 2012 has been passed in violation of the principles of natural justice as the notice was issued by invoking Section 112 (a) and 112 (b). The earlier order was passed imposing penalty under Section 112 (b) whereas the later order, impugned in this appeal, was passed imposing penalty under Section 112 (a) of Customs Act, 1962 Section 112 (a) and 112 (b) operates in different fields and cannot be invoked on same facts. I agree with the learned consultant.

3.3 The learned Consultant also submitted that the learned Commissioner has imposed penalty on the appellant by observing that the appellant being the employee should share the blame if the boss (CHA firm) is caught on the wrong foot. However, the learned Commissioner has failed to appreciate the fact that the CHA firm has already been exonerated from penalty under earlier order dated 30th October, 2001 / 9th November, 2001. Consequently, there is no justification in imposing penalty or enhancing penalty on the appellant. The learned Consultant also submitted that none of the persons, whose statements were recorded by DRI, have implicated the appellant about knowledge of the forged or bogus nature of license of importer firm namely M/s. Roha Dye Chem Ltd.

3.4 The learned Consultant also cited decision of the Cestat Ahmedabad **Prakash Punia** (252) ELT 442 (Tri. Ahmedabad) in which the Tribunal held that no penalty can be imposed without any knowledge of forged license during the process of clearance of goods.

3.5 The learned Consultant also cited **Hindustan Zinc Ltd** 2003 (152) ELT 148 (Tri. Delhi) in which, the Tribunal held that the penalty on an employee cannot be imposed when employer is not found guilty. This decision was upheld by Hon'ble Supreme Court as reported in Commissioner vs. Hindustan Zinc Ltd. 2004 (169) ELT A37 (SC). It has been prayed by the learned

Consultant that the appeal may be allowed and the impugned order passed by the learned Commissioner may be set aside.

4. The learned Authorised Representative for the department reiterated the impugned order passed by the Commissioner. He submitted that Shri Sanjay Gandhi, Manager of the CHA firm M/s. Shree Maruti Shipping Service had received all the import documents, including the Advance License no. 0332748 dated 28th March, 1995 and HSS contract entered into between M/s. R. K. Exports and M/s. Roha Dye Chem Pvt Ltd from Shree Raju Mohta for processing the documents in the Customs Department. He was fully aware of the fact that the import documents were forged. He has prayed that the impugned order, passed by the learned Commissioner, be confirmed and the appeal may be rejected.

4.1 I have heard the learned Consultant for the appellant and learned Authorised Representative for the department and perused the records and the submissions made by both the parties.

4.2 I find much force in the argument of learned Consultant for the appellant that when the CHA firm, employer of the appellant has already been exonerated from penalty under earlier order dated 30th October, 2001 / 9th November, 2001, then, there is no justification in imposing penalty rather enhancing penalty on the appellant, who was employee of that firm.

4.3 I also agree with the learned Consultant that there seems to be no justification in enhancing penalty of Rs. 5,00,000/- imposed on the appellant vide order dated 30.10.2001 to Rs. 20,00,000/- under Section 112 (a) of Customs Act, 1962. It is also pertinent to note here that the appeal under reference was filed by the appellant and not by the department. Further, the learned Commissioner to give cogent reasons for enhancing the penalty from Rs. 5,00,000/- to Rs. 20,00,000/-.

4.4 I also find much force in the arguments of the learned Consultant that in Order-in-Original dated 30th October, 2001, learned Commissioner has found that there is no evidence to impose penalty on M/s. Shree Maruti Shipping Service. On this reasoning, he exonerated M/s. Shree Maruti Shipping Service and the order attained finality. However, in remand proceedings, learned Commissioner while passing the impugned order dated 24nd September, 2012, observed that Shri Sanjay Gandhi (Appellant) and the Customs House Agent Company i.e. M/s. Maruti Shipping Services had aided and abetted the fraud and enhanced the penalty imposed on appellant.

4.5 I also agree with the learned Consultant for the appellant that the knowledge of forged license cannot be presumed or inferred from the facts by the department and the department must prove by cogent evidence that the appellant had full knowledge that the license was forged as held in **Prakash Punia** 2010 (252) ELT 442 (Tri.-Ahmedabad). The Tribunal has held that no penalty is imposable without any knowledge of forged license during the process of clearance of goods.

4.6 I also agree with the learned consultant that the appellant is entitled to get benefit of the principle of law laid down in **Hindustan Zinc Ltd** 2003 (152) ELT 148 (Tri. Delhi) in which, it has been held that penalty on an employee is not imposable when employer was not found guilty. This decision was duly upheld by Hon’ble Supreme Court in **Commissioner** vs. **Hindustan Zinc Ltd.** 2004 (169) ELT A37 (S.C.).

In view of the above observations, I have come to the conclusion that the impugned order passed by the learned Commissioner cannot be sustained. I am also of the view that the appeal is liable to be allowed whereas, the impugned order is liable to be set aside.

5. Consequently, the appeal is allowed and the impugned order is set aside.

(Order pronounced in the open Court on 14.08.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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