CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 11938 OF 2015

(Arising out of OIA-JMN-CUSTM-000-APP-068-072-15-16 Dated-19/08/2015 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

SHAILESH M MEHTA **Appellant**
11, Bardanwala Road, Grain Market,
Jamnagar, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-JAMNAGAR(PREV) **Respondent**
Sharda House, Bedi Bandar Road, Opp. Panchavati,
Jamnagar, Gujarat

WITH

- **I. Custom Appeal No. 11939 of 2015 (Rajendra Bhanushali)**
- **II. Custom Appeal No. 11940 of 2015 (Vijay Sanghvi)**
- **III. Custom Appeal No. 11941 of 2015 (V S Marine Services)**
- **IV. Custom Appeal No. 11942 of 2015 (K B Shipping & Company)**

(Arising out of OIA-JMN-CUSTM-000-APP-068-072-15-16 Dated-19/08/2015 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

Appearance:
Shri Vikas Mehta, Consultant and Shri Sarju Mehta, Chartered Accountant for the Appellant
Shri P Ganesan, Superintendent (AR) for the Respondent

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

<u>FINAL ORDER NO. 10849-10853/2025</u>

Date of Hearing : 19.08.2025
Date of Decision : 29.10.2025

<u>Dr. AJAYA KRISHNA VISHVESHA</u>

This appeal is directed against the impugned order dated 19/20 August, 2015 passed by learned Commissioner of Customs (Appeals) through which the learned Commissioner upheld the Order-in-Original passed by the Adjudicating Authority. However, he reduced the amount of penalty imposed upon the appellants Vijay K Sanghvi, Shri Rajendra Bhanushali, Shri Shailesh

M Mehta, M/s. K B Shipping & Company and modified the Order-in-Original to that extent.

2. The facts of the case in brief are that the intelligence gathered information that a tug 'Alliance' owned by M/s. K B Shipping & Company Jamnagar had illegally made supply of 20 KL of diesel oil to a Pakistan going foreign flag vessel 'MT CANTA' without filing export document. In view of this information, the officers of DRI visited Bangar (DCC) Jetty, Sikka, and interrogated crew of the tug bearing registration no. 3796 on board. The crew members and one of the owners, appellant Shailesh M Mehta admitted to have effected supply of 20 KL of diesel oil to vessel 'MT CANTA' in high seas through the said Tug 'Alliance' without informing Customs department nor filing any documents like shipping bills. Port clearance was obtained by the Tug 'Alliance' from Sikka Custom House to sail for Porbandar. However, instead of going to Porbandar Port, the Tug went straight to MT CANTA which was on way to Pakistan and delivered 20 KL of diesel oil, two packets of welding rods, one grinder with six discs and thereafter went to Porbandar port and deposited their port clearance to Customs Porbandar. After obtaining port clearance from Porbandar port for Sikka port, they sailed back to Sikka port. Shri Musa Ibrahim Modi of Jamnagar had boarded the Tug 'Alliance' as its Master when it sailed from Sikka port and was instrumental in delivering impugned goods to vessel 'MT CANTA'. The Tug "Alliance" was used as conveyance for transportation of illegal export of impugned goods without filing shipping bills for export and without any permission from Customs Authority rendering the impugned goods liable for confiscation under Section 113 of the Customs Act 1962 and since the illegal export was allegedly carried out with the knowledge and connivance of the so called owner of the Tug and Master of the Tug, they were also held liable for confiscation under Section 115 of the Customs Act,

1962. The Show Cause Notice dated 11th March, 2014 was issued to the appellants along with other co-noticees. The Show Cause Notice was adjudicated by the Adjudicating Authority / Additional Commissioner. The Adjudicating Authority held that the impugned goods were liable for confiscation under Section 113 (f) and (g) of Customs Act, 1962. He gave an option to Shri Jitendra Kamdar, one of the co-noticees to redeem the same on payment of redemption fine of Rs. 1,50,000/- under Section 125 of the Customs Act, 1962. He also imposed penalty on other appellants under Section 114 (iii) of Customs Act and Section 114 AA of the Customs Act, 1962.

3. Aggrieved with the Order-in-Original passed by the learned Commissioner dated 26.12.2014, the appellants preferred appeal before the learned Commissioner of Customs (Appeals). After hearing the appellants, the learned Commissioner of Customs (Appeals) passed impugned order dated 19/20 August, 2015. The learned Commissioner arrived at the conclusion that the appellants along with other co-noticees acting in connivance deliberately got engaged through contacts with one another, aided each other, working beyond the scope of Customs Law and violating the rules and regulations laid down in Customs Act, 1962. They intentionally involved themselves in breaking all laws to meet the requirements of vessels MT CANTA. In doing so, they arranged for the Tug "Alliance" and supplied diesel and spares to MT CANTA. No shipping bill was filed in this process and port clearance was obtained from CH Sikka to CH Porbandar. No dues certificate, issued by the port authorities for the Tug "Alliance" showed it in ballast. Breach of Section 50 and 51 of Customs Act, 1962 also took place in as much as no shipping bill was filed for export of goods and no permission was sought for loading of goods for export, thereby attracting Section 13 (f) and (g) of Customs Act, 1962 for confiscation of goods. He agreed with the findings of the lower

authority regarding confiscation of Tug and imposition of redemption fine. However, he reduced the amount of penalty imposed upon the appellants but confirmed the Order-in-Original in other respects. Feeling aggrieved from the impugned order dated 19/20 August, 2015 passed by the learned Commissioner of Customs (Appeals), the present appeals have been filed by the appellants.

4. The learned Consultant / C.A. for the appellants submitted that the impugned order passed by the learned Commissioner (Appeals) is a non-speaking order and it has not taken into consideration all the submissions advanced by the Authorised Representative of the appellant. Learned Commissioner (Appeals) has failed to give consideration to the plea of the appellant that the learned Additional Commissioner had passed Order-in-Original in violation of the principles of natural justice as he refused to give opportunity to the appellant for cross examination of Shri Jitendra Kamdar, Shri Musa Ibrahim Modi, Shri Narpali Mohamad Rafiq and Shri Tarun Patel without any justification.

4.1 The learned Consultant / C.A. for the appellants submitted that in his statement recorded on 16th September, 2013, Shri Musa has admitted that as the Master of the vessel he was aware of the fact that it is unlawful to supply any goods to any vessel inside the sea without permission from the Customs Authority and agreed that he has made a mistake by supplying diesel oil, welding rods, cutting wheels and grinder to ship 'MT CANTA' through Tug "Alliance". Learned counsel for the appellant further argued that Shri Musa never informed anyone that he had obtained Port Clearance Certificate showing wrong destination and he made no mention of vessel "MT CANTA" and he had not filed any Manifest as well as Shipping Bill showing supply of aforesaid items.

4.2 The learned Consultant / C.A. for the appellants also submitted that the Adjudicating Authority has held in the Order-in-Original that it was the duty of Shri Jitendra Kamdar, Agent of the owner, to ensure that proper documents are filed with Customs. For his failure, penalty was imposed on him under Section 114 (iii) of Customs Act, 1962.

4.3 The learned Consultant / C.A. for the appellants also submitted that M/s. K B Shipping and Company were past owners of Tug "Alliance" and they had retained operational control during the transfer of title documents to M/s. V. S. Marine Services. M/s. K B Shipping & Company had deputed their employee Shri Tarun Patel to obtain "No Dues Certificate" from Gujarat Maritime Board. Once "No Dues Certificate" was obtained, it was for Shri Musa, being the Master of the Tug, to obtain proper permission from Customs House, Sikka before making any supply. He has duly admitted these mistakes in reply to the question put to him during his statement recorded on 16.09.2013. Shri Musa has stated that he had only taken the port clearance from the Customs House Sikka for Porbandar port. Shri Tarun Patel, Supervisor of M/s. K B Shipping was within the Tug while he obtained port clearance from Customs House Sikka. He did not take any other permission from Customs House Sikka for supplying diesel oil, welding rods, grinder and disc to vessel 'MV CANTA'. He also did not inform the Customs House, Sikka or Customs House, Porbandar about the supply of above material to the ship 'MV CANTA'. He also stated that as the Master of the ship, he knew that it is unlawful to supply any goods to any vessel, inside the seas without permission from Customs Authority. He made a mistake by supplying diesel oil, welding rods, cutting wheels and grinder to the ship MV CANTA through our Tug "Alliance".

4.4 The learned Consultant / C.A. for the appellants also submitted that there is no evidence to show that M/s. K B Shipping or their partners Shri

Shailesh Mehta and Shri Vijay Sanghvi had any prior knowledge about the mistakes on the part of Shri Musa, who was the Master of the 'Tug'. Shri Tarun Patel, who was deputed for obtaining "No Dues Certificate" from Gujarat Maritime Board for the Tug is not even a co-noticee in the present case. Therefore, no penalty was imposed on him. He also submitted that the omission on the part of Shri Musa and Shri Tarun Patel was not in the knowledge of M/s. K B Shipping and their partners Shri Shailesh Mehta and Shri Vijay Sanghvi and Shri Tarun Patel was not even implicated in the case. Therefore, no penalty ought to have been imposed upon M/s. K B Shipping, Shri Shailesh Mehta and Shri Vijay Sanghvi, Partners under Section 114 (iii) and Section 114 AA of the Customs Act, 1962.

4.5 The learned Consultant / C. A. for the appellants also submitted that the learned Adjudicating Authority has duly admitted that Shri Vijay Sanghvi, Partner of M/s. K. B. Shipping was in Kolkata at the material time and had no role in filing any application / declaration before Customs. On this ground, he has already been exonerated from penalty proposed under Section 114 AA. Once it is an admitted position that Shri Vijay Sanghvi had no role in the entire episode, penalty imposed on him under Section 114 (iii) is not tenable in the eyes of law.

4.6 The learned Consultant / C.A. for the appellants also submitted that the redemption fine imposed by learned Adjudicating Authority on the 'Tug' is not tenable in the eyes of law. On account of his findings contained in para 3.06 of the order it was duly held by the learned Adjudicating Authority that the 'Tug' was under operational control of M/s. K B Shipping and hence M/s. V. S. Marine cannot be held liable for the omission / commission on the part of M/s. K B Shipping. Despite this fact, the learned Adjudicating Authority imposed redemption fine of Rs. 30 lakhs on the Tug by holding the Tug liable for confiscation under Section 115 (2) of the Customs Act, 1962.

4.7 The learned Consultant / C.A. for the appellants also argued that Section 115 (2) of the Customs Act provides that any conveyance used as means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself or his agent and the person in charge of the conveyance. In this case, the learned Adjudicating Authority has already held that the 'Tug' was under operational control of M/s. K B Shipping, therefore, M/s. V. S. Marine Services cannot be held liable for the offence, if any. Consequently, the 'Tug' cannot be held liable to confiscation under Section 115 (2) considering absence of knowledge or connivance on the part of the owner. On this basis imposition of fine of Rs. 30 Lakhs on M/s. V S Marine Service is not tenable in the eye of law.

4.8 The learned Consultant / C.A. for the appellants also argued that penalty has been imposed on Shri Rajendra Bhanushali, Partner of M/s. Raja Petroleum under Section 114 (iii) of Customs Act, 1962 by alleging that diesel supplied by Shri Musa to the vessel 'MT CANTA' by using Tug 'MT Alliance' was sold by him. However, it has been provided in Section 114 of the Customs Act that any person, who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113 or abets the doing or omission of such acts shall be liable to a penalty. In this case, it is no where alleged in the show cause notice that Shri Rajendra Bhanushali had rendered anything liable to confiscation under Section 113, therefore, the requirements of Section 114 are not satisfied and Shri Rajendra Bhanusali is not liable to penalty under Section 114 of the

Customs Act, 1962. It has been prayed by the learned Consultant / C.A. for the appellants that the 'Tug' is not liable to confiscation under Section 115 (2) and M/s. K B Shipping, M/s. V S Marine Service, Shri Shailesh Mehta and Shri Vijay Sanghvi are not liable to penalty under Section 114 (iii) and 114 AA as imposed.

5. The learned Authorised Representative for the department reiterated the Order-in-Appeal dated 19th August 2015 passed by learned Commissioner of Customs (Appeals) and submitted that the appellants facilitated the supply of diesel and other material to a foreign going vessel "MT CANTA" without filing shipping bill. Therefore, the appellants cannot escape their responsibility by claiming that they had no prior knowledge of these facts or their employees made mistake. He has further submitted that the impugned order was rightly passed by the learned Commissioner of Customs and it is liable to be upheld whereas the appeals are liable to be dismissed.

6. I have heard the learned Counsel for the appellants and the learned Authorised Representative for the department and perused the records.

6.1. From perusal of the impugned Order-in-Appeal passed by the learned Commissioner dated 19/20.08.2015, it comes out that learned Adjudicating Authority passed the order for confiscation of diesel oil, portable grinder with six discs and two packets of welding rod under Section 113(f) and (g) of the Customs Act, 1962 and Shri Jitendra Kamdar was given option to redeem the same on payment of redemption fine of Rs. 1,50,000/-. He also imposed penalty upon Shri Jitendra M Kamdar, Shri Shailesh Mansukhlal Mehta, Shri Vijay Sanghavi, Shri Musa Ibrahim Modi, Shri Mohamad Rafiq Abdulkarim Narpali, Shri Rajendra Bhagwanjibhai Bhanushali and M/s. K. B. Shipping & Company, Jamnagar under Section 114(iii) of the Customs Act, 1962. He also imposed penalty upon M/s. K. B. Shipping & Company, Jamnagar and Shri Shailesh M Mehta, Shri Musa Ibrahim Modi under Section 114AA of the Customs Act, 1962. He also confiscated the tug 'Alliance' owned by M/s. V.S. Marine Service, Jamnagar but gave option to the owner to redeem it on payment of redemption fine of Rs. 30,00,000/- under Section 125 of the Customs Act, 1962.

6.2. Learned Commissioner has upheld the Order-in-Original passed by learned Adjudicating Authority but reduced the amount of penalty imposed upon the appellants.

6.3. The main issue before the Tribunal is whether the appellants deliberately violated Section 50 and 51 of the Customs Act, 1962 and no shipping bill was filed for export of goods and no permission was sought for loading of goods for export on their instruction and on their initiative thereby Section 13(f) and 13(g) of Customs Act, 1962 are attracted against the appellants and whether the penalty has been rightly imposed upon the appellants. Sections 50 and 51 of the Customs Act, 1962 are reproduced below:-

> ***"SECTION 50. Entry of goods for exportation.*** —
>
> *(1) The exporter of any goods shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed]:*
> *[**Provided** that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner.]*
>
> *(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall [xxx] make and subscribe to a declaration as to the truth of its contents.*

[(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

SECTION 51. Clearance of goods for exportation. *— [(1)] Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation:*
*[[**Provided** that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*
***Provided** further that] the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.]*

[(2) Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. *— The following export goods shall be liable to confiscation:-*
(a) to (e) ….. …… ……

(f) any [* *] goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;*
(g) any [* *] goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;*

6.4 From the material available on record, it comes out that at the relevant time Shri Jitendra M Kamdar, the agent of owner of the vessel "MT Canta" contacted Mohammad Rafiq and Abdulkarim Narpali who further contacted Shri Musa Ibrahim Modi to arrange the supply of bunker fuel as the vessel "MT

CANTA" fell short of bunker fuel. Shri Musa Ibrahim Modi procured 20KL diesel from M/s. Raja Petroleum and hired one tug named, 'Alliance' to supply the bunker diesel to vessel "MT CANTA". The tug was earlier owned by M/s. K. B. Shipping and was later transferred to M/s. V. S. Marine Service, Jamnagar. Therefore, Shri Musa Ibrahim Modi contacted Shri Shailesh Mehta, Partner of M/s. V. S. Marine Service to provide the tug.

6.5 It is pertinent to mention here that there is no evidence on record that Shri Rajendra Bhagwanjibhai Bhanushali, partner of M/s. Raja Petroleum was duly informed that 20KL of diesel oil has to be procured so that it can be supplied to the ship "MT CANTA" in violation of provisions of Customs Act, 1962. Therefore, I am of the view that penalty has been wrongly imposed by the Adjudicating Authority on the appellant Shri Rajendra Bhagwanjibhai Bhanushali, partner of M/s. Raja Petroleum and has been wrongly confirmed by learned Commissioner through the impugned order.

6.6 At page 42 of the Order-in-Original, the learned Adjudicating Authority has mentioned that M/s. Raja Petroleum was not authorised to sell more than 2KL diesel at a time to any customer and in violation of the relevant rules, he has supplied 20KL of diesel by 10 different invoices issued in the name of M/s. Chisti Marine Service, Jamnagar. I am of the view that violation of such rules and selling more than 2KL of diesel to a customer cannot attract any provisions of Customs Act, though it may be punishable under relevant provisions of other laws and on this count, penalty cannot be imposed upon him under Section 114(iii) of Customs Act. Even if Shri Rajendra Bhagwanjibhai Bhanushali, partner of Raja Petroleum knew that diesel was being purchased for supplying it to the "Tug", it cannot be presumed that he knew that the said diesel will be supplied to vessel "MT CANTA" against the provisions of Customs Act, 1962. Therefore, I am of the view that penalty under Section 114(iii) has been wrongly imposed upon the appellant Shri Rajendra Bhagwanjibhai Bhanushali.

6.7 As already mentioned, penalty under Section 114(iii) can be imposed upon a person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113 or abets the doing or omission of such act. Appellant Shri Rajendra Bhagwanjibhai Bhanushali was not having any knowledge that by his actions he will be rendering the goods liable to confiscation under Section 113 hence no penalty could be imposed upon him.

6.8 From the material available on record it also comes out that Shri Musa Ibrahim Modi boarded the tug 'Alliance' from Sikka Port as 'Master' and he obtained port clearance from Customs House Sikka, from Sikka to Porbandar port and completed the supply of diesel, grinder with discs and welding rods to vessel MT Canta on high seas and returned to Porbandar from which he again obtained Port Clearance for a voyage from Porbandar port to Sikka port. It is pertinent to mention here that Shri Musa Ibrahim Modi neither filed 'Manifest' nor 'shipping bills' with Customs for the aforesaid supplies. From the above facts, it appears that Shri Musa Ibrahim Modi, who was the 'Master' of the tug at the relevant time, was bound by law to have filed 'Manifest' and shipping bills with Customs House Sikka for the above mentioned supply but he failed to do so.

6.9 Now, the question before the Tribunal is 'whether penalty under Section 114 (iii) has been rightly imposed upon Shri Vijay Kantilal Sanghvi Partner in the firm M/s. K. B. Shipping Co. & M/s. V. S. Marine Service? Shri Vijay Kantilal Sanghvi Partner in the firm M/s. K. B. Shipping and M/s. V. S. Marine Service has stated in his statement recorded on 20.09.2013 under Section 108 of the

Customs Act, 1962 which has been reproduced at page 21 to 24 of the Order-in-Original that "he had asked Shri Rafiq Narpali to contact his Partner Shri Shailesh Mehta and to tie up the supply programme. He had ensured telephonically with Musa as well as Rafiq to leave for supply after completion of all the formalities of port and Customs. He also conveyed to his Partner Shri Shaileshbhai to ensure to complete all formalities of port and Customs before sailing for bunker." He has also stated that "it was not his intention to mislead Customs but he admitted of committing a mistake on their part that Musa had not filed shipping bill for this bunker, though, it was to be supplied to Foreign Going Vessel in the high seas. They had trusted Shri Musa Ibrahim Modi but he had misrepresented the facts related to supply of diesel and spare parts and has betrayed them in the matter." He has further stated "Shri Musa Ibrahim has suppressed and misrepresented the facts to them in the entire issue. He was not involved in the smuggling of diesel and spare parts."

6.10 From the above mentioned statement made by Shri Vijay Kantilal Sanghvi, it is clear that Shri Musa betrayed the Partners of M/s. K. B. Shipping & Co. and M/s. V. S. Marine Services and failed to complete all the formalities with the Customs officers and failed to submit Manifest and Shipping Bills.

6.11 It is also pertinent to note that the learned Adjudicating Authority has mentioned in his order that Shri Vijay Kantilal Sanghvi, Partner of of M/s. K. B. Shipping was in Kolkata at the material time and therefore, he had no role in filing any application / declaration before Customs. On this ground, Shri Vijay Sanghvi has already been exonerated from penalty proposed under Section 114 AA. I am of the view that from the material available on the record it comes out that the conduct of Shri Vijay Sanghvi, Partner of M/s. K. B. Shipping Company was bonafide and he was not aware of the fact that Shri Musa Ibrahim Modi has not filed Manifest and Shipping Bills with the Customs

Authorities and without the permission of the Customs Shri Musa supplied the bunker fuel and other spare parts to the Foreign going vessel 'MT Canta'. Therefore, penalty imposed upon Shri Vijay Sanghvi under Section 114 (iii) is also not sustainable and is liable to be set aside.

6.12 Now the question arises whether penalty under Section 114 (iii) and 114 AA has been rightly imposed upon Shri Shailesh Mansukhlal Mehta, Partner of M/s. K. B. Shipping Company?

6.13 Shri Tarun Patel Supervisor in M/s. K. B. Shipping and Company, Jamnagar has stated in his statement recorded on 04.10.2013 under Section 108 of the Customs Act that Shri Shaileshbhai Mehta, who is Partner in their company had directed him to obtain "No Dues Certificate" for tug 'Alliance' from Sikka port to Porbandar. When he was asked whether Shri Shaileshbhai Mehta told him that supply of diesel oil and other spares is also to be made by tug "Alliance" to foreign going vessel 'MT Canta' to which he stated that "he is unaware of the same." Shri Musa Ibrahim Modi has stated in his statement dated 16.09.2013 that as 'Master of vessel' he was aware of the fact that it is unlawful to supply any goods to any vessel inside the sea without permission from the Customs authorities and agreed that he has made a mistake by supplying diesel oil, welding rods, cutting wheels and grinder to vessel MT Canta through tug "Alliance". There is no evidence on record that Shri Musa Ibrahim Modi informed Shri Shailesh Mansukhlal Mehta that he had obtained 'Port Clearance Certificate' showing wrong destination or he made any mention of vessel "MT CANTA" or he had informed him that he had not filed any 'Manifest' as well as "shipping bills" showing supply of above mentioned items. Unless the above mentioned facts are in the knowledge of Shri Shailesh Mansukhlal Mehta and unless this fact is proved that Shri Shailesh Mansukhlal Mehta was in knowledge of those facts, no penalty can be imposed upon him. It appears from the facts of the case that Shri Shailesh Mansukhlal Mehta was not involved in the smuggling of diesel oil and spare parts through tug "Alliance" from Sikka port to vessel "MT CANTA" and penalty has been wrongly imposed upon him and the impugned order imposing penalty upon him cannot be sustained.

6.14 It is pertinent to mention here that Shri Shailesh Mehta, common partner of M/s. K. B. Shipping & Co. and M/s. V.S. Marine Services, Jamnagar has stated in his statement that he did not have any prior knowledge about the fact that Shri Musa, to whom the tug was given on lease for supply of diesel and spares to the vessel, had not filed any shipping bill for supply of the said goods. Shri Shailesh Mehta has nowhere stated that he had allowed Shri Musa to use the tug for supply of diesel and spares without filing the shipping bill and without observing the law. Therefore, no understanding can be assumed between Shri Shailesh Mehta and Shri Musa.

6.15 It is also pertinent to note here that Shri Tarun Patel, Supervisor of M/s. Shri K. B. Shipping & Co. has stated in his statement that Shri Shailesh Mehta introduced him to Shri Musa on 12.09.2013 and instructed him to tie up with Shri Musa to carry out the procedure for obtaining 'No Dues Certificate' and permission from GMB and Customs. Therefore, the job related to making correct application before the Port Authorities and Customs Authorities was entrusted to Shri Tarun Patel. Neither Shri Shailesh Mehta nor Shri Tarun Patel has stated in their statements that Shri Shailesh Mehta has instructed Shri Tarun Patel to make application with respective Government Authorities showing incorrect particulars. Shri Tarun Patel, employee of M/s. K. B. Shipping & Co. though, has made some mistakes in preparing the applications that were filed by him before the Port and Customs Authorities but it appears that Shri Shailesh Mehta was not aware about these discrepancies at any point of time and this fact came to light during investigation by DRI. It seems that Shri Shailesh Mehta had no prior knowledge about the contents of the application made by Shri Tarun Patel before the Port and Customs Authorities for obtaining the "No Dues Certificate" and "Port Clearance Certificate" respectively. They had also made request for cross examination of Shri Jitendra Kamdar, Shri Musa, Shri Narpali and Shri Tarun Patel to elicit the sequence of events owing to which the exporter did not file the shipping bill and Shri Tarun Patel filed applications containing wrong facts before the Port and Customs Authorities which ended up in issuance of 'No Dues Certificate' showing the tug in ballast and destination of tug as Porbandar, however, their request was turned down. In these circumstances, Shri Shailesh Mehta cannot be held responsible for all the above mentioned irregularities and illegalities. It appears that Shri Shailesh Mehta or Shri Vijay Kantilal Sanghvi did not receive any proposal from Shri Musa and never agreed to any such proposal to transport the goods by the tug without filing shipping bills or without making correct declarations before the Port and Customs Authorities regarding the "Port Clearance" from the Customs. It appears that Shri Shailesh Mehta and Shri Vijay Kantilal Sanghvi had no prior knowledge regarding the fact that the goods would be transported by Shri Musa or Shri Tarun Patel by using their tug, without filing the shipping bills and the tug would sail from the port of Sikka under the cover of 'No Dues Certificate' issued by GMB showing the tug in ballast. Neither Shri Vijay Kantilal Sanghvi nor Shri Shailesh Mansukhlal Mehta filed any applications before the Port Authorities or Customs Authorities in connection with obtaining "Port Clearance Certificate". In fact, the applications were filed by Shri Tarun Patel an employee of M/s. K. B. Shipping & Co. Shri Tarun Patel had prepared the alleged erroneous applications before the "Port Authorities" for obtaining 'No Dues Certificate' and before the Customs Authorities for obtaining the "Port Clearance Certificate" but, Shri

Tarun Patel has been given a clean chit by the department and no notice was issued to him. Even in the show cause notice, no allegation has been made regarding collusion between any of the partners of M/s. K. B. Shipping & Co. or M/s. V. S. Marine Services and Shri Tarun Patel. Therefore, when the person who had actually prepared the application for obtaining 'No Dues Certificate' and "Port Clearance Certificate" has not been found guilty and no allegation has been made by the department regarding collusion between him and the partners of the firm, then it was not proper to initiate action against Shri Shailesh Mansukhlal Mehta and Shri Vijay Kantilal Sanghvi.

6.16 Now the question before the Tribunal is "whether penalty upon M/s. K. B. Shipping & Co. has been rightly imposed or otherwise. From the material available on records, it comes out that M/s. K. B. Shipping & Co. is a partnership firm and Shri Vijay Kantilal Sanghvi and Shri Shailesh Mansukhlal Mehta were the Partners of the firm who sold the tug 'Alliance' through a sale deed dated 01.09.2013 to another partnership firm M/s. V. S. Marine Service, Jamnagar owned by Shri Vinit Arvind Shah, Shri Vijay Kantilal Sanghavi and Shri Shailesh Mansukhlal Mehta as its partners. Shri Vijay Kantilal Sanghavi and Shri Shailesh Mansukhlal Mehta had common business interest in both the firms M/s. K. B. Shipping & Company and M/s. V. S. Marine Service, Jamnagar. M/s. K. B. Shipping & Co. were the past owner of tug "Alliance" and they had operational control during the transfer of the tug by title documents to M/s. V. S. Marine Service. When partners of M/s. K. B. Shipping & Co. were not found guilty for illegally supplying diesel and other spares to foreign going vessel 'MT Canta' without filing shipping bill and providing wrong destination of the tug then their firm M/s. K. B. Shipping & Co. cannot be held liable for the above mentioned irregularities and illegalities. It is pertinent to mention here that Shri Musa Ibrahim Modi, who was the Master of the tug at the relevant time, stated in his statement that "he had taken only port clearance from Customs House Sikka for Porbandar Port. Shri Tarun Patel, Supervisor of M/s. K. B. Shipping was there when port clearance was taken from Customs House Sikka. He did not take any other permission from Customs House Sikka for supplying diesel oil, welding rods, grinder and disks to the vessel "MV Canta". He also did not inform Custom House, Sikka or Custom House, Porbandar about the above supplies to ship "MV Canta".

6.17 From the above statement made by Shri Musa and from the perusal of the records, it is clear that in the whole episode, Shri Musa Ibrahim Modi, the "Master of the tug" at the relevant time and Shri Tarun Patel, Supervisor of M/s. K. B. Shipping & Co. played key roles in the whole episode. Shri Tarun Patel obtained port clearance but did not take any other permission from Customs House Sikka for supplying diesel oil, welding rods, grinders and disks to the vessel "MV Canta". They did not inform Customs House Sikka or Customs House Probandar about the above supplies to ship "MV Canta". Therefore, in these Circumstances, no liability can be fastened on Shri Shailesh Mehta or Shri Vijay Kantilal Sanghvi or their firm M/s. K. B. Shipping & Co., Jamnagar.

6.18 Now the question before the Tribunal is whether the actual owner of the tug 'Alliance' M/s. V. S. Marine Services, Jamnagar is responsible for the above mentioned irregularities and illegalities and whether penalty has been rightly imposed upon them. In this context, it is pertinent to mention here that at the relevant time, the tug 'Alliance' was at the disposal of M/s. K. B. Shipping & Co. and their employees. It was not under the control of M/s. V. S. Marine Services. Therefore, no conclusion can be drawn that M/s. V. S. Marine Services had committed any act or omitted to do any act or abated any such act which rendered the goods liable to confiscation under Section 113 of

Customs Act, 1962. It also appears that the partners of M/s. V. S. Marine Services had no prior knowledge regarding the aberrations on the part of Shri Musa or Shri Tarun Patel and therefore M/s. V. S. Services cannot be held responsible for the above mentioned irregularities and illegalities and no liability can be fastened upon it and no penalty can be imposed upon it under Section 114 (iii) of Customs Act, 1962.

6.19 So far as the redemption fine imposed by learned Adjudicating Authority on the tug is concerned, it is also not tenable in the eyes of law. The learned Adjudicating Authority has accepted in the Order-in-Original that tug "Alliance" was not under the operational control of M/s. V. S. Shipping at the relevant time. Therefore, M/s. V. S. Marine Service cannot be held liable for violation of provisions of Section 50 and 51 of the Customs Act. Despite this fact, learned Adjudicating Authority imposed redemption fine of Rs. 30,00,000/- on the tug "Alliance" by holding it liable for confiscation under Section 115(2) of the Customs Act, 1962. It is pertinent to mention here that Section 115 (2) of the Customs Act, 1962 provides that any conveyance used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, or the person in charge of the conveyance. In the present case, the Adjudicating Authority has come to the conclusion that the tug 'Alliance' was under the operational control of M/s. K. B. Shipping & Co. at the material time and therefore, M/s. V. S. Marine Services cannot be held liable for irregularities and illegalities and the tug 'Alliance' cannot be held liable to confiscation under Section 115 (2) of the Customs Act, 1962.

6.20 Considering the facts that the owners of the tug 'Alliance' M/s. V. S. Marine Services were not in the knowledge of the above mentioned irregularities and illegalities and there was no connivance on their part to illegally supply bunker fuel to vessel "MV Canta", therefore, imposition of redemption fine of Rs. 30,00,000/- on the appellant M/s. V. S. Marine Services is not sustainable.

In view of above observations and discussion, I am of the view that learned Commissioner has erred in upholding the Order-in-Original passed by learned Adjudicating Authority and the impugned order is not sustainable and liable to be set-aside and the appeals are liable to be allowed.

7. Consequently, the appeals are allowed and the impugned order dated 19/20 August, 2015 passed by learned Commissioner is set-aside.

(Order pronounced in the open Court on 29.10.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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