# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 1

## CUSTOMS Appeal No. 11409 of 2016

[Arising out of Order-in-Appeal No JMN-CUSTM-000-APP-012-16-17 dated 21.04.2016 passed by Commissioner (Appeals), CUSTOMS-JAMNAGAR(PREV)]

**Ladhubhai Keshav Lodhari** **.... Appellant**
Customs House Agent
Palano Chowk, Bunder Road,
PORBANDAR, GUJARAT.

*VERSUS*

**Commissioner of Customs, Jamnagar** **.... Respondent**
Sarda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

**APPEARANCE :**

Shri Sharan Rayaprol, Advocate for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Revenue.

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

DATE OF HEARING: 30.09.2025
DATE OF DECISION:24.10.2025

**FINAL ORDER NO. 10870/2025**

**BINU TAMTA:**

M/s. Ladhubhai Keshav Lodhari are Custom House Agent, engaged in the work of clearance of import and export cargo and also processing of documents.

2. The officers of Customs Department, Jamnagar, intercepted and seized one consignment of 22.050 MTs of Red Sanders wood. During inquiry, they found that six other containers of 40.800 MTs of Red Sanders wood had already been exported. After due inquiry, a Show Cause Notice was issued proposing to seize the entire Red Sanders wood logs and impose penalties on various persons involved. Action under CHALR/CBLR against the appellant was also proposed under the same SCN.

3. On adjudication, Additional Commissioner of Customs, Jamnagar passed the order dated 03.07.2015 imposing penalty of Rs. 50,00,000/- on the appellant and also ordered for a separate action against the appellant under CHALR/CBLR. Aggrieved by the impugned OIO, the appellant filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad and by Order-in-Appeal No. JMN-CUSTM-000-APP-012-16-17 dated 21.04.2016 set aside the order for initiating action against the appellant under CHALR/CBLR, however the penalty imposed on the appellant was reduced from Rs. 50,00,000/- to Rs. 7,50,000/-. The appellant have filed the present appeal before this Tribunal.

4. Heard Shri Sharan Rayaprol, learned Counsel for the appellant and Smt. Sunita Menon, learned Superintendent (AR) for the Revenue.

5. The appellant submits that their role was carried out in a bonafide manner, only carrying out the duties of a CHA as per the CHALR/CBLR regulations. Also the shipping bill that they had filed for the exporter M/s. Sanghar Exports, Pune, was brought to them by Mr. Kamlesh Manjaria and that the CHA agency charges were paid by Mr. Sanjay Barot, who also gave instructions for the filing of shipping bill on behalf of M/s. Sanghar Exports to Mr. Mahavir Jadeja, who is a G-Card holder representative of the appellant at the Pipavav Port.

6. The appellant submits that even though they had filed one shipping bill, based on the trust reposed in the documents provided to them by the exporter, they had no other role to play. The appellant had neither seen the cargo nor the container, nor was it in their scope of work to do so. As per their responsibility, they are responsible for coordinating with the customs and the exporter and follow the procedure correctly. In this case also, the appellants had taken care of the procedure of customs. However, the stuffing

of goods at the factory or the examination of goods at the Port of export was not at all in their scope of work, which is where the lapse has occurred.

7. The appellant submits that in terms of section 114 (i) the appellants have not at all attempted to export the goods as they are not the exporter, and also it is a fact that they have also not prepared any document which renders the goods liable for confiscation. The appellant has also not done anything or omitted anything nor have abetted any doing of the exporter, which makes the goods liable for confiscation. In the present case, the forged documents were created by some other person and they are not at all responsible for the same. The appellant's G-Card holder had only prepared a shipping bill based on the documents received by him from another person.

8. Per contra, the learned AR has reiterated the findings of the authorities below and relied on the decisions in the case of **S Chandrashekharan vs. Commissioner of Customs, Tuticorin – 2014 (310) ELT 826 (Tri. Chennai) and G Masilamani vs. Commissioner of Customs, Chennai – IV – 2019 (367) ELT 730 (Mad.)** to say that the penalty under Section 114 of the Act is sustainable and hence no interference is called for.

9. The short question for consideration is whether penalty can be imposed on the appellant under section 114 of the Customs Act. Admittedly, the appellant is not part of the syndicate involved in illegal export of red sanders. The findings recorded by the Commissioner is to the effect that the appellant was negligent in handling work pertaining to stuffing of containers and failed to verify the genuineness of the exporter. For such allegations, the proper course was to proceed under the provisions of CBLR, which specifically deal with the responsibilities/liability of the CHA in verifying the antecedents of the exporters. Findings recorded qua the negligence of the CHA are not relevant for imposing the penalty under section 114. Penalty under section 114 can be

imposed in cases where any person who, in relation to any goods, does or omits to do any act, which renders the goods liable for confiscation. In **Fast Cargo Movers versus Commissioner of Customs, Jodhpur – 2018 (362) ELT 184 (Tri. Del.)**, the Division Bench of the Tribunal observed that the charges leveled against the appellant were confined to the fact that as the custodian, clearing and forwarding agents, shipping line agents, and customs house agents in context with the export of alleged goods, the appellants have grossly neglected their duties and responsibilities cast on them under the regulations, which provides the procedure for suspension or revocation of license and for imposition of penalty for contravention of the provisions laid down therein. It was therefore, held that when the statue specifically provides for a code of conduct and penalty for infringement thereof, it is not proper and appropriate to bring such violation within the realm or scope of another statutory provision i.e. Section 114 of the Act for punishing the person, by way of imposing penalty. In other words, it was held that for invoking the provisions of section 114 of the Act, the authorities are under the statutory obligation to prove that because of the wrong doing, omission, or commission on part of such person, the goods became liable for confiscation. The order imposing penalty under section 114 for illegal export of red sanders instead of the declared goods was therefore set aside.

10. The revenue has relied on the decision of the learned Single Member of the Tribunal in **S Chandrashekharan versus Commissioner of Customs, Tuticorin – 2014 (310) ELT 826 (Tri. Chennai)**. The appellant therein was the proprietor of M/s Kumari Coir Products and had allowed his name and IEC to export goods/red sanders by persons who were unknown to him for a consideration. The other appeal pertained to the CHA and it was found that he was just collecting rental income out of the license. Further, the argument

that for not complying with the provisions of CHALR, 2004, punishment can be only revocation of license was rejected and it was held that if the omission of duties cast on him have rendered any goods liable to confiscation penalty under section 114(i) is justified. First of all, factually the case is very different and moreover, the decision has been rendered by the Bench of learned Single Member and as against the same, the view of the Division Bench in **Fast Cargo Movers** is contrary as discussed above. The decision of the Division Bench is later in point of time and having binding effect, judicial proprietary demands that the same needs to be followed.

11. The other decision cited by revenue is by the Division Bench of the High Court of Madras in **G Masilamani versus Commissioner of Customs, Chennai –IV – 2019 (367) ELT 730 (Mad.)**, however, on facts, the same is clearly distinguishable, where the High Court noted the conclusion of the Tribunal that the appellant's role was avidly clear that perpetuated smuggling for having lent their license and had to face the consequence of mis-use of such CHA license to carry out smuggling. Thus the conclusion was that CHA acted in connivance with the racket till the offending container was seized by the investigation resulting in the discovery of smuggled goods and they could not lead any evidence to prove their detachment to the attempted export of the offending goods. The decisions cited by the appellants there in the case of **Commissioner versus I Sahaya Edin Prabhu – 2015 (320) ELT 264 (Mad) and Commissioner versus M Renganathan – 2017 (345) ELT 95 (Mad.**) were distinguished.

12. In light of the aforementioned ruling in **Fast Cargo Movers**, I am of the considered opinion that the impugned order imposing penalty on the appellant under section 114 of the Act is not sustainable as there is no material to prove

that appellant was either involved in smuggling of goods, or encouraged and supported the wrong doer in doing the wrongful act in attempting to export the goods.

13. The impugned order, is therefore, set-aside. Consequently, the appeal is allowed.

*(Order pronounced in the open court on 24th October, 2025)*

**(Ms. Binu Tamta)**
**Member (Judicial)**

**KL**