

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
AHMEDABAD**

**REGIONAL BENCH, COURT NO. 2**

**CUSTOMS APPEAL NO. 11961 OF 2015**

[Arising out of OIA-JMN-CUSTM-000-APP-064-065-15-16 dated 07/08/2015 passed by  
Commissioner of CUSTOMS-JAMNAGAR (PREV)]

**JITENDRA MANSUKHLAL KAMDAR**

**Appellant**

202-anmol, Above Bata Show Room, Waghawadi Road,  
Bhavnagar, Gujarat

Vs.

**COMMISSIONER OF CUSTOMS-JAMNAGAR (PREV)**

**Respondent**

Sharda House...Bedi Bandar Road, Opp. Panchavati,  
Jamnagar, Gujarat

**WITH**

**CUSTOMS APPEAL NO. 12068 OF 2015**

[Arising out of OIA-JMN-CUSTM-000-APP-064-065-15-16 dated 07/08/2015 passed by  
Commissioner of CUSTOMS-JAMNAGAR(PREV)]

**MOHAMADRAFIQ ABDULKARIM NARPALI**

**Appellant**

Proprietor, N R Underwater Diving Services, 306,  
Sagar Complex, Jashonath Chowk, Motibaug Road,  
Bhavnagar, Gujarat

Vs.

**COMMISSIONER OF CUSTOMS-JAMNAGAR (PREV)**

**Respondent**

Sharda House...Bedi Bandar Road, Opp. Panchavati,  
Jamnagar, Gujarat

**Appearance:**

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 )**

**FINAL ORDER NO. 11381-11382/2025**

Date of Hearing : 19.08.2025

Date of Decision : 28.11.2025

**Dr. AJAYA KRISHNA VISHVESHA**

This appeal is directed against the impugned order dated 07.08.2015  
passed by the learned Commissioner of Customs (Appeals) through which he  
upheld the Order-in-Original passed by the Lower Authority dated 26.12.2014

regarding confiscation and redemption fine. However, he reduced the penalty to Rs. 5,00,000/- on Shri Mohamadrafiq Abdulkarim Narpali, Proprietor of M/s. N R Underwater Diving Services and also reduced the penalty to Rs. 7,00,000/- on Shri Jitendra Mansukhlal Kamdar, Proprietor of M/s. Prime Multi Link and ors. and modified the order of the Lower Authority to that extent.

1.1 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, 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.

1.2 The show Cause Notice dated 11<sup>th</sup> 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 Appellant, 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 of Rs. 7,00,000/- on the appellant Shri Mohamadrafik Abdulkarim Narpali under Section 114 (iii) of the Customs Act, 1962 and penalty of Rs. 10,00,000/- on the Appellant Shri Jitendra Mansukhlal Kamdar agent of M/s. Exim Incorporated USA under Section 114 (iii) of the Customs Act, 1962.

1.3 Aggrieved with the Order-in-Original passed by the learned Additional Commissioner, the appellants preferred appeal before the learned Commissioner of Customs (Appeals). After hearing the appellants the learned Commissioner of Customs (Appeals) passed the impugned order dated 07.08.2015.

1.4 The learned Commissioner (Appeals) came to the conclusion recorded at page 24 of the impugned order in paragraph-7 that it is an undisputed fact that Appellant 1 and 2 along with other co-noticees mentioned in the impugned order, without going into the technicality of Customs formalities caused export of 'impugned goods' under the perception that the impugned goods are non-dutiable. I find that lower authority has discussed the issue in detail in impugned order. I agree with the findings of the lower authority regarding confiscation of exported goods and imposition of redemption fine. However, it is observed that the Lower Authority has imposed penalties on both the Appellants on higher side not taking into consideration the nature

and extent of offences committed by them. Therefore, the penalty imposed on Appellant no. 1 and 2 namely Shri Mohamadrafiq Abdulkarim Narpali, Proprietor of M/s. N R Undertaking Diving Services and M/s. Jitendra Mansukhlal Kamdar, Proprietor of M/s. Prime Multi Link under Section 114 (iii) of Customs Act, 1962 is required to be reduced and I order accordingly.

1.5 Feeling aggrieved from the impugned order dated 07.08.2015 passed by the learned Commissioner (Appeals). The present appeal has been filed before this Tribunal.

2. The learned Consultant for the appellants submitted that the impugned order passed by the learned Commissioner (Appeals) is non-speaking and non-reasoned order, as he has not dealt with all the pleas made in the 'grounds of appeal' by the appellants. The judgments and rulings referred to and relied upon by the appellants have been completely ignored by the learned Commissioner (Appeals) while passing the impugned order.

2.1 The learned Consultant for the appellants also submitted that the learned Commissioner (Appeals) has not recorded any findings on the arguments raised before him by the appellants.

2.2 The learned Consultant for the appellant also submitted that goods already exported were not liable to confiscation under Section 113 of the Act and consequently, no penalty relating to such confiscation under Section 114 of the Act was liable to be imposed on the appellant. The Show Cause Notice issued to the appellants is pertaining to goods already exported. Therefore, the provisions of Section 113 of the Act cannot be invoked for confiscation of goods already exported. Section 113 of the Act can be pressed into service only to confiscate goods which are attempted to be exported in violation of any of the prohibitions mentioned in the various clauses thereof. The confiscation ordered in respect of the subject goods is, therefore, bad in law. He has also submitted that in the present case, the diesel oil, one portable

grinder with six discs and two packets of welding rods are not available with the department nor any bond was executed by the Appellant in favour of the department. In the absence of the bond and security, no confiscation can be ordered by the department nor any redemption fine can be imposed upon the appellant.

2.3 The learned Consultant for the appellants also submitted that when the goods as mentioned above were not seized under Section 110 of the Customs Act they are not liable for confiscation. He has further submitted that the department has not seized those goods under Section 110 of the Customs Act therefore, there could not be any order regarding confiscation of those goods.

2.4 The learned Consultant for the appellants also submitted that no duty was involved on the supply of the impugned goods as the same were applied to foreign going vessels. Therefore, when no duty is leviable on the impugned goods, penalty can not be imposed upon the appellants and no penalty could survive under Section 114 (iii) of the Customs Act which was imposed upon the appellants. The learned consultant for the appellants submitted that the impugned order passed by the learned Commissioner be set aside and the appeal may be allowed.

3. The learned Authorised Representative for the department reiterated the Order-in-Original passed by the learned Additional Commissioner and the Order-in-Appeal dated 07.08.2015 passed by the learned Commissioner (Appeals) and submitted that the impugned order passed by the learned Commissioner has been passed in accordance with provisions of Customs Act and no illegality has been committed by the learned Commissioner (Appeals). Therefore, the impugned order passed by the learned Commissioner of Customs (Appeals) be upheld and the appeal may be rejected.

4. I have heard the learned Consultant for the appellants and learned Authorised Representative for the department and perused the records. It is

pertinent to mention here that in Customs appeal No. 11938 of 2015 **Shailesh M. Mehta vs. Commissioner of Customs** along with other connected appeals Customs Appeal No. 11939 of 2015, 11940 of 2015, 11941 of 2015 and 11942 of 2015, this Tribunal has passed final order no. 10849-10853/2025 on 29.10.2025 and it has been concluded in the order that there is no evidence on record that Shri Rajendra Bhagwanjibhai Bhanushali Appellant and partner of M/s. Raja Petroleum was duly informed that 20 KL 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, 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 the learned Commissioner through the impugned order.

4.1 The Tribunal has also arrived at the conclusion 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.

4.2 This Tribunal has also arrived at the conclusion in the above mentioned judgment 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.

4.3 This Tribunal has also arrived at the conclusion in the above mentioned judgment that 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 on the port of Sikka under the cover of 'No Dues Certificate' issued by GMP 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.

4.4 This Tribunal has also arrived at the conclusion in the above mentioned judgment 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 incident. 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 discs 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.

4.5 I am of the view that the learned Adjudicating Authority and the learned Commissioner of Customs (Appeals) has erred in passing order for confiscation of Diesel Oil, Portable Grinder with 6 discs and two packets of welding rods and imposing redemption fine on the appellant and holding the

appellants liable for penalty under Section 114 (iii) of the Customs Act and the impugned order imposing penalty upon the appellants is not sustainable in the eyes of law.

4.6 I am of the view that the appellants cannot be held responsible for the mistakes committed by Shri Musa Ibrahim Modi and Shri Tarun Patel. There is no evidence on record for the appellants were actively involved in supply of bunker to the ship 'MV Canta' without following the Customs formalities. There is no evidence on the records that the appellants instructed any person to supply the bunker illegally and there appears to be no intention of the appellants to supply the goods in contravention of the provisions of the Customs Act.

4.7 I agree with the arguments of the learned Consultant for the appellants that the question of redemption fine arises only when the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of goods. Admittedly, diesel oil, portable grinder with six discs and two packets of welding rods supplied to the ship 'MV Canta' were not available before the Customs Authorities. Under Section 125 of the Customs Act, 1962 power has been conferred on the authorities, when the export of prohibited goods is undertaken, to order confiscation of the goods with a discretion to release the goods on payment of redemption fine. But, such an order can only be passed if the goods are available with the Customs Authorities for redemption. When no goods are available with the Customs Authorities, they can not be confiscated and no redemption fine can be imposed on the appellants for their redemption and the confiscation of goods mentioned in the order and imposition of redemption fine is not sustainable. This view finds support in following cases (a) **CC Amritsar vs Raja Impex (P) Ltd** – 2008 (229) ELT 185 (P & H) (b) **ShivKrupa Ispat Private Limited vs CCE Nasik** – 2009 (235) ELT 623 (Tri.-LP) (c) **Rinku Exports vs CC**

**Kolkata** 1999 (112) ELT 400 (T) which was upheld by Hon'ble Supreme Court as reported in 2005 (184) ELT A36 (SC).

4.8 Thus, I have come to the conclusion that the department failed to adduce any such evidence to prove that the appellants agreed to any proposal to transport the goods by the 'Tug' without filing Shipping Bills or without making correct declaration before the Port and Customs Authorities regarding the port clearance from the Customs. It appears that the appellants 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. The appellants never filed any application before the Port Authorities or Customs Authorities in connection with obtaining Port Clearance Certificate. In fact, the application was filed by Shri Tarun Patel, an employee of M/s. K. B. Shipping & Co. Shri Tarun Patel prepared the erroneous application before the Port Authorities for obtaining 'No Dues Certificate' and before the Customs Authorities for obtaining the Port Clearance Certificate but, Shri Tarun Patel was 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 appellants and Shri Tarun Patel and Shri Musa Ibrahim Modi. Therefore, when the person who had actually prepared the application for obtaining 'No Dues Certificate' and 'Port Clearance Certificate' was not found guilty and no allegation has been made by the department regarding collusion between him and the appellants, therefore, it will not be proper to impose penalty upon the appellants.

4.9 In view of the above discussion, I am of the view that the impugned order dated 07.08.2015 is liable to be set aside and the appeal is liable to be allowed.

5 Consequently, the appeal is allowed and the impugned order passed by the learned Commissioner (Appeals) dated 07.08.2015 and the Order-in-Original dated 26.12.2014 passed by Additional Commissioner are set aside.

(Order Pronounced in the open Court on 28.11.2025)

**(Dr. AJAYA KRISHNA VISHVESHA)**  
**MEMBER ( JUDICIAL )**

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