

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 117 of 2012

(Arising out of Order-in-Original No. 18642/2012 dated 09.04.2012 passed by Commissioner of Customs (Port-Export), Custom House, No.60, Rajaji Salai, Chennai-600 001.)

M/s. Fairdeal Enterprises (P) Ltd.,

No.36 New No.71, I Floor,
Thambu Chetty Street,
Chennai-600 001.

...Appellant

Versus

**Commissioner of Customs
(Sea Port-Export),**

Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

...Respondent

APPEARANCE:

Shri M. Kannan, Advocate for the appellant
Smt. O.M. Reena, Authorised Representative
for the Respondent

CORAM:

HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER No. 40159/2025**DATE OF HEARING: 01.01.2025**
DATE OF DECISION:04.02.2025

The appellant is a CHA, the allegation against the main exporter Shri Om Prakash is that he had exported Ketamine Hydrochloride concealed in the consignment without having the necessary 'No Objection Certificate' (NOC) for the export of the said contraband. Show Cause Notice came to be issued against various noticees including appellant herein. After hearing all the noticees, a common Order-in-Original dated 09.04.2012 came to be passed by the Commissioner of Customs vide OIO No. 18642/2012. The allegation against present appellant is that it being a CHA, allowed one of its employees namely Ramesh, a H-card holder without exercising control over the said person and without monitoring his activities, who was found to be hand-in-glove with the said exporter. It is the case of the Appellant that the above activities alleged against its employee, namely Ramesh were not within its knowledge or notice and hence, the said employee alone is individually responsible for the acts committed in his personal capacity. This fact also stands supported by the statement of another employee namely Vivekanandan who has deposed that the said

Ramesh was working as a clerk attending export documentation, the said person and exporter Shri Om Prakash were present when the consignment was offloaded at M/s.All Cargo CFS, Shri Ramesh had assisted Shri Om Prakash in the export documentation and transport and after examination by DRI officers, etc. The Original Authority, however, had chosen not only to impose penalty on Shri Ramesh, but also against the appellant for no fault on its part. Hence by this appeal, the appellant is seeking relief for setting aside the penalty under Section 114 of the Customs Act, 1962 imposed on it.

2. I have heard Shri M. Kannan, Ld. Advocate for the Appellant and Smt. O.M. Reena, Ld. Additional Commissioner for the Respondent. I have carefully gone through the documents placed on record including various case law relied upon during the course of arguments.

3. Upon hearing both sides, I find that the only issue to be addressed by me is, "whether the imposition of penalty under Section 114 *ibid* on the appellant is justified"?

4. The impugned OIO clearly reveals the *modus operandi* of the importer and the involvement of various persons. Many of

the noticees including the importer appears to have not contested the demand of duty or imposition of penalty, as the case may be, against them. Further, I also find that the Original Authority has very meticulously brought on record the role of played by each of the noticees but, however, insofar as the present appellant is concerned it has been charged for the vicarious liability for not exercising control over its employee viz. Ramesh. I do not find any material on record to punish the appellant for a clear illegal activity of the employee and it is not the case of the Revenue that the importer had alleged anywhere the involvement of the appellant and that its employee viz. Ramesh was working/assisting the exporter at the instructions of his master. Hence, I am of the view that the penalty levied on the appellant cannot sustain for which reason, I delete the same.

5. Impugned order insofar the appellant herein is concerned, is set aside and resultantly, the Appeal stands allowed.

(Order pronounced in Open Court on 04.02.2025)

sd/-
(P. DINESHA)
 MEMBER (JUDICIAL)