IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal Nos. 40775 and 40776 of 2015

(Arising out of Order-in-Appeal Nos. 2&3/2015 dated 13.01.2015 passed by Commissioner of Customs & Central Excise (Appeals-2), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Janani International Pvt. Ltd. **...Appellant**
No. 241/4, Rajapalayam Road,
Chatrapatti – 626 102.

And

Mr. A. Ramanathan **...Appellant**
Managing Director,
M/s. Janani International Pvt. Ltd.,
No. 241/4, Rajapalayam Road,
Chatrapatti – 626 102.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

For the Appellants : Mr. A. Niraikulam, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 11.07.2025
DATE OF DECISION : 15.10.2025

FINAL ORDER Nos. 41145-41146 / 2025

Order:-

These Customs Appeals Nos. C/40775 & 40776/2015 have been filed by M/s. Janani International Pvt.

Ltd. and Mr. A. Ramanathan, Managing Director (hereinafter both referred to as the 'Appellants') against the Orders-in-Appeal Nos. 2&3/2015 dated 13.01.2015 passed by Commissioner of Customs & Central Excise (Appeals-2), Tiruchirappali.

2.1 The Appellant firm exported 100% cotton grey made-ups to UK, Sri Lanka etc. on CIF/C&F basis under drawback Shipping Bills during the period 2007-08 to 2011-12 and availed drawback based on FOB value of the goods which was calculated by deducting the freight amount declared in the shipping bill and the insurance amount, if any, from the CIF / C&F value of the goods. The officers of Directorate of Revenue Intelligence gathered specific intelligence that the appellant availed undue drawback by mis-declaration of the actual freight paid for the said export consignments. Investigation conducted by DRI revealed that the actual freight paid to the liners / freight forwarders was more than the freight declared in the shipping bills filed by the appellant.

2.2 Upon completion of investigation, a show cause notice dated 18.10.2023 was issued to the appellant by the Additional Director, DRI, Chennai Zonal Unit with the proposals to (i) reject the freight paid declared in the shipping bills and adopt the actual freight paid to arrive at the actual FOB value; (ii) deny the excess ineligible drawback amount of Rs. 10,19,720/- availed on account of mis-declaration of freight against shipping bills, as detailed in Annexure I to the show cause notice, and recover the same under Rule 16 of the Customs, Central Excise duties and Service tax drawback Rules 1995; (iii) demand the applicable interest on the above mentioned drawback amount under Section 75A(2) of the Customs Act, 1962; (iv) confiscate the impugned goods exported during the year 2007-08 to 2011-12 with the total value of Rs. 34,76,38,722/- under Section 113(i) of the Customs Act, 1962; (v) appropriate the amount of Rs. 15,69,401/- paid by the appellant during the course of investigation; and (vi) impose penalty separately on the appellant firm and the Managing Director of the appellant firm under Section 114 and 114AA of the Customs Act, 1962.

2.3 The Original Authority upheld all the proposals in the show cause notice and imposed penalties of (a) Rs.2,00,000/- and Rs. 50,000/- on the appellant firm under Sections 114 and 114AA of the Customs Act, 1962 respectively; and (b) Rs. 50,000/- and Rs. 25,000/- on the

Managing Director of the appellant firm under Sections 114 and 114AA of the Customs Act, 1962 respectively. However, the original adjudicating authority refrained from imposing any redemption fine in the absence of availability of the goods for confiscation.

3. The Appellant firm and the Managing Director of the appellant firm carried the matter in appeal in so far as it related to imposition of penalties on them under Section 114 and 114AA of the Customs Act, 1962 and the appeal was rejected by the Commissioner of Customs & Central Excise (Appeals-2), Tiruchirapalli *vide* the impugned Orders-in-Appeal Nos. 2&3/2015 dated 13.01.2015.

4. The appellant firm and the Managing Director of the appellant firm have preferred the present appeals assailing the impugned order. Both the appeals are taken up together as they arise out of the same common Order-in-Appeal.

5.1 The Ld. Advocate Shri A. Niraikulam appeared and argued for the appellant firm and submitted that their price confirmation was always well ahead of actual shipment, so they had taken the standard freight rate into consideration to arrive at CIF or C&F value. Referring to Board's Circular No. 44/2000-Cus. dated 15.05.2000, the Ld. Advocate submitted that as they could not ascertain the correct freight at the time of shipment, they had used the standard freight to arrive at FOB value as the Circular No. 44/2000-Cus facilitates that wherever the freight could not be ascertained, standard freight can be used to arrive at FOB value. The appellant followed the procedure prescribed in the Board's circular by declaring the average freight in the shipping bills and arrived at FOB value for arriving drawback.

5.2 The Ld. Advocate submitted that the appellant came to know about their availment of excess drawback only when the DRI officer informed them and they immediately repaid the excess drawback amount of Rs. 10,19,720/- along with interest of Rs.5,49,681/- well before the issuance of the Show Cause Notice to the Appellant.

5.3 Further, the Ld. Advocate pointed out that as per Sec. 75A (2) of Customs Act "Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made there under, the claimant shall within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under (section 28AA) and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback". In this regard, he submitted that the above said drawback provisions did not provide for any penal proceedings. It was further submitted that no penalty is imposable in the present case as the appellant have paid the excess drawback amount along with the interest even before the issue of Demand/Show Cause Notice in accordance with the statutory provisions.

5.4 It was the contention of the Ld. Advocate that the FOB value declared in the Shipping Bill is well within the provisions of the Board's Circular and therefore, the appellant did not contravene the provisions of Section 50 of Customs Act, 1962 while filing the Shipping Bill and hence there is no mis-declaration by the appellant.

5.5 The Ld. Advocate argued that when there is no mis-declaration by the appellant, there was no violation of

Section 50 of Customs Act, 1962 and section 113(i) is not attracted for confiscation of the goods exported and Section 114 cannot be invoked to impose penalty on the appellant. Further, it cannot be said that the appellant intentionally or knowingly made/declared false or incorrect FOB value in the Shipping Bill and consequently, the appellant is not liable for penalty under Sec. 114AA of Customs Act, 1962.

5.6 The Ld. Advocate relied on the decision rendered in the case of *K. Kamala Bai Vs. Commissioner of Cus. & C.Ex., Trichy [2005 (186) ELT 459 (Tri.-Chennai)]* to submit that the provisions of Section 113 cannot be invoked for confiscation of goods already exported and consequently, the order of penalty on the appellant under Section 114 is not sustainable.

5.7 The case of *M/s. Packer Sea Foods Vs Commissioner of Customs, Tuticorin [2005 (180) ELT 381 (Tri.-Chennai)]* was relied upon to submit that confiscation of goods after its export being not provided for under Section 113 of Customs Act, 1962, *prima facie* confiscation thereunder is bad in law and penalty imposed being relatable to order of confiscation is not imposable.

5.8 Further reliance was placed on the case of *M/s. Rekha Overseas Versus Commissioner of Customs, Chennai [2006 (197) ELT 359 (Tri.-Chennai)]* and it was submitted by the Ld. Advocate that any goods already exported cannot be confiscable under Section 113 of Customs Act, 1962.

5.9 The Ld. Advocate averred that penalty imposed under Section 114 is legally not sustainable in as much as the Adjudicating authority has dropped the confiscation proposal.

6.1 Apart from arguing as above for the appellant firm, the Ld. Advocate Mr. A. Niraikulam also argued for Mr. A. Ramanathan, Managing Director of the Appellant firm and submitted that the Learned Commissioner (Appeals) in the O-I-A has stated that the appellant (A. Ramanathan, MD) was liable for penalty under Sections 114 and 114AA of Customs Act as: -

i. the appellant was directly / indirectly the beneficiary of the ineligible drawback.
ii. the appellant never informed to the Customs about the undue receipt of drawback, even though he was a responsible person.

iii. Being in charge of company he was solely responsible for the misdeed.

He submitted that the above contentions i to iii were not raised in the Show Cause Notice. Therefore, all the above charges, being beyons the scope of SCN, are legally not sustainable

6.2 The Ld. Advocate further submitted that as the Managing Director, the appellant had not been involved in drawback related works and these type of jobs were done by their staff. Their staff failed to review the shipments as required under Board's Circular No.44/2000-Cus dated 15.05.2000 and the appellant did not know it till DRI investigation.

6.3 The Ld. Advocate averred that the appellant raised some important submissions in their appeal to the lower appellate authority and cited many case laws but there are no findings in the Order-in-Appeal Nos. 2&3/2015 dated 13.01.2015 on these submissions and case laws.

6.4 The Ld. Advocate argued that in order to impose penalty on Managing Director normally the following need to be proved, whereas the Show Cause Notice has not brought out the same: -

a) connivance in committing offence;

b) evidence for personal guilt; and

c) personal involvement

In this regard, he placed reliance on the following case laws: -

i. *Sanjay Gupta Vs. CC, Hyderabad [2004 (172) ELT 58 (Tri.-Bangalore)]*
ii. *Tirupati Granites (P) Ltd. Vs. CC Kandla [1995 (78) ELT 301 (Tribunal)]*
iii. *Weston Components Ltd. Vs. CC New Delhi (2000 (118) ELT 199 (Tribunal)]*
iv. *Concorde Overseas (P) Ltd. Vs. CC New Delhi (2003 (156) ELT 287 (Tribunal)]*
v. *Commissioner of C.Ex., Mumbai Vs. Kasat Paper & Paper Pulp Ltd. [2003 (153) ELT 131 (Tri.-Mumbai)]*
vi. *Madras Petrochem Ltd. Vs. CC, Chennai [2007 (218) ELT 712 (Tri.-Chennai)]*

6.5 It was submitted that the Lower Appellate Authority did not consider the fact that when the appellant's connivance was not proved and when no personal guilt or involvement of the appellant was proved, the appellant cannot be brought into the ambit of Sections 114 and 114AA to impose penalty. Further it was submitted that the lower appellate authority erred in holding that being in charge of the company, the appellant is solely responsible for his misdeed. It was also submitted that penalty cannot be imposed for just being in charge of a company and that the appellant's personal commission or omission has not been brought in the Order-in-Appeal Nos. 2&3/2015 dated 13.01.2015 / Order-in-Original dated 30.09.2014 / Show Cause Notice dated 18.10.2013 issued.

7.1 *Per contra*, Ms. Anandalakshmi Ganeshram, the Learned AR for the Revenue has submitted that the appellant firm had mis-declared the freight amount by suppressing the actual freight incurred by them and inflated the FOB value of the export goods and received excess drawback to the tune of Rs.10,19,720/-. She referred to the Board's Circular No.44/2000-Cus and submitted that the said circular clearly states that "In the exceptional cases, when the exporter is not able to ascertain the actual freight payable by him at the time of export, the exporter must file a declaration of the freight payable for the consignment on the basis of the standard published freight schedule. However, the exporter should review each case of shipment after export has taken place and if the freight borne by him is higher than the one declared in the shipping bill, he would immediately on his own pay back to the customs the excess amount of drawback claimed/received or any other export incentives claimed thereon. Any mis-declaration of freight paid or payable which results in loss of revenue by way of excess drawback payment, is liable be processed against under the Customs Act, 1962." In the present case the appellants have failed to pay on their own the excess drawback received which would not have come to light but for the investigation.

7.2 The Ld. AR further submitted that the appellant firm did not bring the actual freight amount paid to the liner to the knowledge of Customs and continued to avail ineligible excess drawback fraudulently. Thus, the appellant firm violated the provisions of Section 50 of the Customs Act, 1962 while filing the Shipping Bills and received excess drawback and for their acts of omission and commission, the appellant firm are liable for penal action under (a) Section 114; and (b) Section 114AA of Customs Act, 1962 as they had (a) rendered the goods liable for confiscation; and (b) had made false / incorrect declarations in the shipping bills filed by them.

7.3 It was further submitted by the Ld. AR that the appellant Shri A. Ramanathan, Managing Director of the appellant firm, never informed Customs about the undue receipt of drawback on account of mis-declaration of freight and being in-charge of company, the appellant is solely responsible for his misdeed. She contended that the case laws relied upon by the appellant are not relevant. Therefore, the appellant Mr. A. Ramanathan is liable for penalty under Section 114 & Section 114AA of Customs Act, 1962.

8. Heard both sides and perused the appeal records.

9. The issue in this case is whether the appellant firm and the Managing Director of the appellant firm are liable for penalty under Section 114 and Section 114AA of Customs Act, 1962 due to excess claim and availment of duty drawback on the exports made by the appellant firm by declaration of average freight in the shipping bills which was subsequently found upon investigation conducted by the officers of Directorate of Revenue Intelligence to be less than the actual freight incurred.

10. The penalties imposed under Section 114 of Customs Act, 1962 in this case is a consequence of the finding that the appellants have rendered the export goods liable for confiscation. The Adjudicating Authority has held the goods liable for confiscation. Therefore, it needs to be verified whether the goods exported are liable for confiscation and if so, whether by their acts of omission or commission the appellants have rendered the goods liable for confiscation.

11. Section 113(i) of Customs Act, 1962 reads as under: -

> *"The following export goods shall be liable to confiscation:-*
>
> *(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;"*

12. The undisputed facts of the case are as follows: -

i. At the time of filing the Shipping Bills, the appellants were unaware of the actual freight for exportation of the goods.

ii. The appellants have declared average freight in the shipping bills.

iii. Board's Circular No. 44/2000- Customs permitted the exporters to declare freight as per Standard Published

Freight Rates in case the freight was not known while filing Shipping Bills. In such cases, the exporter should review each case of shipment after export has taken place and if the freight borne by him is higher than the one declared in the shipping bill, he should immediately on his own pay back to the customs the excess amount of drawback claimed/received.

iv. Any mis-declaration of freight paid or payable which results in loss of revenue by way of excess drawback payment, is liable be proceeded against under the Customs Act, 1962.

13. It is evident from the Circular issued by CBEC that generally the freight should be known to the exporters at the time of filing the shipping bills and it is only in exceptional cases that the freight amount is not known to the exporter while filing the shipping bills. The present case comes under such exception as the freight was not known to the appellant while making the declaration in the Shipping Bills under Section 50 of the Customs Act, 1962.

14. The case of the Department is not that the appellant exporter was aware at the time of filing of the

shipping bills that the average freight declared by them is lower than the actual freight to be borne by them. The only charge against the appellant is that they have not reviewed the freight as mandated by the Board's Circular for such exceptional cases and thereby failed to repay the excess drawback with interest on their own before it was found out by the department that the drawback granted to the appellant is higher than the eligible drawback amount.

15. Average freight was declared in the Shipping Bills in accordance with the Board's Circular as the actual freight was not known to the appellants. Thus, there is nothing wrong with the declaration made in the shipping Bills. However, the exporter has failed to review the freight declared immediately after getting to know about the actual freight incurred by them even though such a review was mandatory as per Board's Circular No. 44/2000-Customs. This is a lapse on the part of the appellants but it does not amount to mis-declaration of freight in the Shipping Bills.

16. Failure to review the declared freight is different from deliberate mis-declaration of freight in the Shipping Bills with the intention to claim excess drawback. Declaring the

average freight in the shipping bills does not amount to mis-declaration as the Board's Circular No. 44/2000-Cus. itself expressly provides for declaration of freight on the basis of the standard published freight schedule. The charge of mis-declaration of freight to claim higher drawback would arise only when the exporter knowingly declared lesser freight in the shipping bills than the freight as per the standard published freight schedule. There is no such allegation against the appellants. Therefore, there is no basis for holding that the appellants have mis-declared the freight in the shipping bills filed by them.

17.1 Para 3 of Board's Circular No. 44/2000-Customs reads as under: -

> *"3. Commissioner of Customs also should ensure that a regular test check of 10-15% of the claims cleared on actual/declared standard freight schedule basis (with suitable undertaking) is carried out so as to verify the correctness of the declaration of freight by the exporter and taking appropriate action against exporters who are found to have misdeclared the freight element to claim higher drawback. However, in cases where the freight actually paid is less than the one declared, no supplementary claims shall be entertained."*

17.2 It is observed from the said para that such exceptional cases of drawback claims should have been cleared on the basis of the standard published freight schedule basis only with suitable undertaking. Therefore, the onus was on the department to take suitable undertaking to secure revenue while allowing / clearing drawback claims of the appellant on the basis of average freight declared by the appellant. The show cause notice, order of the adjudicating authority and the order passed by the lower appellate authority are all conspicuously silent on this aspect.

17.3 Further, the said para mandates that Commissioner of Customs should ensure that 10-15% of such drawback claims cleared on declared standard freight schedule basis are regularly test checked so as to verify the correctness of the declaration of freight by the exporter and take appropriate action against exporters who are found to have mis-declared the freight element to claim higher drawback. The show cause notice, order of the adjudicating authority and the order passed by the lower appellate authority are all conspicuously silent as to whether 10-15% of such drawback claims were checked and if so, how the case of the appellant was never checked by Customs officers until it was detected by officers of Directorate of Revenue Intelligence that the actual freight borne by the appellant was higher than the freight declared in the shipping bills.

17.4 Under the circumstances, the allegation of willful mis-declaration / false declaration of freight with the intention to claim excess drawback is far-fetched as the appellants were not in a position to prevent the Customs officers from taking up their claim for test check as mandated in para 3 of the Board's Circular No. 44/2000-Customs.

18. Section 114AA of Customs Act, 1962 provides for imposition of penalty if a person knowingly or intentionally makes a false declaration. It reads as under: -

> *"Penalty for use of false and incorrect material. –*
>
> *If a person knowingly or intentionally makes, signs or uses, or causes to be made. signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

19. As discussed earlier in this order, there is no basis for holding that the appellants have mis- declared the freight in the shipping bills filed by them. Therefore, the question of knowingly or intentionally making a false declaration does not even arise.

20. Since the appellants have not made any mis-declaration in the shipping bills filed by them, they have not rendered the export goods liable for confiscation. Therefore, penalty cannot be imposed on the appellant under Section 114 of Customs Act, 1962. Further, the appellants have not knowingly made any false declaration in the shipping bills filed by them. Hence penalty cannot be imposed on them under Section 114AA of Customs Act, 1962.

21. Given the above factual matrix of the case, it is deemed unnecessary to take up the case laws cited by the appellants for discussion.

22. The prayer of the appellants in these appeals before this forum is relating to setting aside the penalties imposed. Repayment of excess drawback amount of Rs.10,19,720/- (Rupees Ten Lakh Nineteen Thousand Seven Hundred and Twenty only) along with interest of Rs.5,49,681/- (Five Lakh Forty Nine Thousand Six Hundred and Eighty One only) and its appropriation in the Order-in-Original dated 30.09.2014 passed by the Commissioner of Customs, Tuticorin is not disturbed. The penalties imposed on M/s. Janani International Pvt. Ltd., Chatrapatti and its

Managing Director *viz.,* Ms. A. Ramanathan under Sections 114 and 114AA of the Customs Act, 1962 are ordered to be set aside.

23. In the result, the impugned Orders-in-Appeal Nos. 2&3/2015 dated 13.01.2015 are set aside. Both the appeals are allowed with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 15.10.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK