IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT No. III

Customs Appeal Nos. 42069 to 42072 of 2013

(Arising out of Orders-in-Appeal Nos. 725-728/2013 dated 16.05.2013 passed by Commissioner of Customs (Appeals), No. 60 Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Gateway Distriparks South (P) Ltd. **...Appellant**
No. 200, Ponneri High Road,
New Manali,
Chenai – 600 103.

With

M/s. Volkart Fleming Shipping and Service Limited **...Appellant**
Catholic Centre Annexe,
No. 64, Armenian Street,
Chennai – 600 001.

With

Mr. R. Keshavanathan **...Appellant**
M/s. OOCL India Pvt. Ltd.,
AR Complex, 2nd Floor,
No. 1090, P.H. Road,
Chennai – 600 084.

And

Mr. E. Mahendran **...Appellant**
M/s. OOCL India Pvt. Ltd.,
AR Complex, 2nd Floor,
No. 1090, P.H. Road,
Chennai – 600 084.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

<u>APPEARANCE:</u>

For the Appellants : Mr. B. Aditya Sundar, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorized Representative

<u>CORAM:</u>

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

DATE OF HEARING : 09.07.2025
DATE OF DECISION : 28.10.2025

FINAL ORDER Nos. 41172-41175 / 2025

Order:-

These four appeals are filed by (i) M/s. Gateway Distriparks (South) Pvt. Ltd., (ii) M/s. Volkart Fleming Shipping & Services, Chennai, (iii) Shri R. Kesavanathan, and (iv) Shri E.Mahendran to assail the Orders-in-Appeal C.Cus. No. 725 to 728/2013 dated 16.05.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated, the facts of the case are that Shri R. Janardhanan, partner of M/s. Orrjay Process Pvt. Ltd. on the request of Shri Ramana Babu of M/s. Babu Marketing Services, New York filed the bill of entry No. 022484 dated 31.07.2000 and cleared 32 numbers of used printing mini-offset machines from M/s. Indev CFS (later re-named as M/s. Gateway Distriparks (South) Pvt. Ltd.), which were originally imported in the name of M/s. Gold Line Offset Printers. At the time of filing of bill of entry No. 022484 dated 31.07.2000 by M/s. Orjay Process Pvt. Ltd. and clearance of the goods from Indev CFS vide the said bill of entry, the goods had been seized by Directorate of Revenue Intelligence (hereinafter referred to as DRI) and a show cause notice had been issued by DRI to the original importer wherein inter-alia the original

importer was called upon to show cause why i) the 32 Nos. second hand printing machines valued at Rs. 32 Lakhs (Market Value) and Rs. 12.80 Lakhs (Appraised value) seized under a Mahazar dated 14.10.1999 and deposited with Indev CFS which were disowned by the original importer should not be confiscated under Section111(d) of the Customs Act, 1962; and (ii) penal action under Section 112(a) of the Customs Act, 1962 should not be taken against the proprietor of the importing firm in as much as he has intentionally and deliberately used the name of the said firm which was floated by him, for the purpose of importation and sale of second hand printing machines in the local market knowing well that the said import could be made only under Actual User condition.

3. On adjudication, the proposals made in the show cause notice were confirmed by the Chief Commissioner of Customs *vide* Order-in-Original No. 22/2001-CAU dated 31.01.2001 wherein the Chief Commissioner ordered (i) absolute confiscation of 32 Nos. second hand printing machines imported *vide* Bill of Lading No.ACSL000186 dated 25.03.1999, I.M. No. 319 in container No. OOLU 5018885 under section 111(d) of the Customs Act, 1962; and (ii) penalty of Rs. 10000/- was imposed on the proprietor of the

importing firm under Section 112(a) of the Customs Act, 1962.

4. The clearance of the seized goods by M/s. Orrjay Process Pvt. Ltd. *vide* bill of entry No. 022484 dated 31.07.2000 came to light when DRI sought to dispose the seized goods which had been ordered to be absolutely confiscated vide Order-in-Original No. 22/2001-CAU dated 31.01.2001 passed by the Chief Commissioner of Customs.

5. Upon further investigation, another show cause notice dated 02.08.2005 was issued to the four appellants herein and also to the original importer as well as M/s. Orrjay Process Pvt. Ltd. and adjudication of the same by the Additional Commissioner of Customs (Appraising - Group 5 - SEAPORT) vide Order-in-Original No. 18695/2012 dated 31.03.2012 resulted in imposition of penalty under section 112(a) of Customs Act, 1962 on each of the four appellants apart from confiscation of the impugned goods under Section 111 (j) and Section 111 (d) and Section 111 (o) of the Customs Act, 1962.

6. All the four appellants carried the matter in appeal and the lower appellate authority (hereinafter referred to as LAA) rejected the appeals by holding that

i. all the appellants as the Custodian of the cargo or the Steamer agents or their employees were having the prior knowledge that the goods were offending in nature and were seized by the DRI under mahazar.
ii. there is *mens rea* on the part of all the four appellants.
iii. the issue of illegal clearances of the goods came to light only after the issue of Order-in-Original by the Chief Commissioner of Customs dated 31.01.2001, DRI letter dated 13.06.2001 to Disposal Unit of the Custom House and the fax message sent by the Disposal unit on 14.03.2002 to the Custodian of the Cargo.
iv. the new fact of suppression came to light in the year 2002 and hence, it has got nothing to do with the earlier Order-in-Original passed by the Chief Commissioner of Customs.
v. the delay in passing the adjudication order in 2012 for the show cause notice issued in 2005 was due to administrative and time adjustment factor between the various parties involved in the case and the adjudicating authority.

vi. the second consignee connived with the steamer agent (the Second Appellant herein) in amending the import manifest.

vii. the steamer agent (the Second Appellant herein) successfully got the consignee name changed by suppressing the fact that the goods were liable for confiscation.

viii. the permission for clearance which was obtained by suppressing fact cannot be said to be a legal one.

7. The four appellants have preferred the present appeals assailing the impugned order. All the appeals are takenup together as they arise out of a common order-in-appeal.

8.1 The Ld. Advocate Mr. B. Aditya Sundar appeared and argued for the appellants and submitted that the appellants have acted only in pursuance of the acts of authorizations, approvals and endorsements made by several Customs Authorities since import in 1999, viz. Joint Commissioner of Customs, Assistant Commissioner of Customs, Appraising Officers and Examining Officer. All acts of Appellants are only "Contributory" to the acts of Customs.

8.2 The Ld. Advocate argued that release of goods was not possible if Customs authorities had not permitted. The Appellants have acted only in pursuance to the various approvals / orders / Reports / directions issued by several Customs Authorities. The Appellants have not independently removed any goods without appropriate approvals. Hence if any person is to be questioned it would be the various Customs Officials who have permitted clearance knowing that goods were seized. One official can act by oversight, but not all customs officials (Appraising Officers, Examining Officer, Assistant Commissioner of Customs, Joint Commissioner of Customs, etc.).

8.3 He contended that at the relevant point of time, in case of DRI seizures and subsequent releases, issuance of Pass out order by Customs was only the norm and practice. The concept of issuance of NOC from DRI was never contemplated or in the process or procedure. The onus is on Customs to provide the prevalent rule, regulation of law for a mandatory NOC to be furnished, for any violation to be alleged against the Appellants. It is not disputed that though the seizure was made by DRI, the goods were released by the Proper Officer after realization of Customs duty accepted from M/s. Orrjay Process.

8.4 The Ld. Advocate further contended that the goods stated to be absolutely confiscated by the Chief Commissioner of Customs *vide* order dated 31.01.2001 cannot be re-confiscated again by passing the impugned order-in-original in 2012 for the same alleged violation of the EXIM Policy, when the initial confiscation was absolute with no right to redeem ordered.

8.5 He averred that the Show Cause Notice issued after 6 months with respect to Exim policy violations is time barred. Further, he submitted that there was no allegation of *mens rea* against appellants and no acts of abetment alleged. The order dated 06.09.2002 of CEGAT confirms that R. Janardhanan of Orrjay Process has orchestrated an elaborate plan to import 460 machines in violation of the EXIM Policy by floating 23 companies. These imports were done through several importers, CHAs and consignors and the imports were made in the names of his friends and relatives. Hence the Appellants not being part of any of the said violations cannot be penalized along with the said violator on equal footing as the king pin was penalized for the same amount under the subject proceedings. In fact, the CEGAT order confirms the *bonafide* nature of the Appellants.

8.6 He submitted that Section 112(a) of Customs Act, 1962 can be invoked when “duty is sought to be evaded” but there is no evasion of duty as the same has been paid by the consignee by filing bill of entry and accepted by Customs. Therefore, Section 112(a) of Customs Act, 1962 cannot be invoked on the Appellants.

9.1 *Per contra* the Ld. Authorized Representative Ms. Anandalakshmi Ganeshram, for the department reiterated and supported the findings in the impugned order. She submitted that from the chronological dates and events of the whole issue given in the findings of the impugned order it is clear that all the appellants as the Custodian of the cargo or the Steamer agents or their employees were having the prior knowledge that the goods were offending in nature and were seized by DRI under mahazar. They knew that it cannot be cleared without proper clearance from the seizing authorities. It was in the premises of the Custodian of the cargo the impugned goods were seized and they were informed in writing not to clear the goods without permission from the proper officer.

9.2 She further submitted that regarding *mens rea* on the part of the steamer agent and their employees, it is an undisputed fact that they had to sign as the mahazar witnesses when the goods were seized under the mahazar. Hence, they cannot deny their prior knowledge. The intentions of the steamer agent and their employees is proved by the fact that they attempted and abetted the offence by changing the consignee's name even after knowing that the goods were seized under mahazar. The second consignee could physically clear the goods only with their active connivance.

9.3 The Ld. AR for the department placed reliance on the judgement in the case of *M/s. ORR Jay Process* reported in *2017 (7) TMI 670 – CESTAT CHENNAI* wherein the Hon'ble Tribunal, Chennai held that it emerges that the entire exercise was a meticulously planned one by the appellants who utilised loopholes in the system to obtain clearances of imported goods with their definite knowledge under confiscation. Their conduct cannot be but otherwise considered as one of deceit and contumacious. The order of the lower appellate authority in respect of confiscation of sale proceeds of the illegally removed imported goods and confirmation of penalty of ₹ 4,00,000/- under section 112(a) ibid is therefore just, fair and legal and does not call for any interference.

The Learned AR submitted that the above judgment is squarely applicable to the present case, since the appellant of the above judgement is the person who cleared the impugned goods.

9.4 Further reliance is placed by the Learned AR on the judgment in the case of Shri R.JANARDHANAN reported in 2002 (9) TMI 167 – CESTAT, CHENNAI wherein the Hon'ble Tribunal, Chennai held that

> *"10. In so far as the confiscation order pertaining to 71 machines is concerned, ld. Chief Commissioner has taken all the evidence on record to show that the goods had not been installed in the appellant's premises and had also been shifted to various places. The chain of circumstances clearly prove the intention of the appellant to sell the same and therefore the fact that same had not been actually used in terms of the policy has established the charge and goods have become liable for confiscation.*
>
> *11. In so far as the quantum of RF, we notice that in respect of 389 nos. of imported second-hand printing machines, the assessable value has been arrived at Rs. 2,93,74,056/- and the redemption fine imposed is less than 10% of the amount i.e. Rs. 25 lakhs. The Larger Bench in the case of Harpreet International - 2000 (120) E.L.T. 529 has upheld the imposition of 85% of the value as redemption fine. Therefore, the quantum of fine being only 10% of the total value, it cannot be said that in the facts and circumstances that the fine imposed is on the higher side requiring it to be reduced. Likewise, 71 nos. of second-hand printing machines under seizure have been valued at Rs. 30,92,439/- and imposed*

> *redemption fine of Rs. 3 lakhs is less than 10% of the value of the goods. Therefore, we find no reason to interfere with the quantum of the RF and confirm the same. As regards penalty, the offence committed by R. Janardhanan is very serious and he has done it with clear intention to make profit by selling the goods in the market against the actual user conditions laid down in the EXIM policy. He, in fact, also sold 389 nos. of imported second hand machinery. The value of the goods are more than Rs. 3.20 crores. Therefore, the penalty of Rs. 10,00,000/- on him in terms of Section 112(a) cannot said to be on the higher side which worked less than 10% and we cannot find fault with the Chief Commissioner for imposing a penalty of Rs. 10 lakhs on R. Janardhanan. Likewise, for other contravention imposition of Rs. 5000/- each on R. Janardhanan is not at all excessive and is justified. There is no merit in this appeal and hence we reject the same."*

The Learned AR submitted that the above judgment is also squarely applicable to the present case and it is clear that the appellants are regular offenders. She submitted that it is clear from the findings of the OIO and OIA that the adjudicating authority and the lower appellate authority have passed a very well reasoned order.

10. Heard both sides and perused the appeal records.

11. The issue to be decided in this case is whether imposition of penalties on the four appellants is correct or not.

12. The appellants have argued that they have not independently removed any goods without appropriate approvals and that the Customs Officials who have permitted clearance knowing that goods were seized alone should be

questioned. This is nothing but a desperate attempt to blame others for their own misdeeds. The chronology of events shows that the illegal removal of the goods came to light only after the fax message sent by the Disposal unit on 14.03.2002 to the Custodian of the Cargo after receipt of DRI letter dated 13.06.2001 by the Disposal Unit of Custom House, which was preceded by the issue of O-in-O by the Chief Commissioner of Customs dated 31.01.2001.

13. Another contention of the appellants is that at the relevant point of time, in case of DRI seizures and subsequent releases, issuance of Pass out order by Customs was the norm and the concept of issuance of NOC from DRI was never contemplated. The onus is on Customs to provide the prevalent rule, regulation of law for a mandatory NOC to be furnished. The appellants have not cited any legal provisions or instructions or judgments in support of this contention. On the other hand, the adjudicating authority has specifically mentioned in para 33 of the impugned order-in-original No. 18695/2012 dated 31.03.2012 that the seized goods were handed over to M/s. Indev CFS, the custodian of the goods in this case. In the same para, he has held that the appellants have released the seized goods to M/s. Orrjay Process in violation of Section 45(2) (b) of the Customs Act, 1962 which

reads as under: "The Custodian shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer". The proper officer for the release of the seized goods in this case is the seizing authority i.e., DRI.

In this regard, it is pertinent to note that the Manager (Operations) of M/s. Indev CFS has admitted to have received the seized goods, entered the same in the computer system of M/s. Indev CFS and also instructed his staff, in writing, not to release the container. This proves that the appellants were well aware that in terms of Section 45(2) (b) of the Customs Act, 1962, seized goods handed over to the Custodian should not be removed from the customs area or otherwise deal without the permission of the proper officer for release of the seized goods, viz. the officer of DRI in this case. Therefore, the LAA is correct in holding that mens rea on the part of all the four appellants.

14. Regarding the submission of the appellants that the goods once confiscated absolutely cannot be re-confiscated for the same alleged violation of EXIM Policy, it is observed that same argument was made in the case of M/s. *ORRJay Process* reported in *2017 (7) TMI 670 – CESTAT*

CHENNAI, which has been relied upon by the Learned AR on the grounds that the appellant of the above judgement is the person who cleared the impugned goods. There the confiscation was upheld by this Tribunal. Moreover, the earlier order of absolute confiscation of the impugned goods was issued in terms of Section 111(d) of Customs Act, 1962 on account of violation of EXIM Policy whereas in the impugned Order-in-Original No. 18695/2012 dated 31.03.2012, the adjudicating authority has invoked Section 111 (j) of the Customs Act, 1962 in addition to Section 111(d) and Section 111(o) of the Customs Act, 1962. The appellants have failed to notice that Section 111(j) of Customs Act, 1962 has been invoked in this case only on account of the offence committed by the appellants, viz. illegal removal of the impugned goods. In order to put the matter in proper perspective, it is appropriate to mention at this juncture that in terms of Section 111(j) of Customs Act, 1962, the following goods brought from a place outside India shall be liable to confiscation: -

> *"(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission."*

15. Reliance has been placed by the appellants on the judgment in the case of *Shri R. Janardhanan* reported in *2002*

(9) TMI 167 – CESTAT, CHENNAI to claim that their bonafide nature is confirmed by the same. The appellants are not parties in that case and there is nothing in that judgment to confirm that the appellants are innocent.

16. The argument of the appellant that Section 112(a) of Customs Act, 1962 cannot be invoked against them is contrary to law, as Section 112(a) of Customs Act, 1962 can be invoked not only for evasion of duty but also for doing or omitting to do any other act which act or omission would render imported goods liable to confiscation under section 111 of Customs Act, 1962 or for abetting the doing or omission of such an act. In the case of the appellants, they have rendered the impugned goods liable for confiscation under Section 111(j) of the Customs Act, 1962 as the second consignee could not have illegally removed the goods from M/s Indev CFS without connivance of all the four appellants at various stages starting from amendment of the import manifest to delivery of the impugned goods to the second consignee.

17. The quantum of penalties imposed on the appellants is appropriate as the role played by the appellant firms in illegal removal of the impugned goods is no less than that of the second consignee, viz. M/s. Orrjay Process.

18. In view of the above findings, I reject all the four appeals and uphold the Orders-in-Appeal Nos. 725-728/2013 dated 16.05.2013.

(Order pronounced in open court on 28.10.2025)

Sd/-

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK