IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 72 of 2011

(Arising out of Order-in-Original No. 07/2009 dated 28.05.2009 passed by Commissioner of Customs and Central Excise, No. 6/7, A.T.D. Street, Race Course, Coimbatore – 641 018)

M/s. Excel Shipping Services **...Appellant**
No. 606, K.M. Towers,
Binny Compound II Street,
Kumaran Road,
Tirupur – 641 601.

Versus

Commissioner of Customs (Preventive) **...Respondent**
Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

APPEARANCE:

For the Appellant : Mr. T. Sundaranathan, Advocate
For the Respondent : Ms. O.M. Reena, Authorized Representative

CORAM:

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

DATE OF HEARING : 13.06.2025
DATE OF DECISION : 14.11.2025

FINAL ORDER No. 41321 / 2025

Order:-

This Customs Appeal No. C/72/2011 was filed by M/s. Excel Shipping Services (hereinafter referred to as the 'Appellant') directed against the Order-in-Original No. 07/2009 dated 28.05.2009 passed by the Commissioner of Customs and Central Excise, Coimbatore for imposing a penalty of Rs.1,50,000/- under Section 114(iii) of the Customs Act, 1962.

2.1 Briefly stated the facts are that M/s. R.K. Exports, Tirupur filed 13 Shipping Bills at ICD, Tirupur grossly inflating the value in order to obtain ineligible drawback.

2.2 The Appellant had filed 5 Shipping Bills *viz.,* Nos. 39319, 39320 & 39321 all dated 06.11.2003 and Nos. 43922 & 43924 both dated 20.12.2003 on behalf of the exporter M/s. R.K. Exports, Tiruppur.

2.3 On the basis of intelligence, DRI Chennai have conducted investigation on these exports resulting in issuance of the Show Cause Notice dated 18.10.2006 under Rule 16 and 16A of Customs & Central Excise Duty Drawback Rules, 1995 read with Section 75(1) of the Customs Act, 1962 for recovery of drawback sanctioned. It was noticed that certain unscrupulous persons had floated companies in the name of their employees / known persons who have indulged in export of goods by inflating the value in order to avail ineligible duty drawback benefits. The sale proceeds of exports were not realized and the export firms were either abandoned or closed. It was declared that Italy as destination country in the Shipping Bills but, the goods were sent to Dubai, by switching Bills of Lading, after obtaining Let Export Orders (LEOs). The exporter involved in the present case is M/s. R.K. Exports, Chennai.

2.4 The main allegation against the Appellant involved in this appeal is that he had not verified the credentials of the exporter, not verified the declaration to Shipping Bill and without obtaining written authorization from the exporter had processed the documents for export of the goods thereby rendering the goods liable for confiscation under the Section 113(i) of the Customs Act, 1962 and also liable for penal action under Section 114(iii) of the Act *ibid.*

2.5 After the due process of law, *vide* Order-in-Original No. 07/2009 dated 28.05.2009 passed by the Commissioner of Customs and Central Excise, Coimbatore imposed a penalty of Rs.1,50,000/- under Section 114(iii) of the Customs Act, 1962. Being aggrieved, the appellant has come in appeal before this Tribunal.

3. The Ld. Advocate Mr. T. Sundaranathan representing the appellant had submitted during the hearing before the Tribunal: -

i. That the CHA had not played any role in the mischief planned and carried out by the exporter who had purportedly issued the Bill of Lading showing one destination as per Shipping Bills and another Bill of Lading showing port of discharge as Dubai. The Appellant had contended that the exporter submitted the Bills of Lading issued as per the destination shown in the Shipping Bills to Customs for claiming duty drawback;
ii. That investigation did not implicate the CHA and the appellant did not have any connection with any fraud committed by others. He has submitted that the role of CHA ceases soon after the goods have been cleared on let export order and handed over to the custodian.
iii. That issuing Show Cause Notice itself to the appellants is without any basis in law or on facts and thus illegal and liable to be set aside.
iv. That the order of the Adjudicating Authority has been passed without proper appreciation of law and the facts and circumstances of the case.
v. That in para No. 8.5 of the Notice as well as the impugned order, it was alleged that the appellants have

filed shipping bills without verifying the declarations of the exporters and it facilitated the exports resulting in the confiscation of cargo under Sec. 113(i) of the Customs Act, 1962. It is submitted that there is no provision as Section 113(i) under the Customs Act, 1962. It is submitted that Sec. 113 of the Customs Act, 1962 has the clauses indexed on alphabetical order and not numerical basis. Thus, the clause (i) of Sec. 113 cannot be taken to mean the number one. It is further submitted that there is no clause with the alphabet 'i' and thus the Sec. 113 (i) as referred in Show Cause Notice and also in the impugned order, cannot be said to be referring to any clause under Sec. 113 of the Customs Act, 1962.

vi. That the exported goods are not liable to be confiscated either in law or on facts as neither Sec. 113 of the Customs Act, 1962 is applicable nor there were any material mis-declarations in the relevant shipping bills.

vii. That the material particulars such as the description, quantity, value, destination, *etc.*, have been provided in the associated documents such as packing list, invoice and IEC code provided by the exporter and also declared as such in the shipping bills by the exporter. It is further submitted that there has been no dispute or objection as to the above material particulars as incorporated in the shipping bills *vis-à-vis* its associated documents and declarations based on which the shipping bills were filed by the appellants, either at the time of examination for export or in the Show Cause Notice. In the circumstances, it cannot be said that there has been any failure on the part of the appellants to verify the declarations. It is further submitted when there is no dispute as to the material particulars in the shipping bills and thus the shipping bills were proper, the appellants cannot be alleged to have facilitated any exports that rendered the goods liable to confiscation.

viii. That the Adjudicating Authority has failed to attribute any specific omission or commission of any specific act on the appellants in respect of the offences in order to impose liability on them. On this ground alone the impugned order is liable to be set aside as not sustainable in law or on facts.

ix. That the Adjudicating Authority grossly failed to take note of the facts that very intelligence report and investigation carried out were all done in the post export period. In the circumstances when there is no allegation as to the declarations made in the shipping bill and its supporting documents as to their correctness which were duly verified and examined, the Appellants herein cannot be held liable for any occurrences or otherwise in respect of the export goods. It is further submitted that the Lower Authority had also not made any specific finding against the appellants as to their involvement in the alleged offences.

x. That the Adjudicating Authority has failed to note that the issues involved were wrong availment of Drawback benefits on account of non-receipt of foreign remittances in respect of the export made. It is submitted that when a shipping bill is filed along with relevant documents *Viz*. Invoice, Packing list, and declaration as required under Drawback rules and the exports were also made in accordance with law after examination of goods by the customs officials in the presence of the exporter all at ICD, Tiruppur, no act or omission is attributable to the Appellants in respect of the concerned exports. It is further submitted that non-receipt of foreign remittances in respect of the exports made or its diversion to any other place *vide* allegedly illegal lading bills at another place is by any stretch of imagination not attributable to the Appellants as the same was not falling their scope of their duties.

xi. That the Adjudicating Authority has imposed a penalty on the Appellants merely referring and interpreting certain judgments and that too only in respect of one M/s. Manasa Impex Services, Coimbatore., and not on account of any specific act or omission attributable to the Appellants and the same is illegal and liable to be set aside.

xii. That the goods have been discharged in Dubai instead of the destination as declared in the shipping bills and its associated documents. Discharging at a different destination than the one as declared in the shipping bills and the associated documents can in no way be attributed to the Appellants. It is further submitted that the appellants were not involved in any manner switching in Bill of Lading or in the preparation of the lading documents nor there has been any findings as above.

4. The Ld. Authorized Representative Ms. O.M. Reena appeared and argued for the Department. She has reiterated the findings of the impugned Order-in-Original No. 07/2009 dated 28.05.2009. She has stated that the Appellant had not obtained authorization of the exporter on the documents facilitating the export of goods by over valuation to obtain ineligible draw back amount which was facilitated by

the various acts of commission and omission by the Appellant-CHA and the penalty imposed was minimal and so, the Appeal is to be dismissed due to lack of merits.

5. Heard both sides and considered the rival submissions of the Appellant and also case laws relied upon.

6. The only issue that has to be decided in this appeal is whether the penalty imposed on the Appellant M/s. Excel Shipping Services under Section 114(iii) of the Customs Act, 1962 is justified in the facts of the appeal?

7. The main allegation against the Appellant was that he failed to get authorization of the exporter and he has failed in exercising due diligence in verifying the correctness of the information given with regard to the particulars in the Shipping Bills. The Adjudicating Authority found fault with the conduct of the CHA for exhibiting total disregard to the trust vested by the statute and such breach of trust is to be penalised. It was concluded that the CHA had failed to ascertain the correctness of the information provided by the exporter which was mandated on them by the statute, and

thus he had aided as an active party in misdeclaring the destination of the consignments.

8. But the Appellant has replied that he had carried out the verification as expected by any CHA and the exported goods were examined by the Customs officers and it is not correct to say that he had not verified the credentials of the exporter or not verified the Shipping Bill declarations. Written authorization was obtained from the exporter and processed the documents for export of goods. He has further advanced the plea that the role of CHA ceased soon after the goods have been cleared and let export order issued relying upon the Tribunal's decision in the case of *K.L. Alagu Murugappan Vs. CC, Trichy [2004 (163) ELT 352 (Tri.-Chennai)]*.

9. It is seen that apart from alleging vaguely that the appellant had not obtained exporter's authorization, investigation could not prove any lapse on the part of the Appellant as the goods being exported under draw back were examined by the officers who allowed the export. No fault could be found with the appellant's conduct. Further, at the relevant time, there was no proforma prescribed for obtaining the authorization of the exporter and the exporter in this case

obtained exporter's signature on the Shipping Bills which have to be treated as sufficient compliance of obtaining authorization. The Tribunal Mumbai in the case of *Somaiya Shipping Clearing Private Limited Vs. Commissioner of Central Excise, Mumbai [2006 (197) ELT 552 (Tri.-Mum.)]* had held that penalty under Section 114 of the Customs Act not imposable on the ground that the CHA failed to file authorization of the export. Further, jurisdictional Madras High Court has supported the Tribunal's finding in the case of *Commissioner of Customs, Chennai Exports Vs. I. Sahaya Edin Prabhu [2015 (320) ELT 264 (Mad.)]* that allegation set out in the Show Cause Notice was related to alleged failure of discharge of functions as CHA for which provisions are available in the Custom House Agents Licensing Regulations would be sufficient and penalty under Section 114 of the Customs Act, 1962 was unwarranted.

10. It was also contended by the Appellant that in the case of *M/s. Manasa Impex Services Vs. Commissioner of Customs and Central Excise, Coimbatore [2018 (363) ELT 420 (Tri.Mad.)]* another CHA involving the similar facts has filed 48 Shipping Bills whereas the Appellant in this case filed only 5 Shipping Bills wherein the Tribunal Chennai has set aside the penalty on the main CHA.

11. Appreciating the case laws as above, as the Appellant has obtained authorization of the exporter and carried out the verification before filing the documents to the exporter, the penalty imposed is ordered to be set aside. Ordered accordingly.

12. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 14.11.2025)

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

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