

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

REGIONAL BENCH – COURT No. III

i. Customs Appeal No. 41047 of 2014

(Arising out of Order-in-Original No. 01/2014(Cus.) dated 14.02.2014 passed by Commissioner of Central Excise, No. 1, Foulk's Compound, Anai Medu, Salem – 636 001)

M/s. Shagai Logistics

No. 89 (45), Marine Tower,
Thambu Chetty Street,
Chennai – 600 001.

...Appellant

Versus

Commissioner of Customs & Central Excise

Salem Commissionerate,
No. 1, Foulk's Compound,
Anai Medu,
Salem – 636 001.

...Respondent

With

- ii. Customs Appeal No. 41048/2014 (Mr. Alagu Kumar, Proprietor)
- iii. Customs Appeal No. 41082/2014 (M/s. Shrine Freight Systems)
- iv. Customs Appeal No. 41083/2014 (Mr. Heartleen Tibu)

APPEARANCE:

For the Appellants : Ms. Shwetha R.S., Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorized Representative

CORAM:

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

DATE OF HEARING : 24.07.2025

DATE OF DECISION : 25.11.2025

FINAL ORDER Nos. 41352-41355 / 2025

Order:-

These appeals are filed against common Order-in-Original No. 01/2014-(Cus.) dated 14.02.2014, wherein

penalties proposed in the Show Cause Notice had been confirmed by the adjudicating authority under Section 114(iii) of the Customs Act, 1962 as mentioned under:

- a. M/s. Saghai Logistics - Rs. 2,50,000/-
- b. Mr. Alagu Kumar - Rs.2,50,000/-
- c. M/s. Shrine Freight Systems, Tuticorin - Rs.2,50,000/-
- d. Mr. Heartleen Tibu - Rs. 2,50,000/-

2. The Brief facts of the case are that the Appellants during the period November 2005 to March 2006 had arranged containers to various exporters of garments through ICD Salem. On investigation, it appears that certain persons, in the name of firms that were no longer in existence had exported the consignments by inflating the values for the purpose of availing higher duty drawback and had exported consignments which were actually garments of inferior quality. Further, it appears that the exporters in order to avoid stricter examination of goods, had mis-declared the destination port as UK or USA in the shipping bills, while the actual destination was Dubai. While the bill of lading presented to the Customs showed the destination port as UK, the exporter had managed to obtain another bill of lading

fraudulently from the liner indicating the destination port as Dubai. In view of the above issues, the DRI had examined and had obtained statements from the exporter, custom house agents, freight forwarders etc., who were connected with the alleged export of garments. Based on the investigation, the Show Cause Notice was issued by DRI, Chennai in F.No.VIII/26/181/2007 dated 31.03.2009 proposing to recover the alleged drawback amount availed by the exporter along with interest under Section 75A(2) of the Customs Act, 1962, confiscation under Section 113(d) & 113(i) of the Customs Act, 1962, Penalty under Section 114(i) and 114AA of the Customs Act, 1962 against the main exporter and penalty under Section 114(i) and 114AA of the Customs Act, 1962 against CHA's, freight forwarders, etc.

3. After due process of law, the Adjudicating Authority had confirmed the demand proposed in the Show Cause Notice against the exporter. Penalty had been imposed on the Appellants *vide* para 69 of the impugned order under sec.114 (iii) of the Customs Act 1962 by observing that the appellants: -

"69.were responsible for issuance of two sets of B/Ls with two different ports of destination so as to enable the fraud and help to get the fraudulent drawback. They have abetted the fraudsters and are also involved in the same. In view of above I conclude that all of them are liable

for penalty under Section 114(iii) of the Customs Act, 1962."

While dropping penalty under Section 114AA of the Customs Act, 1962."

4. Aggrieved by the impugned order imposing penalty under Section 114(iii) of the Customs Act, 1962, the Appellants are on appeal before this Tribunal.

5. The Ld. Counsel Ms. Shwetha R.S. appeared and argued for the appellants against the imposition of penalty under Section 114(iii) as follows: -

- i. DRI is not the proper officer to issue Show Cause Notice under Drawback Rules 16 and 16A of the Customs Act, 1962 as the Notification No.44/11-Cus. (N.T.) dated 06.07.2011 designates DRI as proper officer only for purpose of issuing notice under Section 17 and 28 of the Customs Act, 1962. In support of her submission, the Ld. Counsel has relied upon the decisions in the case of *Monte International v. CC., Amritsar* [2016 (340) ELT 345 (Tri. -Del)], *Manasa Impex Services v. CC. & C.Ex., Coimbatore* [2018 (363) E.L.T. 420 (Tri.- Mad.)] and *CC vs. Cannon India Pvt. Ltd.* [2024 (24) Centax 117 (SC)].

- ii. No separate penalty can be imposed on the proprietor and the firm simultaneously for the same issue. In support, the Id. Counsel has relied on the decision in the case of *CCE.& Cus. Surat -II v. Mahendra Kumar Kapadia* [2010 (260) E.L.T. 51 (Guj.)] and *Pravin N.Shah v. CESTAT* [2017 (52) STR 217 (Guj.)].
- iii. Penalty under Section 114(iii) of the Customs Act, 1962 is imposable only when appellants had abetted with an intent to facilitate the commission of fraudulent act committed by the exporter. No proof to show that appellants had intentionally aided the fraudulent act committed by the exporter and therefore appellants cannot be penalized under Section 114(iii) of the Customs Act, 1962. In support of the argument, the Ld. Counsel has relied upon the decisions rendered in the following cases.
- i. *Vishnu Kumar vs. Commr. of Customs, New Delhi*, 2010 (260) ELT 356 (Del)
 - ii. *Maersk India Pvt. Ltd. vs. Commr. of Cus. (Import), Nava Sheva*, 2018 (362) ELT 181 (Tri-Mumbai)
 - iii. *Sanco Trans Limited vs. Collector of Customs, Bangalore*, 1996 (83) ELT 557 (Tribunal)
 - iv. *Neptune's Cargo Movers Pvt. Ltd. vs. Commr. of Cus (Export), Chennai*, 2007 (219) ELT 673 (Tri-Chennai)
- iv. On merits, it is argued that during the period in question, the appellants had been approached by Moses

Selvakumar of M/s. Moshi Enterprises, Tuticorin, a clearing & forwarding agent in relation to several exports for arranging containers with liner agents for exporting garments to Dubai. Based on his booking order given in writing which contained the details such as number of containers required, port of discharge *etc.*, the appellants had arranged the containers. The Appellants had collected container charges for such arrangement and had paid the liners by retaining a margin. The appellants had no knowledge that the goods exported were other than what was described in the shipping bill and the FOB value for the goods was overstated in order to obtain higher drawback benefit. That the appellant had no contact with the exporter, no role in relation to the preparation of Shipping Bills and other related documents *etc.* Shipping bills are generally not provided to the Freight forwarders for booking containers and appellants had proceeded based on the written order at the request of the CHA. Assuming, the appellants had not checked the documents carefully, it can be at best considered as negligence and not to be treated as abetment. In support of this submission, the Ld. Counsel relied on case laws as detailed below to prove that penalty not imposable for mere negligence: -

contention of the appellant is that neither in the Show Cause Notice nor in the Order-in-Original there is any observation that the appellant instigated or participated in the fraud committed by the exporters. The appellant had no monetary benefit or shared the higher amount of drawback obtained by the exporters.

vii. Further, a reference is made with regard to the decision rendered by the Tribunal Chennai in the case of *Skyline Shipping & Logistics [2010 (262) ELT 986 (Tri.-Chennai)]* wherein empty containers were stuffed without any requisition from the CHA by the exporter. The cargo was substituted with the red sander wood logs prohibited for export. The Tribunal held that except for a finding that the appellant supplied the empty container there is no material or record to come to the conclusion that the appellant had in any way abetted the offence and accordingly, ordered to set aside the penalty imposed under Section 114 of the Customs Act, 1962.

viii. Reliance is also placed on the decision rendered in the case of *Airtravel Enterprises India Ltd. [2009 (23) ELT 275 (Tri.)]* wherein it was held in favour of the CHA where the infractions found on the part of the CHA that he did not verify the *bonafide* of parties, the exporter was not having IE code but used the code belonging to

another exporters, the address given by the exporter did not tally with the address given to DGFT and there was mis-declaration of quantity, value and description in the documents presented to the Customs, the Tribunal held that in the absence of any evidence to prove the positive role played by the CHA, no penalty could be imposed on him for abetment.

In view of the above, the Ld. Counsel prayed that the appeals may be allowed.

6. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram appeared and argued on behalf of the department. Ld. Authorized Representative had supported the grounds for confirmation of penalties in the impugned order and prayed that the appeals may be dismissed.

7. Heard both sides and considered the rival submissions and case laws relied upon.

8. The only issue that arises for determination in these appeals is whether imposition of penalty under Section 114(iii) of the Customs Act, 1962 for acts of commission and

omission indulged in by the Appellants is legally justified or not?

11. On a careful reading of the facts present in the order, we see that the Adjudicating Authority had imposed penalties on the appellants under Section 114(iii) of the Customs Act, 1962, while the notice had proposed to impose the penalty under Section 114(i) of the Customs Act, 1962. Even though, the adjudicating authority has justified his act in para 65 of the impugned order for confirming penalty under Section 114(iii) as against the penalty which was originally proposed under Section 114(i) in the Show Cause Notice, it is to be observed that the exporters have attempted here to obtain excess drawback illegally by overvaluation and non receipt of export proceeds. The appellants have contented that they have no connection with the exporters neither they have been benefited by the excess drawback sanctioned to these exporters. As such the allegation of falsification of records for facilitating the availment of duty drawback against the appellants is not sustainable and they only have merely booked the containers on the basis of the request by the CHAs concerned.

12. Shri Alagu Kumar of M/s. Shagai Logistics has submitted that neither he nor his company has issued two sets of Bills of Lading and they have booked the containers based on the Booking Letter from Mr. Moses Selvakumar the CHA of the exporter. Considering the above submissions, imposition of penalties on these appellants on the grounds of offence committed by the exporters there is a need to primarily establish that the appellants have prior knowledge about the exports being made by overvaluation in order to obtain illegal drawback by the exporters. The facts are very clear that the appellants have only arranged the containers and collected the container charges with their margin. It is not reasonable to presume that the appellants have knowledge on the nature of the goods exported and their value or the description and containers were arranged, and the house Bill of Lading was issued as per the details furnished by the agent of the exporter. There is no possibility or need for the appellant to go into the legality of the exports for arranging of the containers or booking of the cargo. In the case of *B.K. Manjunath v. C.C.EX., CUS. & ST, Mysore [2024 (388) E.L.T 217 (Tri. -Bang.)]*, the Tribunal while dealing with a similar issue, had set aside penalty on considering the fact that the person in-charge of conveyance did not have knowledge of nature of the goods being transported and no admissible

evidence had been produced by the investigation to show that appellant therein had knowledge of the nature of goods exported.

13. The Tribunal in the case of *P.N. Ram Vs. Commissioner of Central Excise, Kanpur [2008 (225) ELT 294 (Tri.-Del.)]* has held on the issue of abetment in overvaluation of exports affected under the drawback claim as follows: -

"5. We find that the statement of Shri Rajesh Sharma, exporter implicates Shri R.K. Saxena, Inspector of Customs, for abetting the exporter in respect of mis-declaration of the goods and for withdrawal of the undue amounts and it is also stated by the exporter that Shri R.K. Saxena is getting Rs. 2.50 lakh per container. Shri R.K. Saxena in his statement admitted these facts. We find that Shri R.K. Saxena who was co-noticee in these proceedings but no penalty was imposed on Shri R.K. Saxena. The present appellant who was working as a Inspector of Customs withdrawn the samples and the same was shown to the higher authorities and he was directed to make the market inquiry and in his statement he admitted that as nobody was found who give trade opinion in respect of the same or similar goods, therefore, he requested R.K. Saxena who was his colleague to help him. Shri R.K. Saxena obtained the trade opinions which was endorsed by him. We find that in the statement of exporter, there is no awareness that present appellant has done same thing for some consideration. Further, we find that as there is allegation of negligence and dereliction of duty only in the show cause notice and the Tribunal in the case decision relied upon by the appellant after relying upon the previous decision held that failure to perform the duty of scrutinizing/examining the document as best be dereliction of the duty and penalties Customs Act are not sustainable.

6. In the present case, we find even in the show cause notice, the allegation is only of negligence and dereliction of duty. There is no allegation that the same has been done for some consideration. In these circumstances, we find

merit in the contention of the appellant. The impugned order is set aside and the appeal is allowed."

14. Further, in the case of *M.J. Joshy Vs. Commissioner of Customs (Export-Seaport), Chennai [2009 (245) ELT 440 (Tri.-Chennai)]*, the Tribunal Chennai has held as follows: -

"3. *I have carefully studied the records of the case and the submissions by both sides. I find that the impugned order deals with attempted export of two consignments of fabrics under cover of shipping bills which had declared inflated value to obtain inadmissible drawback. I find that the value of the export goods is known to the exporter which he declares. The CHA cannot be faulted and held liable for any penalty if an exporter declares an incorrect value for the export goods in the shipping bill through the CHA. In the facts of the case, the offence found cannot be held to have been facilitated by any failure of the CHA. Moreover, the CHA cannot be penalized for negligence or lack of diligence. In the following case law cited by the applicant, the Tribunal had held in similar cases that CHA could not be penalized :-*

(1) *A.N. Bhat v. Collector of Customs, [1991 \(55\) E.L.T. 580](#) (Tribunal)*

It was held that "mere negligence or want of diligence on the part of the Customs House Clearing Agent or the Customs Officers in clearing the goods would not ipso facto render their act culpable inviting penal consequences in law."

(2) *Syndicate Shipping Services Pvt. Ltd. v. CC, Chennai - [2003 \(154\) E.L.T. 756](#) (Tri.-Chennai).*

In this decision it was held as follows :-

"It has been held in a number of cases that mere failure by the Custom House Agent to carry out his duties in accordance with law by itself is not sufficient ground to impose personal penalty under Section 117 of the Customs Act, 1962 unless there is evidence to show that the failure was on account of mala fide intention".

(3) *In the decision of the Tribunal reported as [2001 \(132\) E.L.T. 644](#) (Tri.-Chennai) (*Aspinwell & Co. v.**

CCE, Trichy), it was held that the CHA acted under Regulations framed for the purpose, to present papers for clearance of import of goods under Bill of Entry and not to act as an agent as contemplated under Section 147 of the Act. It was also held the authorities had erred in treating the CHA as an agent of the importer under Section 147 of the Act.

4. I find that the appellant has made out a strong prima facie against impugned penalty. Accordingly, it is ordered that there shall be waiver of predeposit and stay of recovery of the penalty pending appeal."

15. Except for arranging the containers at the request of the CHAs concerned, no evidence to establish that there is an act of abetment on the part of the appellants with regard to obtaining illegal drawback by overvaluation or non-receipt of export proceeds by the exporters. As such, the Order-in-Original No. 01/2014(Cus.) dated 14.02.2014 in respect of appellants imposing penalties is set aside and the appeals are allowed with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 25.11.2025)

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