

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

REGIONAL BENCH - COURT No. I

Customs Appeal No. 42049 of 2016

(Arising out of Order-in-Original TUT-CUSTOM-000-ADJ-007-15-16 dated
31.03.2016 passed by the Commissioner of Customs, Tuticorin)

K.S. Murugan,
26C/IB Kamaraj Nagar,
Tuticorin – 628 008.

.... Appellant

VERSUS

Commissioner of Customs
Custom House, New Harbour Estate,
Tuticorin, TN – 628004.

...Respondent

APPEARANCE :

Shri K.S. Murugan, Party – in Person, for the Appellant
Shri. N. Satyanarayana, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41442/2025

DATE OF HEARING: 21.08.2025
DATE OF DECISION:08.12.2025

Per Ajayan T.V.

K.S. Murugan, the appellant, has challenged the Order-in-Original TUT-CUSTOM-000-ADJ-007-15-16 dated 31.03.2016 of the Commissioner of Customs, Tuticorin, being aggrieved by the penalty of Rs.25,00,000/- imposed thereby under section 114 AA of the Customs Act 1962.

2. Relevant facts are that the Directorate of Revenue Intelligence, Tuticorin conducted investigation into imports of different varieties of fabrics through Tuticorin Port by S/Shri. Suresh Jain, Vikram S. Jain and Prakash Chand Jain stated to have been made under various names and IEC Codes by allegedly resorting to under valuation and evasion of customs duties. The investigation led to searches at various places, recovery and seizure of incriminating documents, pen drives/laptop/hard disk etc as well as recording of statements from various persons. Show cause notice dated 10.02.2015 (SCN) was

issued invoking extended period of limitation and demanding differential duty along with applicable interest and proposing imposition of penalties under the provisions of the Customs Act.

3. The SCN also alleged that the appellant being a CHA was obligated to verify the antecedence, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The notice alleged that the appellant knowingly undertook the CHA work by obliging the fraudulent importers, even after knowing well that the IEC holders are not the real importers and thereby abetted in the commission of offence. The notice hence alleged that the appellant is liable for penal action under section 114 AA of the Customs Act 1962 for the offences committed.
4. Pursuant to the reply filed by the appellant, after due process of law, the adjudicating authority held that the appellant admitted inter alia that he had under taken the CHA work of the fabrics imported in the name of various IEC Codes as per the request of Shri. Suresh Jain and Shri. Prakash Chand Jain after obtaining authorisation letters from the concerned IEC holders for carrying out the CHA work. The appellant made all dealings such as receipt of documents, payment of duties/CHA charges and other clarifications from Shri. Suresh Jain though the imports were made in the name of said IECs. The appellant had also admitted that the DFIA licenses were arranged by him in certain cases and that he knew that the IEC holders are not actual importers and Suresh Jain @ Sureshmal Jain and his son Vikram Jain are the real importers and the documents furnished by them are fabricated with suppressed value and quantity. That the appellant had knowingly undertaken the CHA work for the fraudulent importers even after knowing well that the IEC holders are not the real importers and the documents furnished are fabricated and the declarations made are false. That the appellant himself had referred to the 11 IEC holders as de-facto importers in his letter requesting for cross-examination and thus the appellant knowingly and intentionally used the declaration and fabricated documents containing false information regarding the actual importers, value and quantity of the goods imported while filing the Bills of Entry. The Ld. Adjudicating Authority therefore held that he is liable for penal action under section

114 AA of the Customs Act and imposed the penalty of Rs.25,00,000/- under the said section. Aggrieved, the appellant having preferred the appeal, is now before this forum.

5. Shri K.S. Murugan, the appellant, appeared in person and filed a written synopsis in support of his submissions that penalty was not leviable, contending as under:-
 - a) that none of the co-noticees, IEC holders or witnesses had implicated the appellant in their statements. All depositions uniformly identify Suresh Jain and Vikram Jain as the actual persons behind the fraudulent imports. The IEC holders admitted that they merely lent their codes, while even Vikram Jain only referred to Greenport/MKS Shipping as the CHA without alleging that the Appellant or CHA handled documents or fabricated/used false invoices.
 - b) that essential Ingredients of Section 114AA is not satisfied. Section 114AA requires proof that the Appellant knowingly or intentionally made/used/caused to be made/used a false declaration, statement, or document in any material particular. No evidence shows that the appellant prepared, signed, or directed the preparation of any false invoice or declaration. Merely knowing that IEC holders were not the beneficial owners does not equate to knowing that valuation documents were false.
 - c) that there was no direct evidence against Appellant. All evidence of fabrication/undervaluation emanates from the premises, records, and statements of other noticees. No documents were recovered from the appellant's premises showing altered values or falsified particulars. The impugned order does not cite any communication to the appellant from importers or other persons directing undervaluation.
 - d) The Respondent has travelled beyond the scope of SCN. The Show Cause Notice did not contain any allegation whatsoever that the appellant had fabricated or forged any documents or knowingly submitted such documents before the Customs authorities. There was no averment, reference, or suggestion that the appellant had prepared, altered, or caused to be prepared any false or fabricated document. That the learned adjudicating authority without any foundation that the appellant

was involved in the fabrication of documents in para 72 of impugned order amounts to travelling beyond the scope of the SCN and importing a new and serious charge without affording the appellant an opportunity to rebut the same. Reliance is placed on the decision in ***CCE v Ballarpur Industries Ltd.-2007 (215) ELT 489 (SC); CCE v. Toyo Engineering India Ltd.-2006 (201) ELT 513 (SC)***.

- e) that Section 114AA specifically requires that the person "knowingly or intentionally makes, signs or uses" any false or incorrect document in a material particular that in the absence of any allegation in the SCN regarding fabrication or use of false documents, and without any corroborative evidence to that effect, invocation of Section 114AA in the impugned order is wholly without jurisdiction. Reliance is placed on ***Hera Shipping Solutions Pvt Ltd v CC, Chennai IV, 2022 (382)ELT 552 (Tri-Madras), Cochin Air Cargo Clearing House v CC, Trichy, 2024 (390 ELT 670 (Tri-Madras), Ingram Micro India P. Ltd v CC ACC (I), New Delhi, 2019 (369) ELT 1668 (Tri-Del), A.V. Global Corporation Pvt Ltd v CC, New Delhi, 2024 25 Centax 37 (Tri-Del), Fast Cargo Movers v CC, Jodhpur, 2018 (362) ELT (Tri-Del), Kunal Travels (Cargo) vs CC (I&G), IGI Airport, New Delhi [2017(354) ELT 447 (Del)]; M.S. Exim Services vs CC Ludhiana [2021(377) ELT 615 (Tri-Chan) and CC (Imports) v Trinetra Impex Pvt Ltd, 2020 (372) ELT (Del)***.
- f) that Section 114AA has been invoked without complying with Section 140 of the Customs Act. Section 140 of the Customs Act, 1962 is *pari materia* with Section 141 of the Negotiable Instruments Act, 1881, as interpreted by the Hon'ble Supreme Court in SMS Pharmaceuticals Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89. The Court held that vicarious liability of directors/partners is not automatic and it must be specifically pleaded and proved that the person was in charge of and responsible for the conduct of the company's business. In the present case, the CHA firms M/s. Green Port Shipping Agencies and M/s. MKS Shipping Services Pvt Ltd., which actually handled the clearance of the impugned consignments were not made noticees to the proceedings. The appellant was not in charge of day-to-day operations of the CHA.

Shri M. Arunachalam, CHA Manager, held Power of Attorney under CHALR, 2004 and was solely responsible for filing Bills of Entry and handling customs clearance. In absence of any evidence of conscious knowledge, consent or connivance on the part of the Appellant. The ingredients of Section 132 read with Section 114AA of the Act are not satisfied. The liability, if any, rests on the CHA claim and the authorised person managing its day-to-day activities.

- g) that the department's act of provisionally releasing the goods to the same parties under Section 110A amounts to recognizing them as the "importer" within the meaning of Section 2(26) of the Customs Act. Having accepted their legal status for release, the department is estopped from later alleging that they were not the real importers. If they were fictitious, release itself could not have been made. Such contradictory conduct of approbating and reprobating vitiates the allegation in entirety. The appellant prays that the penalty imposed may be set aside.
6. Shri. N. Satyanarayana, authorized representative appearing for the respondent reiterated the findings of the appellate authority in the impugned order.
 7. Heard both sides, perused the appeal records and the citation submitted.
 8. The sole issue that arises for our determination is whether the penalty imposed under Section 114AA on the appellant is tenable.
 9. We find that the SCN has extracted the contents of the appellant's statement in para 13 thereof and thereafter alleged in para 30 thereof, as under:

"30.0 Shri. K. S. Murugan, Managing person of M/s. Green Port Shipping services and M/s. M.K. Shipping services (P) Ltd, Tuticorin (CHA) being a CHA it is obligatory on his part to verify the antecedence, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. But knowingly, he had undertaken the CHA work by obliging fraudulent importers, even after knowing well that the IEC holders are not the real

importers and thereby abetted in the above commission of offence. Hence it appears that he is liable for penal action under Section 114AA of the Customs Act, 1962 for the aforesaid offences committed.”

10. The appeal records reflect that the appellant has enclosed a letter on the subject of submission of the KYC documents of the importers under the acknowledgement of the investigating agency on 27-05-2014. Revenue has not evidenced to the contrary. It is also seen that the appellant had requested for cross-examination of certain persons which is not seen acceded to. Therefore, the findings of the adjudicating authority that the appellant has knowingly and intentionally used the declarations and fabricated documents containing false information regarding the actual importers, value and quantity of the goods imported while filing the bills of entry does not merit acceptance.
11. Recently, this bench in its decision in the case of **J Uthaman v Commissioner of Customs**, authored by one of us [Ajayan T.V., Member (Judicial)], had vide, **Final Order Nos. 41346-41348/2025 dated 24.11.2025**, examined the provisions of Section 114AA in detail. The relevant portions are reproduced below:

“25. In order to examine the correctness of the penalty imposed on the appellants under Section 114AA, We notice the provisions of Section 114AA of the Customs Act, 1962, which read as under:

“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.”

26. Thus, in order to impose a penalty under Section 114AA, the following aspects need to be satisfied:

- a) It can be imposed only on a person
- b) Such a person should knowingly or intentionally:
 - i) Make, sign or use
 - ii) or cause to be made, signed or used
- c) Any declaration, statement or document
 - i) which declaration, statement or document is false or
 - ii) which declaration, statement or document is incorrect in any material particular

d) the aforesaid actions should be in the transaction of any business for the purposes of this Act.

27. Firstly, we note that there are different types of actions, namely, make sign or use or cause to be made, signed or used, that are specified in the said provisions which can be performed with respect to a declaration, statement or document in the transaction of any business for the purposes of the act. This makes it imperative that the particular action being alleged against the person is put to the notice of the person who is sought to be brought within the ambit of the said penal provision. That apart, whether it was a declaration, statement or a document on which such action was performed should also be stated in the notice when it raises the allegation that the person is liable for penalty under Section 114AA. Moreover, it also needs to be specified in the notice whether such declaration, statement or document on which the listed actions were performed, is false or whether such declaration, statement or document is incorrect in any particular, and if so what is/are the particular/particulars which is/are found to be incorrect. Only then would it enable such a person, who is alleged to have done these actions which is stated to make the person liable for penalty under Section 114AA, to effectively set up his defence to rebut the charge/allegation. When we consider that the quantum of penalty that can be imposed, which can be upto five times the value of the goods, the incidence could well be quite heavy. Hence, it is necessary that these aspects are carefully detailed when the charges are laid down in the notice. There is no gainsaying that a notice would be read as a whole to find out as to whether the person concerned is made aware of the various grounds on the basis of which action is proposed to be taken as well as nature of the action. However, that in itself cannot be taken as a sanction to cryptically summarise that "for various omissions and commissions" the person is liable to penalty under the specified penal sections, and thereby jettison the detailing of the action that is sought to be brought under the specified penal section being invoked. We find that the appellants herein have not been put to notice as elucidated supra while being proposed to be visited with the penalty under Section 114AA, thereby rendering such imposition of penalty unsustainable on this count.

28. That apart, it is only a person who deliberately and consciously, aware that the declaration, statement or document is false or incorrect in any material particular, thereafter makes, signs or uses, or causes it to be made signed or used, who can then be said to be

knowingly or intentionally performing the said acts so as to be made liable for penalty under Section 114AA. The requirement of mens-rea is explicit on a plain reading of the provision and hence the burden of proof, that the person is liable for penalty under Section 114AA, rests heavily on the Department. We find that the Department has not discharged this burden in the instant case. The imposition of penalty on the appellants under Section 114A fails on this aspect too.”

12. In such circumstances, the contested and unproved statements cannot be relied on as evidence of any overt act or mens rea of the appellant so as to attract the penalty under Section 114AA. The decisions relied upon by the appellant in this regard too fortify our aforesaid views. Given our aforesaid findings, we do not consider it necessary to address the other contentions of the appellant.
13. After appreciating the facts and evidence, we find that the Department has failed to bring home the charge of the appellant having committed an offence under Section 114AA in as much as the evidence as to the ingredients thereto have not been proved in the instant case insofar as the appellant is concerned. Resultantly, the impugned order insofar as it imposes penalty under Section 114AA on the appellant cannot be sustained and is liable to be set aside to that extent. Ordered accordingly.

The appeal stands allowed in the aforesaid terms, and the appellant is entitled to consequential relief(s) in law, if any.

(Order pronounced in open court on 08.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)