

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

Customs Appeal No. 41728 of 2014

(Both arising out of Order in Original No. 26/2014 dated 28.3.2014 passed by the Commissioner of Customs, Tuticorin)

Commissioner of customs

Custom House,
Tuticorin – 628 004.

Appellant

Vs.

M/s. Suvindh Overseas

12/14, Room No. A.11, Chandra Niwas
Bora Bazar, Mumbai

Respondent

And

Customs Appeal No. 41786 of 2014

(Both arising out of Order in Original No. 26/2014 dated 28.3.2014 passed by the Commissioner of Customs, Tuticorin)

Shri K.S. Murugan

26-C, 1/B, Kamaraj Nagar
Tuticorin – 628 008.

Appellant

Vs.

Commissioner of customs

Custom House,
Tuticorin – 628 004.

Respondent

APPEARANCE:

None for Appeal No. C/41728/2014

Shri K.S. Murugan, Party-in-Person for Appeal No. C/41786/2014

Smt. Anandalakshmi Ganeshram, Auth. Representative for Revenue

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 41444 & 41445/2025

Date of Hearing : 07.07.2025

Date of Decision: 09.12.2025

Per M. Ajit Kumar,

These appeals are filed against Order in Original No. 26/2014 dated 28.03.2014 passed by the Commissioner of Customs, Tuticorin (impugned order).

2. Brief facts are that it is the allegation of the department that M/s. Suvidh Overseas a firm purportedly owned by one Shri Sunil Sukhdev Chavan and it was found to be a bogus firm with wrong addresses declared. During the investigation, it was found that M/s. Suvidh Overseas had tampered 4 DFRC licenses issued for the import of 'cotton printed fabrics' as if they were issued for the import of 'polyester fabrics'. They bought these licenses from the firms for which the DGFT had issued licenses in lieu of export of cotton printed fabrics through Nhava Sheva Port. On further inquiries it was found that the license holders sold their licenses to others and it became evident that they were exporting cotton and polyester fabrics through Nhava Sheva Port and were getting DFRC licenses in return from DGFT for import of the respective items. On the basis of the facts and statements recorded from various persons, DRI issued Show Cause Notice dated 21.06.2007 to confiscate the goods cleared using fraudulent DFRCs and for imposition of fine on Suvidh Overseas etc. Another Show Cause Notice dated 19.12.2008 was issued to demand customs duty for goods which were cleared using DFRCs along with interest and for imposing penalty on the noticees including Shri K.S. Murugan, the Customs Broker. After due process of law, the Ld. Commissioner confirmed the demands proposed in the Show Cause Notice and imposed a penalty. He also confiscated the goods as proposed and imposed penalties on the noticees including Shri K.S. Murugan the appellant herein. A corrigendum dated 2.5.2014 was issued by the Ld. Commissioner to amend the order to read as equal penalty to be imposed under sec. 114A of the Customs Act, 1962. Aggrieved by the said order, the department has filed Appeal No. C/41728/2014 to enhance the penalty imposed under sec. 114A to that of equal to the customs duty levied.

Shri K.S. Murugan has filed Appeal No. C/41786/2014 against imposition of penalty of Rs. One lakh each on 3 counts under sec. 112(a) and (b) of the Customs Act, 1962.

3. None appeared for M/s. Suvidh Overseas. Shri K.S. Murugan appeared in-person. Smt. Anandalakshmi Ganeshram, Authorized Representative (**A.R.**), appeared for the Revenue.

3.1 Shri K.S. Murugan stated that he is the Managing Partner of M/s. Green Port Shipping Agencies which acted as a Custom House Agent / Customs Broker (**CHA/ CB**) in Tuticorin for a firm by name M/s. Suvidh Overseas, Mumbai owned by one Shri. Sunil Sukhdev Chavan, for the clearance of Polyester fabrics. He stated that the offence in this case pertains to Shri Deepak Bajaj who procured and forged the 4 DFRC's for the clearance in the name of M/s. Suvidh overseas by creating a bogus person in the name of Sunil Chavan; arranged TRA' s for the said clearance; stored the imported goods at the godown and diverted the goods into local market. There is no allegation that he as CHA/CB had aided and abetted Shri. Deepak Bajaj in these core activities which led to confiscation of goods. The appellant CHA/CB had merely handled the clearance and transportation work in Tuticorin. As per the provisions of Notification No.46/2002- Customs, and Circulars issued thereunder, the Duty-Free Replenishment Certificates (DFRCS) were registered and verified at JNCH (Nhava Sheva) by the authorities, and TRAS (Telegraphic Release Advices) were officially transmitted and issued by Customs after verification of authenticity of the licenses. He hence acted under the authority and belief that TRA cleared by Customs was valid. There is no findings in the impugned order that he is involved in forgery/tampering of DFRC Licences.

3.2 Smt. Anandalakshmi Ganeshram, Ld. A.R. submitted on behalf of revenue that the M/s. Suvidh Overseas has not filed an appeal against the impugned order nor appeared for any of the hearings, and hence does not appear to be interested in participating in the proceedings. Hence the departments appeal may be decided. In the case of the appellant Shri K.S. Murugan, she took us through paras 34 and 34.1 of the impugned order, which she said captured the essence of the charges against the appellant and are very serious. She hence prayed that the appeal may be rejected.

4. We have perused the appeals and connected written submissions and have heard the rival parties. The issues are:-

4.1 Since M/s Suvidh Overseas has not appealed against the impugned order it has become final in their case and we can proceed to examine the issue related to Shri K.S. Murugan a co-noticee.

4.2 The department has appealed against the order to enhance the penalty imposed under sec. 114A equal to the customs duty levied and interest payable.

4.3 Shri K.S. Murugan has appealed against the penalty imposed on him.

5. We find that this is a case where the appellant is alleged to have knowingly aided, abetted and colluded in the use of forged DFRC licence with Deepak Bajaj for monetary consideration and violated the provisions of the Custom House Agents Licensing Regulation 2004 [**CHALR 2004**], as detailed in Rule 13a, d and e. Hence, he allegedly rendered himself liable for a penal action under section 112(a), 112(b) of Customs Act 1962 in addition to separate proceedings to be initiated against him under CHALR 2004.

6. It is the departments case that Shri Murugan's was responsible for clearing consignments on behalf of M/s Suvidh Overseas a Proprietary concern, owned by Shri Sunil Sukhdev Chavan. He processed eight consignments for this importer under the DFRC Scheme. Shri Murugan was introduced to an individual identifying himself as Shri Sunil Chavan, Proprietor of M/s Suvidh Overseas, in the presence of Shri Kuresh Taherwala from M/s Taher Impex Pvt. Ltd. and Shri Deepak Bajaj, who acted as an intermediary for M/s Suvidh Overseas. At that time, Shri Murugan statedly did not realize that the person he met was not the Shri Chavan although the picture on the Import Export Certificate for M/s Suvidh Overseas was not that of the person he met. Shri Murugan received a letter dated 07.06.2006 appointing him as CHA/CB, along with other import documents, by post. All bills were raised in the name of M/s Suvidh Overseas but were personally handed over by Shri Murugan to Shri Bajaj in Mumbai although Mr Murugans office was in Tuticorin. For clearances under the DFRC scheme, all import documents, DFRC licences, TRAs, duty payments, and clearing charges were supplied by Shri Deepak Bajaj. After Customs clearance, goods were transported to Shri Deepak Bajaj's warehouse in Bhiwandi as per his instructions. It was stated in a letter from M/s Suvidh Overseas, provided by Shri Murugan, that clearance bills should be paid via cheque or demand draft; however, investigations revealed no regular banking transactions associated with these clearances. Shri Murugan stated that he had received Rs. 23 lakhs in cash, with Rs. 14 lakhs still outstanding. Of the Rs. 23 lakhs paid, Rs. 10 lakhs was received at Shri Bajaj's office, and Rs. 13 lakhs was deposited in Shri Murugan's bank account in Mumbai by Shri Deepak Bajaj. Although five cheques were provided by M/s Suvidh

Overseas, Shri Murugan never deposited them into the CHA's company's bank account. Inquiries conducted by department officers with the relevant bank revealed that Account No. 921 with M/s Shramik Sahakari Bank Ltd, Vashi, New Mumbai, actually belonged to M/s Keyur Impex, not M/s Suvidh Overseas. Based on Shri Murugan's deposition, he had harboured doubts regarding the authenticity of the advance license holder, which is why he requested to visit M/s Suvidh Overseas and meet Sunil Chavan. Nonetheless, it did not deter him from doing business with the said concern nor did he feel it fit to verify the address of M/s Suvidh nor notify Customs authorities about his concerns regarding the legitimacy of the advance licenses. Despite having staff based in Mumbai, he did not find it necessary verify M/s Suvidh Overseas' address or confirm the contact details of the proprietor or office. The firms Proprietor never visited Tuticorin, nor were their representatives present during the examination and clearance of goods at Tuticorin port. Instead, Shri Deepak Bajaj and his employee, Shri Ramesh Daswani, visited Tuticorin and met Shri Murugan concerning the clearance of goods for M/s Suvidh Overseas. Shri Murugan also arranged hotel accommodations for Shri Deepak Bajaj and Shri Ramesh Daswani under fictitious names during their stay in Tuticorin.

7. Per contra the appellant Shri Murugan has stated that:

A. The main allegation against the appellant involves DFRC license tampering by Shri Deepak Bajaj, who forged four licenses using a fictitious person, managed TRAs, stored imported goods, and diverted them to the local market.

B. The appellant, serving as CHA, was only responsible for clearance and transport at Tuticorin and received a modest fee of Rs. 25,000

compared to the alleged Rs. 1.88 crore duty evasion. There is no evidence that the appellant assisted in the fraud;

C. Their work involved valid documents verified by Customs officers, with KYC requirements introduced only after Notification 30/2010 (NT).

D. License authenticity checks were the responsibility of JNCH (Nhava Sheva) authorities, not the CHA. Goods were cleared based on official TRAs, and all details were recorded by Customs at Tuticorin.

E. Errors with DFRCs are attributable to the issuing authorities, as the CHA acted in good faith. No authority canceled or suspended the licenses or TRAs, and there is no proof of the appellant's involvement in forgery.

F. Alleged breaches of CHA Regulations 2004 do not justify penalties under Section 112 of the Customs Act.

G. Points about importers, intermediaries, payments, or verification lapses relate to DEEC cases, not DFRC imports. DEEC and DFRC are separate schemes, so statements concerning one cannot be used as evidence for the other.

H. Reliance on unrelated testimonies undermines natural justice and proper legal standards.

8. The presumption of innocence is a background assumption of our legal system. We find that nothing is brought out in the impugned order which shows that the appellant has knowingly aided, abetted and colluded with Deepak Bajaj in the use of forged DFRC licence for monetary consideration or that there was a common design. When the charge is of Shri Murugan having knowingly done a blameworthy act, then knowledge about indulgence in either an illegal act or a legal act by illegal means must be proved by the department. Secondly if the

act is allegedly done along with another person, then there should be proved that there was a meeting of minds for agreeing to do or causing a blameworthy act to be done. Simply meeting individuals, accepting money into bank accounts, not depositing cheques received with the bank, interacting with an importer's intermediary, receiving and passing on documents to an intermediary, or shipping goods according to the intermediary's instructions etc does not amount to evidence that Shri Murugan aided, abetted, or conspired with Shri Bajaj in any illegal activity. Findings merely based on assumptions and presumptions, is not sustainable in the eye of law.

9. It is perhaps for this reason that the SCN only seeks to limit the charge against Shri Murugan for violating the provisions of the CHALR 2004, as detailed in Rule 13a, d and e.

10. Whether the actions of a CHA for violation of the CHALR can be taken under the Customs Act 1962 was examined by a Coordinate Bench of this Tribunal in **M/s. Meticulous Forwarders Vs Commissioner of Customs** [FINAL ORDER NOS. 40725 & 40726/2025, Dated: 14.07.2025], speaking through one of us [M Ajit Kumar, Member (Technical)]. The Bench held:

"14. It may be gainfully shown that some of the omissions and commissions of the appellant, as alleged above, ultimately facilitated or aided the clandestine clearance of the imported goods. **However when the legislature makes a special law in the form of a Regulation, it is not enough that the CB did not do what is lawfully expected of him under the Regulations and which others have made an unlawful use of, to rope the CB under the penal provision of the Customs Act. It has to be shown that the act was done in reference to their common intention to do an illegal act or that the CB had a stake in the outcome of the illegality.**"

Hence a penalty under the Customs Act 1962 cannot be sustained for an alleged breach of the provisions of CHALR 2004 by the CHA/ CB and the impugned order in as much as it relates to the appellant merits to be set aside.

11. Once the penalty against Shri Murugan is found not sustainable and is set aside, the appeal of revenue against the impugned order in order to enhance the penalty imposed under sec. 114A equal to the customs duty levied and interest payable, does not survive.

12. We hence set aside the portion of the impugned order that relates to the appellant Shri Murugan and answer the appeal in his favour. The appeal filed by revenue consequently fails and is rejected. The appellant Shri Murugan is eligible for consequential relief as per law. Both the appeals are disposed of accordingly.

(Order pronounced in open court on 09.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

Rex