

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

Customs Appeal No. 40077 of 2016

(Arising out of Order in Original No. 42365/2015 dated 30.10.2015 passed by the Commissioner of Customs, Chennai – IV)

M/s. Jeyam & Co.

No. 28, Erabbalu Street
Chennai – 600 001.

Appellant

Vs.

Commissioner of Customs

Chennai IV Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant

Shri N. Satyanarayanan, Authorised Representative for the Respondent

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

FINAL ORDER NO. 40416/2026

Date of Hearing: 19.03.2026

Date of Decision: 25.03.2026

This appeal challenges Order-in-Original No. 42365/2015 dated 30.10.2015 (**OIO**), passed by the Commissioner of Customs, Chennai–IV (impugned order).

2. The brief facts of the case are that the appellant, a Customs Broker, filed a Shipping Bill dated 30.04.2014 on behalf of M/s. Solar Granite Exports, Karnataka, for export of 169 pieces of polished granite slabs to M/s. Banha General Trading LLC, Dubai. Acting on specific intelligence regarding attempted export of red sanders disguised as other goods, the DRI conducted an investigation. The container which shipped to Jebel Ali Port, Dubai, was recalled to Chennai Seaport and

examined in the presence of the appellant's proprietor. Examination revealed 439 red sander logs weighing 12.33 MTs which were valued at ₹5,54,85,000/- and were prohibited for export under the Foreign Trade Policy,. The container seal was also found tampered. The appellant in his voluntary statement admitted that he had allowed M/s TRC Shipping and Logistics Pvt Lt. to use their CHA licence, which facilitated the attempted smuggling of the prohibited goods. Following investigation and recording of statements, a Show Cause Notice (SCN), dated 02.12.2014 was issued to the parties involved, including the appellant. By the impugned Order, the Commissioner imposed a penalty of ₹10 lakhs under Section 114(i) of the Customs Act, 1962 on the appellant for having facilitated the smuggling activities. Aggrieved by the said penalty, the appellant has filed the present appeal.

3. The learned Advocate Shri S. Murugappan appeared for the appellant and Ld. Authorized Representative Shri N. Satyanarayanan appeared for the respondent.

3.1 Shri S. Murugappan the Ld. Counsel for the appellant submitted that it is a settled legal position that penalty under Section 114 can be imposed on a third party, such as a Customs House Agent (CHA), only upon clear evidence of conscious and knowing involvement in, or abetment of, smuggling. In the absence of evidence establishing knowledge of or participation in the alleged smuggling activity, such penalty is unsustainable. In the present case, there is no material whatsoever to show that the appellants had knowledge of, or intentionally abetted, the alleged smuggling. This position stands reaffirmed by this Hon'ble Tribunal in **Shri A. Elango Vs**

Commissioner of Customs (Port-Export), Chennai, Final Order No. 40680/2025 dated 01.07.2025, wherein it was held that personal penalty under Section 114 is not leviable in similar circumstances. The appellants further rely on a consistent line of decisions of the Tribunal and the Hon'ble High Court supporting this settled principle as stated below:

In support of their contention, the appellants rely on the following decisions:

(a) *Neil Armstrong v. Commissioner of Customs, Trichy* – 2009 (240) ELT 686 (Tri.-Chennai)

(b) *C. Ashok Kumar v. Commissioner of Customs (Export-Seaport), Chennai* – 2010 (262) ELT 321 (Tri.-Chennai)

(c) *Skyline Shipping & Logistics v. Commissioner of Customs, Chennai* – 2010 (262) ELT 985 (Tri.-Chennai)

(d) *Commissioner of Customs, New Delhi v. Hargovind Export* – 2003 (158) ELT 496 (Tri.-Del.)

(e) *Commissioner of Customs (Exports), Chennai v. Sahaya Edin Prabhu* – 2015 (320) ELT 264 (Mad.)

3.2 Shri N. Satyanarayanan, Ld. A.R. took us through the findings in the OIO and stated that the investigations brought out that Shri J. Arokia Manohar, Proprietor of M/s Jeyam & Co., admitted to lending his CHA licence to M/s TRC Shipping & Logistics Pvt. Ltd. for filing shipping bills in the name of M/s Solar Granite Exports, for monetary consideration, without personally interacting with the exporter or verifying credentials. Shri C.S. John Kennedy, Director of M/s TRC Shipping & Logistics Pvt. Ltd., confirmed use of the CHA licence and payment made for such use. Shri Anil Kumar Dungarwal, Director of

M/s Solar Granite Exports, stated that the containers were not sealed at the factory gate and that commission was paid to an intermediary for export facilitation. There was thus a failure on the part of the CHA to ensure following of proper procedure by the exporter. Hence M/s Jeyam & Co. and the proprietor failed to exercise due diligence and willingly allowed the CHA licence to be misused by others, thereby facilitating attempted smuggling of prohibited goods. He stated that the charge in the present proceedings is not merely a failure under the Customs Broker Regulations but a more serious charge of facilitating the attempted smuggling of red sanders out of India and is hence rightly liable to penal action under the Customs Act 1962. He prayed that the appeals be rejected.

4. I have heard the parties to the dispute and perused the appeals and the citations mentioned. I find that the dispute relates to the penalty imposed on the CHA under the Customs Act for having facilitated smuggling activities.

5. The findings against Shri J. Arokia Manohar, Proprietor of M/s. Jeyam & Co., is that though holding a valid CHA licence, he permitted its use for export clearances filed in the name of M/s. Solar Granite Exports, Bangalore, by Shri Pandian of M/s. TRC Shipping & Logistics Pvt. Ltd., using signed Annexure-C and Shipping Bill checklists provided by him at the instance of the Director of TRC. For such permission, he received ₹1,000 per Shipping Bill, under which two Shipping Bills were filed. He had no direct dealings with the exporter, failed to verify their credentials, and exercised no supervision over the clearance activities, sowing a total lack of due diligence. These facts

stand corroborated by the Directors of M/s. TRC Shipping & Logistics Pvt. Ltd., who admitted that, in the absence of a CHA licence, they utilized the licence of M/s. Jeyam & Co., with Shri Pandian handling the customs clearances and payments being made to Shri J. Arokia Manohar. The Director of M/s. Solar Granite Exports further confirmed that the export containers were not sealed at the factory, as they were informed that sealing would be undertaken by Customs at Chennai, and that although the authorization for CHA services was in the name of M/s. Jeyam & Co., payments were made to M/s. TRC Shipping & Logistics Pvt. Ltd.

6. The appellant does not dispute the findings of the OIO, in the Appeal Memorandum. His sole contention is that a penalty under Section 114 of the Customs Act, 1962 can be imposed on a third party, such as a Customs House Agent, only with clear evidence of conscious involvement or abetment in smuggling. Without such evidence, the penalty is unsustainable. This averment needs to be examined in light of Section 114.

7. Relevant portion of Section 114 of the Customs Act, is reproduced below for ease of reference;

114. Penalty for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-

.....

(emphasis added)

Hence section 114 has two limbs:

- (i) Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or
- (ii) abets the doing or omission of such an act.

7.1 As noted in point (i) above, a plain reading of this limb of the section makes it evident that the legislature has consciously dispensed with any requirement of *mens rea* or conscious and knowing involvement in smuggling. The legislature has deliberately employed objective language, fastening liability upon the commission or omission of an act which, in law, renders the goods liable to confiscation. Once such liability arises, the penalty follows as a civil consequence of the breach itself. It is equally well settled that where a statute creates a civil liability arising from a regulatory breach, the absence of words importing intention must be given due effect.

7.2 Further 'abetment' is expressly carved out as a separate and distinct limb, where elements of knowledge or intent may be relevant. To read a requirement of *mens rea* into the first limb would not only render the abetment clause otiose but would also extinguish the clear structural distinction consciously maintained by the legislature. Since abetment does not form part of the allegations in the OIO, that limb does not arise for consideration in the present appeal.

8. It is established from the findings in the OIO that the appellant, a licensed Customs House Agent, permitting the use of his CHA licence without due diligence and supervision, facilitated the attempted smuggling of red sanders. As a CHA, he was under a statutory obligation to act in furtherance of the objectives of the Customs Act, 1962 and to ensure lawful clearance of goods. His omissions directly contributed to the attempted illicit export, resulting in an act prejudicial to the interests of the Customs Act. The appellant's acts and omissions, read together with those of the other noticees, formed part of a single,

continuous transaction culminating in the attempted smuggling of red sanders, and not merely a violation of CHA licensing provisions. Accordingly, the appellant's act or omission would render the goods liable to confiscation and thus invites a penalty

9. The issue of whether action can be taken against a Customs Broker/CHA under the Customs Act, 1962 was examined by a Division Bench of the Tribunal in **M/s. Meticulous Forwarders Vs. Commissioner of Customs** [FINAL ORDER NOS. 40725 & 40726/2025, Dated: 14.07.2025], an order authored by me on behalf of the Bench. The relevant extract is reproduced below.

"5. Blameworthy conduct by a CB can be subject to penal action both under the Customs Act 1962 and the Custom House Agents Licensing Regulations, 2004 (**Regulations**) as was in vogue at the relevant time. Any contravention by the CB of the obligations under the Regulations, even without intent would be sufficient to invite a penalty upon the CHA as stated in the Regulations, which could also extend to the more stringent provision of revocation of the Customs Brokers Licence. Hence the Regulations carves out a special treatment for acts of delinquency by the CB. Such actions are in essence disciplinary proceedings to ensure compliance with the regulatory provisions. [See: **SMS Logistics Vs Commissioner of Customs (General), New Customs House, New Delhi - 2024 (387) E.L.T. 157 (Del.)**; **M/s. Raj Brothers Shipping Pvt. Ltd. Vs Commissioner of Customs (Import) – CESTAT, Chennai, FINAL ORDER NO. 40631/2025, Dated: 20.06.2025**]. **However, any person including a CHA may be involved in blame worthy acts with the intention of helping the importer/ exporter evade payment of duty, by entering into a conspiracy/ collusion with an importer/ exporter or abetting them to defraud the exchequer etc. In such cases the cause of action is different from the role of a CHA under the Regulations and penal action can be taken under the Customs Act 1962. Moreover, if violations of both the laws are evident then action taken under the Customs Act shall be without prejudice to the action taken under the Regulations and the proceedings can, if the situation warrants, go on simultaneously."**

(emphasis added)

Accordingly, any act or omission which directly or indirectly, expressly or tacitly, facilitates a contravention of the Customs Act resulting in confiscability of export goods under section 113, renders the person concerned liable to penalty under section 114 of the Customs Act. As the appellant lent his signature, knowingly or otherwise, to the Bill of Entry that was misused for smuggling of goods which were liable for confiscation, he is rightly liable to penalty, and the appeal deserves dismissal.

10. I proceed to examine the orders and judgments relied upon by the appellant. In this context, reference is made to the judgment of the Apex Court in **Escorts Ltd. Vs Commissioner of Central Excise, Delhi-II** [2004 (173) E.L.T. 113 (S.C.)], wherein it was held that even a single additional or differing fact can lead to a materially different conclusion, and that cases should not be decided by mechanically relying on precedents.

10.1 In **A. Elango** (supra), the charge against the appellant was one of abetment that is the second limb of section 114 discussed above and not one of a CHA lending his signature for processing the Shipping Bills. The highlighted portion of para 31 of the Hon'ble Supreme Court's judgment in **UNION OF INDIA Vs MUSTAFA & NAJIBAI TRADING CO.** [1998 (101) E.L.T. 529 (S.C.)], cited in the said Order at paragraph 16, clearly states that in the case of a personal penalty the proceeding in personam, the Department must prove "that the person proceeded against was concerned in the smuggling". The word

'concern' has been defined in **Black's Law Dictionary** (Sixth edition), to mean:

"**Concern.** To pertain, relate or belong to; be of interest or importance to; have connection with; to have reference to; to involve; to affect the interest of."
People v. Photocolor Corporation, 156 Misc.'--47, 281 N.Y.S.130.

The definition relates to association or linkage and does not import any element of mens rea, nor does it connote conscious or knowing involvement in smuggling. As per the facts in the present appeal, the appellant's acts clearly show that he was concerned in the smuggling of red sanders.

10.2 The cases of the Tribunals in **Neil Armstrong; C. Ashok; Skyline Shipping & Logistics**; and **Hargovind Export**, all referred to above by the appellant in support of his averments, do not concern a CHA, much less one who has lent/ allowed the use their CHA licence by others. **Sahaya Edin Prabhu** involved a CHA who failed to discharge his duties under the Customs House Agents Licensing Regulations and was penalised under the Customs Act. The Hon'ble Madras High Court held that such failures are governed by penalties under the Regulations; accordingly, a penalty under Section 114(i) of the Customs Act is unwarranted.

10.3 The Orders/ judgment cited by the appellant are hence distinguished.

11. A CHA plays a critical role in facilitating imports and exports by partnering with Customs and coordinating with multiple agencies and therefore operates under a high degree of trust. Licensed only after rigorous examinations and safeguards, any lending of such a licence—

whether knowingly or otherwise—enables misuse of the customs system, including opening the gateway to the smuggling of goods and warrants penal consequences under section 114 of the Customs Act, 1962.

12. In the circumstances the appeal is dismissed and disposed of accordingly.

(Order pronounced in open court on 25.03.2026)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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