

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76539 of 2025

(Arising out of Order-in-Original No. Kol/Cus/Pr. Commr/Port/Adjn/12/2025 dated 07.04.2025 passed by the Principal Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Seaking Agencies,
14, Hare Street, 2nd Floor, Kolkata-700001

: Appellant

VERSUS

Commissioner of Customs (Port)
Custom House, 15/1, Strand Road, Kolkata-700001

: Respondent

APPEARANCE:

Shri Aditya Dutta, Advocate for the Appellant

Shri F. Ahmed, Authorized Representative for the Respondent

CORAM:

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

FINAL ORDER NO.77887/2025

DATE OF HEARING / DECISION: 09.12.2025

Order: [PER SHRI K. ANPAZHAKAN]

M/s. Seaking Agencies (Prop. Shri Biswadeb Chatterjee), 14, Hare Street, 2nd Floor, Kolkata-700001 (herein after referred as the Appellant) have been working as a Customs Broker. The Appellant has filed the present appeal against the Order-in-Original No. Kol/Cus/Pr. Commr/Port/Adjn/12/2025 dated 07.04.2025 passed by the Principal Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata-700001, wherein a penalty of Rs. 50 lakhs has been imposed on them under Section 114(i) of the Customs Act, 1962 and a

penalty of Rs. 1 Crore has been imposed on them under Section 114AA of the Customs Act, 1962.

2. The facts of the case are that one container bearing No. TCKU 2571904 said to contain 740 pieces of 'Accessories of sanitary ware E.W.C. Commodes and Wash Basin' under the Shipping Bill No. 6092170 dated 25.02.2016 was presented for export to Singapore in the name of M/s. Srijita Exports by one Customs Broker (CB) named M/s. A.K. Sircar & Sons. The said consignment was intercepted by DRI, Kolkata at N.S. Dock, Kolkata Port and after examination, the said container was found to contain Red Sander (prohibited item for export) along with the declared items. The container containing the entire consignment was subsequently seized on 04.03.2016.

2.1. During the course of investigation, Shri Biswadeb Chatterjee, Proprietor of the Appellant Customs Broker was also summoned by DRI officers and his statement was recorded on various dates. The Appellant was questioned in respect of the consignments covered under two shipping bills bearing **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014**, where the Appellant operated as the Customs Broker. The impugned consignment covered under the above said two shipping bills were in the name of the exporter M/s. Akash Ganga Enterprise (Prop. Shri Manoj Poddar). For export of the said consignments, the Appellant was approached by one Shri Sudhir Jha. As Shri. Sudhir Jha was the intermediary in respect of the exports made by the Appellant under the said two shipping bills bearing **Shipping Bill Nos. 3134799 dated 05.06.2014**

and 3690980 dated 04.07.2014, the Appellant was also questioned.

2.2. On completion of investigation, a SCN No. DRC/KZU/AS/ENQ-13/2016 dated 26.08.2016 was issued *inter alia* to the appellant also alleging mis-declaration in respect of the two **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014**, where the Appellant operated as CB. In the notice, penalty was proposed to be imposed on the Appellant under Section 114(i) of the Customs Act, 1962 for not obtaining proper KYC and not checking the antecedent/identity of the client exporter which has led to the export of consignment of Red Sanders, a prohibited item. Penalty was also proposed on the Appellant under Section 114AA of the Customs Act, 1962 for using forged and fabricated documents for helping the above-mentioned Shri Sudhir Jha (Noticee No.1 of the SCN) for effecting fraudulent exports of Red sanders.

2.3. The said Notice was adjudicated by the Pr. Commissioner of Customs (Port) vide Order No. KOL/CUS/PR.COMMR/PORT/ADJN/12/2025 dated 07.04.2025, wherein the penalties of Rs. 50 lakhs under Section 114(i) and a penalty of Rs. 1 Crore under Section 114AA of the Customs Act, has been imposed.

2.4. Aggrieved against the imposition of the said penalties, the Appellant has filed this appeal.

3. The Appellant submits that on the same set of facts, the CB License of the Appellant was suspended under Regulation 19(1) of CBLR, 2013 vide CHA Order No. 09/2016 dated 25.08.2016. A SCN No. 10/2016 P.C. (A&A) dated 30.09.2016 was issued

alleging that the appellant has allowed to use his CB license for monetary consideration resulting in fraudulent exports of Red sanders. Accordingly, it was alleged that the Appellant has violated the provisions of Regulations 10, 11(d) and 11 (n) of CBLR, 2013. The Appellant submits that the said Notice was adjudicated by the Commissioner of Customs (Airport & Admin) vide Order No. KOL/CUS/AIRPORT/ADMN/09/2017 dated 08.05.2017, wherein he has dropped the charges levelled against them under the CHA Order No. 09/2016 dated 25.08.2016.

3.1. The Appellant submits that a supplementary Notice to Show Cause bearing No. DRI/KZU/AS-ENQ-13/2016 dated 18.05.2017 was issued in addition to SCN No. DRC/KZU/AS/ENQ-13/2016 dated 26.08.2016 followed by an addendum dated 22.09.2017 was also issued, proposing penalties on various other persons mentioned therein. The Appellant submits that they are no way concerned with the alleged fraudulent export of Red sanders. DRI officers intercepted the Container No. TCKU 2571904 said to contain 740 pieces of 'Accessories of sanitary ware E.W.C. Commodes and Wash Basin' Wares' under **Shipping Bill No. 6092170 dated 25.02.2016** in the name of M/s. Srijita Exports and found to contain Red sanders concealed in it. The said Shipping Bill was filed by the CB, M/s. A.K. Sircar & Sons and they had presented the export documents to customs authority on 04.03.2016. The **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014** containing items like 'sanitary ware' and 'iron and steel items' was filed by the Appellant CB and the said consignments were presented before the customs officers at N.S.

Dock. The Appellant submits that the said consignments were checked and cleared by the customs authorities for export and no mis-declaration was noticed in the said containers. Just because Red sanders were found to be concealed in the Container No. TCKU 2571904 said to contain 'Sanitary Wares' exported in the name of M/s. Srijita Exports under **Shipping Bill No. 6092170 dated 25.02.2016**, it cannot be alleged that Red Sanders were concealed within the containers exported under **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014** also, without any evidence. Thus, the Appellant submits that the penalties imposed on them under sections 114(i) and 114AA are legally not sustainable.

3.2. Regarding the penalty imposed under section 114(i) of the Customs Act, the Appellant submits that on the same set of facts, separate action has been initiated against them by way of issue of Notice under the CBLR 2013, for not obtaining the proper KYC and not checking the antecedent/identity of the client exporter which has led to the export of consignment of Red Sanders. The said Notice was adjudicated by the Commissioner of Customs (Airport & Admin) vide Order No. KOL/CUS/AIRPORT/ADMN/09/2017 dated 08.05.2017, wherein the charges levelled against them have been dropped. Thus, it is the submission of the Appellant that the charge of not verifying the KYC details and not checking the antecedents of the exporter has not been proved, as held by the Principal Commissioner in the order dated 08.05.2017. Hence, the Appellant submits that the penalty imposed on them on the same allegation in the impugned order dated 07.04.2025, is legally not

sustainable. Thus, the penalty imposed under section 114(i) of the Customs Act, 1962 is liable to be set aside.

3.3. Regarding the penalty imposed under section 114AA of the Customs Act, the Appellant submits that penalty can be imposed under this section, only when it is established that the appellant has submitted any forged or fabricated documents. It is on record that the containers exported under **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014** were checked and cleared by the customs authorities for export and no mis-declaration was noticed in the said containers. No concealment of Red Sanders was detected inside the said containers. Thus, the Appellant submits that the allegation of mis-declaration of the description of the goods or fabrication of the documents against the Appellant has not been substantiated with any evidence. Accordingly, the Appellant submits that the penalty imposed on them under section 114AA of the Customs Act, 1962 is legally not sustainable and hence the same is liable to be set aside.

3.4. In support of their contentions, the Appellant relied on the decision in the case of *Pallab Mitra v Commissioner of CGST & CX, Kolkata [(2024) 22 Centax 383 (Tri-Cal)]*, wherein under similar facts and circumstances, the penalty imposed on the CB has been set aside.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the Appellant has filed this appeal against the penalties imposed on them under Sections 114(i) and 114AA of the Customs Act, 1962. For imposing penalty under section 114(i), it has been alleged that the Appellant has not done proper verification of KYC and not checked the antecedents of the client exporter which has led to the export of consignment of Red Sanders. We find that on the same allegation, separate action has been initiated against the Appellant by way of issue of Notice under the CBLR 2013. The said Notice was adjudicated by the Commissioner of Customs (Airport & Admin) vide Order No. KOL/CUS/AIRPORT/ADMN/09/2017 dated 08.05.2017, wherein he has dropped the charges levelled against the Appellant. In the said order, it has been categorically held that the charge of not verifying the KYC details and not checking the antecedents of the exporter has not been proved.

6.1. In support of the view that penalty cannot be imposed on the CB when the allegation of mis-declaration has not been established against them, we rely on the decision in the case of *Pallab Mitra v Commissioner of CGST & CX, Kolkata [(2024) 22Centax 383 (Tri-Cal)]*, wherein under similar facts and circumstances, this Bench has set aside the penalty imposed on the CB.

6.2. Thus, we find that the Ld. Principal Commissioner has already held in the order dated 08.05.2017 that the charge of not verifying the KYC details and not checking the antecedents of the exporter, by the Appellant CB has not been proved. Hence, we hold that the penalty imposed on the Appellant on the same allegation in the impugned

order dated 07.04.2025, is legally not sustainable and hence we set aside the same.

7. Regarding the penalty imposed under section 114AA of the Customs Act, we observe that penalty can be imposed under this section when it is established that the appellant has submitted any forged or fabricated documents for clearance of the consignments.

7.1. We find that the Appellant as CB has filed the two **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014** along with the documents provided to them by one Shri Sudhir Jha (Noticee No.1 of the SCN). In respect of the two shipping bills, the exporter was M/s. Akash Ganga Enterprise. We find that the containers in both the cases were duly sealed with agent bottle seal and Central Excise Lead seal at the factory of clearance. After observance of all formalities along with Customs formalities the containers were cleared for export without any objection raised by Customs authorities. We find that the containers exported under **Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014** were checked and cleared by the customs authorities for export and no mis-declaration was noticed in the said containers. No concealment of Red Sanders was detected inside the said containers. Thus, we find that there is no evidence available on record to substantiate the allegation of submission of forged or fabricated documents by the Appellant.

7.2. We observe that as a customs broker, the Appellant had neither any authority nor any scope to examine the goods contained in the respective containers before sealing by the Central Excise

officer in the factory concerned nor thereafter. We find that the Appellant as CB has performed his job as a customs broker properly by filing the concerned documents with the customs authorities.

7.3. We observe that as a Customs Broker, the Appellant is not required to know Shri Manoj Poddar, proprietor of the exporting firm M/s. Akash Ganga Enterprise personally. The submission of the Appellant is that he has made an informal visit to the office of Akash Ganga Enterprise personally, at 13 A MM Burman Street, Kolkata- 700007 and found that the said M/s. Akash Ganga Enterprise was functioning at the said address. We find that the investigation also has not contradicted this claim of the Appellant. Further, we find that the subject containers were sealed at the factory under Central Excise Lead Seal. We agree with the submission of the Appellant that they had no authority or occasion to examine the materials reportedly contained within the sealed containers which were presented before the customs officers for exportation.

7.4. We also find that the investigation has not brought in any concrete evidence to substantiate the allegation of connivance of the Appellant with the said Shri Sudhir Jha in using fraudulent or fabricated documents for effecting fraudulent exports of goods like red sanders. It is incumbent on the Department to point out the role played by the appellant in the fraudulent export for imposition of penalty on the appellant under Section 114(i) or 114AA of the Customs Act, 1962. We find that there is no finding by the adjudicating authority to indicate any beneficial consideration having been passed on to

the appellant by way of any monetary reward or otherwise for their assumed role.

7.5. We find that the entire charge against the Appellant is based on conjectures and surmises. This is evident from Para 5.7.2 [Page 439 of the paper book] of the Impugned Order wherein it has been observed as under: -

*...I find that recovery of red sanders in respect of previous **SB no. 5915309 dt 17.2.16** which was already exported as confirmed by Singapore Consulate reasonably establishes that the rest of the previously exported 15 consignments were also containing Red Sanders. Previously exported 15 consignments must have some contraband goods is also indicated from the fact that four exporters in the name of whose these consignments were exported viz M/s. Srijita Export, M/s. Gopal Associates, M/s. Sayantika Enterprise and M/s. Akash Ganga Enterprise refused to have exported the consignments during investigation.....*

Therefore I find that there are sufficient evidence available in the subject case which clearly satisfy the test of preponderance of probability to indicate that previously exported 15 consignments were also used to export 225 MT of Red Sanders valued at 100 crore.

7.6. The above-mentioned observation of the adjudicating authority clearly proves that the charge against the Appellant in respect of the two consignments exported under Shipping Bill Nos. 3134799 dated 05.06.2014 and 3690980 dated 04.07.2014 out of the aforesaid previously exported 15 consignments is based on conjecture and

surmises and no concrete evidence available to establish the allegations.

7.7. In view of the above findings, we hold that the penalty imposed on the Appellant under section 114AA of the Customs Act, 1962 is legally not sustainable and hence we set aside the same.

8. In the result, we set aside the penalties imposed on the Appellant under the Sections 114(i) and 114AA of the Customs Act, 1962 and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)