

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2**

Customs Appeal No.75995 of 2024

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/KS/361-262/2024 dated 06.06.2024 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Eastern Carriers

(10B, Shakespeare Sarani, Kolkata-700071.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Customs House, Kolkata-700001.)

.....Respondent

APPEARANCE

Shri Narendra Sethia, Proprietor for the Appellant (s)

Shri Faiz Ahmed, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75164/2026

DATE OF HEARING : 21.01.2026

DATE OF DECISION : 03.02.2026

Per : RAJEEV TANDON :

The impugned appeal is filed by the Customs Broker against Order-in-Appeal No.KOL/CUS(PORT)/KS/361-262/2024 dated 06.06.2024. The cause of action giving rise to the present petition emanates out of a show cause

notice dated 31.12.2019 issued to several parties including the importer as well as the present appellant amongst others. Based on an intelligence, as obtained by the Directorate of Revenue Intelligence and forwarded to the authorities, that vessel M.V. Bos Angel (Vessel Code J8B5408, Voyage No.102018, IGM No.2210721 dated 26.11.2018) carried a consignment of 21319 MT of Nut Coke declaring the Country of Origin as Oman whereas the said cargo was actually loaded on the vessel at BIK/Iran and the actual Country of Origin thereof was Iran. It is the case of the department that such subterfuge was resorted to, to bypass the sanctions imposed by the United States of America on Iran. The records clearly indicate that the goods were consigned in favour of the Kolkata based present importer M/s. Savoy International Pvt.Ltd. and supplied by M/s. Trace International FZE, RAK, UAE, as aforesaid.

2. Upon verification of the aforesaid intelligence it came to the department's notice that the impugned cargo was actually loaded at BIK, Iran and shipping logs were manipulated to show the load port as Khasab Port, Oman and the Country of Origin as Oman. The show cause notice unambiguously states that the same was done under the instruction of the charterer through the operation department of the Shipping Manager M/s.Brook Ocean Shipping, whereafter necessary legal clearances/port clearances were allowed for discharge of cargo. It is also on record that out of the aforesaid 21319 MT of aforesaid cargo, around 5000 MT of the said imports were discharged at Sagar. It is only when the goods were being unloaded at Haldia Docks Complex, Kolkata in pursuance of the aforesaid information, the imported goods were detained and samples were drawn to ascertain the exact nature of the imported goods viz. Pet Coke/Met Coke.

Subsequently, based on the test reports as obtained from the Central Institute of Mining and Fuel Research, Dhanbad as well as CRCL, Kolkata the goods were found to be not restricted vide Notification No.25/2015-2020 dated 17.08.2020.

3. Investigations were carried out by the authorities with all agencies concerned. Since there are no appeals filed by them details of other co-accused and their roles are not being dealt herewith. The appellant at the time of investigation submitted before the authorities that the importer had sent them an email concerning their appointment as Customs Broker in the matter whereafter necessary documents namely B/L, Invoice, Packing List, Country of Origin Certificate were all received by them from the importer M/s. Savoy International Pvt.Ltd. He further pointed out that both as per the Bill of Lading and Country of Origin Certificate, the load port was indicated as Khasab Port, Oman and the Country of Origin indicated as Oman. They further submitted that they were unaware and had no knowledge of the fact that the Master of the Vessel had provided a copy of the B/L and cargo manifest as BIK Port, Iran. Further, in respect of the imported goods the appellant had submitted before the lower authorities that the duty structure did not vary with the Country of Origin nor was any anti-dumping duty involved as the cargo did not arrive from Australia or China, they therefore did not verify the Country of Origin of the said goods and apparently has not felt any reason to do so. It may also be noted that as regards bulk cargo it is normally the Master of the vessel who supplies the packing list and the B/L of the Cargo. As regards the discrepancy in the country of origin(COO) Certificate with respect to the invoice number for which the Certificate was issued, the appellant had contended and had pleaded before us in person on the same lines that as

material particulars like date, weight etc. in respect of the said Cargo were found to be identical, they did not pay much credence to the variation in the invoice numbers and apparently considered the same as a clerical/typographical error. It is the appellant's case that the original B/L provided to them and submitted to the Customs were same and signed by the Master of the vessel and therefore they had no reason to doubt the veracity of the same. The appellant has further pointed out that proceedings initiated against them under the provisions of the Customs Act in view of the aforesaid factual position was however, dropped vide Order-in-Original No.KOL/CUS/ADC/SIB(Port)/64/2020 dated 14.10.2020.

4. With respect to the said proceedings in arriving at the aforesaid decision, the Ld. Adjudicating authority had clearly indicated that the Revenue had failed to produce even a single solitary evidence to suggest that the Customs Broker had manipulated the import documents with *mala fide* intentions. The appellant points out that there is not a shred of evidence to seek some sort of pecuniary benefits with *mala fide* intentions, on part of the appellant. Least of all, no role of the appellant in the misdeclaration of the COO has been pointed out by the authorities. He had also relied upon the fact that the order of suspension of the Customs Broker Licence dated 10.01.2020 was subsequently revoked upon consideration of the reply furnished by the appellant vide Order No.KOL/CUS/AP/ADMN/20/2020 dated 21.01.2020, i.e. even before the date of personal hearing fixed in the matter for 24.01.2020. In short to state that no apparent cause was found by the authorities to subject the appellant to penal provisions.

5. We note that the present proceedings have been initiated, pursuant to the review of the matter, which culminated in the issuance of the Order-in-Original No.KOL/CUS/ADC/SIB(Port)/64/2020 dated 14.10.2020 inviting reference to Regulation 10 of the CBLR 2018. We also note that however, a penalty of Rs.1.00 Lakh under section 114AA of the Customs Act has been imposed on the appellant for their failure to carry out meticulous verification and comparison of the documents as received by them from the importer, and the appellant acting thereupon, without verifying the veracity and correctness thereof. This is to, in short, state that the appellant acted upon without due diligence, besides failing to appropriately inform their clients of the legal stipulations, which order has been subsequently upheld by the first appellate authority.

6. From the chain of evidence and the narration of the facts it is apparently clear that the department has not been able to show and establish any role on part of the appellant, so as to justify their case for imposition of penalty on the appellant under section 114AA of the Customs Act. The onus is on the department to point out that the person concerned, upon whom the penalty is imposed had previous knowledge of the falsification of the records. There is no shred of evidence inculcating the appellant in this regard. From the case records it is evident that the department has mechanically imposed the said penalty on the appellant since the law provided for a legal provision to do so. Penalty under section 114AA can only be imposed for use of false or incorrect material only when such person knowingly utilizes the said material. Prior knowledge of such falsification is a must to impose such penalty upon the appellant. Since there is no such piece of evidence we find absolutely no justification for imposition of penalty on the appellant in the matter. However,

as regards the appellant's responsibility to ensure due diligence while discharging import-export business it is incumbent upon the appellant so as to ensure the correctness of the information acted upon. We are however of the view that in view of the stated facts and all material particulars (other than that of the number), indicated in the invoice, tallying with that of the Country of Origin Certificate, the case of holding a bonafide belief of a typographical error cannot be absolutely ruled out. Moreover, as all import documents were received by them directly from the importer themselves, the presumption of the mis-match in the invoice number with there being no apparent duty benefit accruing to the importers, the appellant may have justifiable reasons to harbor a bonafide belief and benefit of doubt about the clerical errors in the two numbers would ordinarily come to mind; more so as date, weight, quality and quantity of the goods, description thereof etc. were all found to be tallying completely and as per other import documentation. Furthermore, it is also on record that part consignment of the goods was already offloaded at Sagar Port, even prior to offloading the rest of the cargo at the port of Haldia, with the same set of invoice and other import documentation, including the erroneous/ fraudulent Country of Origin Certificate.

7. Considering the totality of the matter and the fact of the suspension of the CBLR having been revoked even prior to the personal hearing of the matter fixed, we obviously do not find any sound reason for sustaining the penalty imposed on the appellant. However, Customs Broker being an important link in the chain of overseas trade and commerce, it is rightly expected of them to exercise all possible care and due diligence to avoid the perpetuation of fraud. He is required to exercise proper vigil and be alert and abreast of the legal nuances at all times, so as to ensure that the sinister

designs of fraudsters do not succeed. Under the circumstances, at best we would like to issue a note of caution to the appellant in the matter for exercise of due diligence and being more careful in such transactions in future. The appeal filed is thus allowed in the aforesaid terms and the order of the lower authority is set aside. There will be no penalty imposed on the appellant in the matter.

(Order pronounced in the open court on 03.02.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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