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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76183 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/37/2024 dated 10.06.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Jehovah Logistics **: Appellant**
3D, Port View Tower, 3rd Floor,
No.-4/38, Krishanan Koli, Street,
Chennai – 600 001

VERSUS

Commissioner of Customs **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Srikant Kumar Mohapatra, Advocate, for the Appellant

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75397 / 2026

DATE OF HEARING / DECISION: 17.03.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Jehovah Logistics, 3D, Port View Tower, 3rd Floor No.-4/38, Krishanan Koli, Street, Chennai – 600 001 (hereinafter referred to as the "appellant") has filed this appeal against the Order-in-Appeal No. KOL/CUS/PORT/KS/37/2024 dated 10.06.2024 wherein the penalty imposed on the appellant under Section 114(iii) of the Customs Act, 1962 vide the Order-in-Original No. KOL/CUS/ADC/PORT/EXPORT/92/2023 dated 02.08.2023 has been upheld.

2. The facts of the case are that M/s. Ehasanmann Trading Concern has exported readymade garments under four (04) Shipping Bills bearing Nos. 2544644, 2544647, 2544816 and 2546144 all dated 30.11.2015 through their authorized Customs Broker i.e., the appellant herein. On examination of the said consignments, the Officers of the SIB (Port) observed that one item in each Shipping Bill might have been overvalued. Thereafter, it was found that the total declared FOB of the goods in all the four Shipping Bills was Rs.75,56,836/- whereas as per the local market survey conducted, the re-calculated FOB of the goods was Rs.53,00,832/-.

2.1. Accordingly, proceedings were initiated by way of a Show Cause Notice dated 30.03.2022, *inter alia* alleging that the exporter has overvalued the goods with a view to get excess drawback. The Notice also proposed penalty on the appellant / Customs Broker for allegedly facilitating the over valuation of the export goods for wrongful availment of drawback.

2.2. During adjudication, the ld. adjudicating authority vide the Order-in-Original dated 02.08.2023, inter alia, imposed a penalty of Rs.2,00,000/- on the appellant herein under Section 114(iii) of the Customs Act, 1962.

2.3. On appeal, the Ld. Commissioner (Appeals) vide the impugned order has upheld the imposition of penalty on the appellant.

2.4. Aggrieved by the imposition of penalty, the appellant has filed the present appeal.

3. The appellant’s contention is that they were in no way concerned with the value declared in the Shipping Bills in question for the purpose of claiming drawback; that it is on record that on examination of the goods, no discrepancy was found on the description of the goods in the shipping bills. If the investigation officers found any over valuation in the goods exported, the responsibility to explain the same is on the exporter. As a Customs Broker, the appellant filed the documents as provided by the exporter. The appellant submits that they cannot be held responsible for the over valuation of export goods. Accordingly, the appellant argued that the penalty imposed on them in this case is legally not sustainable and thus prayed for setting aside the same.

4. The Ld. Authorized Representative of the Revenue appearing before us has reiterated the findings in the impugned order. He thus justified the imposition of penalty on the appellant.

5. Heard both sides and perused the records of the case.

6. In the present case, we find that the appellant, a Customs Broker, has filed four Shipping Bills on behalf of the exporter, namely, M/s. Ehasanmann Trading Concern. On examination of the goods declared for export in the said four shipping bills, the description and quantity of the goods were found to be in order and no discrepancy noticed. This fact has also been recorded by the ld. adjudicating authority at paragraph 3 of the Order-in-Original dated 02.08.2023. We observe that the total declared FOB value of the goods declared in all the four Shipping Bills was Rs.75,56,836/- whereas as per the local market survey conducted, the authorities

re-calculated the FOB value of the goods as Rs.53,00,832/-. Thus, the Revenue has taken the view that the FOB value declared was overvalued, on the basis of a market enquiry conducted by the investigating officers.

7. In this regard, we agree with the submission of the appellant that they were in no way concerned with the valuation of the goods in question. If there is an over-invoicing of goods, the responsibility is on the exporter, to explain. It is the duty of the exporter to confirm that the declaration given in the Shipping Bills are true and correct and correspondingly any liability accruing from any misdeclaration with respect to any particulars stipulated therein, including, description, quantity, valuation and permissibility of export goes to the exporter. There are various decisions of the Hon'ble High Courts and Tribunals supporting the view that the mandate of misdeclaration on valuation is only on the importer/exporter. The Customs Broker is to act only as per the instructions of the exporter. It is responsibility of the exporter to ensure correctness of the export declaration. Thus, we observe that penalization of the Customs Broker (appellant herein) for the alleged overvaluation of the goods is not sustainable. Consequently, we find that the allegation against the appellant, that they have facilitated the over-invoicing of the goods for availment of excess drawback by the exporter is unsubstantiated.

7.1. In this regard, we find that an identical issue came up for consideration before the Tribunal at Delhi in the case of *World Cargo Movers v. Commissioner of Customs, New Delhi [2002 (139) E.L.T. 408 (Tri. – Del.)]* wherein, under similar facts and circumstances, the penalty imposed on the CHA under Section 114 ibid. was set aside. The relevant portion of the said Order is reproduced below: -

> *"6. I have examined the submissions. I note that the show-cause notice has alleged contravention of Regulation No. 14 (b) of the CHA Licensing Regulations 1984, against the appellant. This regulation casts an obligation on the CHA to transact business in the Customs Station either personally or through an employee approved by the Asstt. Commissioner or Dy. Commissioner, designated by the Commissioner. The respondent has no case that the appellant transacted any business in the Customs Station in the Airport otherwise than personally or through an employee duly approved by the Asstt Commissioner or Dy. Commissioner of Customs, designated by the Commissioner. Therefore, Regulation No. 14 (b) appears to have been invoked erroneously by the Commissioner for a finding that the appellant attempted to help the exporter in over-invoicing the goods for the purpose of obtaining higher DEPB benefits. On the facts and evidence of this case, I find nothing to support such a finding, nor is there anything to substantiate the allegation that the appellant violated Regulation No. 14 (b) of the CHA Licensing Regulations. I have also examined the provisions of Section 11 (1) of the Foreign Trade (Development & Regulation) Act, 1992 and I find that these provisions contain a mandate to importers and exporters and not to CHAs. Therefore, the allegation of contravention of Section 11 (1) of the 1992 Act also cannot be sustained. Numerous statements of the exporter were recorded by the Customs officers before issuing the show-cause notice to the appellant. All those statements have been referred to in the impugned order, as well. However, none of the statements contains anything incriminating against the present appellant. The statements, insofar as they relate to the present appellant, are only to the effect that the exporter had filed the export documents through the appellant. The exporter has never stated that the value of the goods or any other material particulars relating to the goods were entered in the documents by the CHA contrary to his instructions or advice.* ***A CHA can act only in accordance with the instructions of the importer/exporter. Of course, he has to ensure that all the particulars so entered in the export documents are true and correct with reference***

> ***to the particulars furnished to him by the importer/exporter. The respondent in the instant case has not contested the appellants' plea that he has only acted in accordance with the instructions of the exporter. It is no job of the CHA to compare the invoice price with the market price of identical goods for the purpose of checking correctness of the value declared in export documents. It is upto the exporter to ensure the correctness before instructing/advicing the CHA.***
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> *7. In the instant case, therefore, I do not find any substance in the finding of the Commissioner that the appellant was liable to be penalized under Section 114 of the Customs Act. In this view, I am supported by the case law cited by the Consultant. As rightly pointed out by the ld. Consultant any penalty to be imposed on the CHA under Section 114 of the Customs Act should be supported by a finding that some omission or commission of the CHA rendered the goods liable to confiscation. No such finding is forthcoming in the impugned order. For these reasons, the order of the Commissioner imposing penalty on the appellant under Section 114 of the Customs Act cannot be sustained. Therefore, I set aside the impugned order and allow this appeal."*
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> [Emphasis supplied]

7.2. We find that the same view has also been expressed by this Tribunal in the case of *Shaikh & Pandit v. Commissioner of Customs (Prev.), Kolkata [2001 (131) E.L.T. 402 (Tri. – Kol.)].*

8. We also find that the ld. adjudicating authority has not given any finding as to the specific role played by the appellant herein in the alleged offence, for imposition of penalty under Section 114(iii) of the Customs Act, 1962. In the impugned order also, the Ld. Commissioner (Appeals) has not recorded any finding regarding the role of the appellant in the alleged overvaluation of goods. Therefore, we observe

that the investigation has not established the role of the appellant in the alleged over-invoicing of the export goods with a view to avail excess drawback.

9. In view of the above discussion and by applying the ratio of the decisions cited supra, we hold that the penalty imposed on the appellant under Section 114(iii) of the Customs Act, 1962 is not sustainable and accordingly, the same stands set aside.

10. In the result, the appeal is allowed, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd