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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75256 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS/PORT/KS/86/2023 dated 07.02.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

Sri Kousik Nundy, Proprietor
M/s. SSS Sai Forwarders
(Room No.222, HMP House, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

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

WITH

Customs Appeal No.75279 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS/PORT/KS/122/2023 dated 14.02.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

Sri Kousik Nundy, Proprietor
M/s. SSS Sai Forwarders
(Room No.222, HMP House, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

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

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)

Shri Tariq Suleman, Authorized Representative for the Revenue

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

FINAL ORDER NO.75531-75532/2026

DATE OF HEARING : 25.03.2026
DATE OF DECISION : 21.04.2026

Per : RAJEEV TANDON :

The aforesaid two appeals have been filed by Shri Kausik Nundy of M/s. SSS Sai Forwarders (a Customs Broker).

2. The two appeals though concerning two separate show cause notices and adjudication/appellate orders passed in the matter, involve a common question of law and are against the same appellant and hence are taken up for decision by way of a common order.

3. The facts of the case are that the appellant was issued two show cause notices bearing Nos.S-2422020 SIIB (Port) dated 25.11.2020 and S-243/2020/SIIB(Port) dated 25.11.2020 charging him with alleged fraudulent export carried out by one M/s. Asian Enterprises vide Shipping Bill dated 11.06.2019 and M/s. Sai Trading vide Shipping Bills dated 10.06.2019 and 12.06.2019. The two show cause notices assert that the aforesaid exporting firms were key players who along with the present appellant '*connived to clear highly over-valued export consignment for fraudulent availment of IGST Refund*'. The key charge against the appellant is that M/s. SSS Sai Forwarders of which the appellant herein is the proprietor provided the contact and documents

related to exports made by the aforesaid firms to M/s. Advent Shipping Agency, the authorized Customs Broker, in these overvalued attempted exports. It is the Revenue's charge that the employees of the appellant firm were actively involved in facilitating the export by the said two firms. It is for this reason that penalties under section 114((iii) and 114AA of the Customs Act have been imposed on the appellant in each of the two matters and upheld by the Ld.Commissioner(Appeals). Aggrieved by the aforesaid orders of the lower authority the appellant herein is in appeal before us.

4. The Ld.Counsel for the appellant(s) submits that for the very cause of action, the Customs Broker licence of the appellant was also suspended and whereupon pursuant to the enquiry conducted, the same was restored and the suspension revoked. However, he was subjected to penalty for which separate proceedings were drawn before the appellate authorities.

5. Reverting back to the present matter, it is the case of the appellant that he had no involvement in the aforesaid shipments and least of all was not even the Customs Broker for the said attempted exports. Having no nexus with the export consignment of over-valued goods booked by the authorities, it is his case that levy of penalty upon them as aforestated is arbitrary and uncalled for. It is vehemently submitted before us by the Ld.Counsel that none of the persons who handled the said consignments were the employees of the appellant

firm at the material time and that there has been no connection of the appellant or his firm with that of Shri Becharam Das, Partner of M/s. Advent Shipping Agency, the Customs Broker on record, for each of those two shipments. The Ld.Counsel therefore seeks complete exoneration from the proceedings initiated by the department against them in the matter.

6. The ld.AR for the Revenue however reiterates the findings of the lower authority and submits that the key conspirator in the said matter is one Sri Ramkrishna Kole, an erstwhile employee of the appellant's firm, who subsequently rejoined the appellant's firm after having resigned from M/s. Advent Shipping Agency.

7. Having heard the two sides, we find that there is nothing on record to expressly insinuate the appellant with the action of certain persons who incidentally were not even the employees of the appellant at the material time. It is undisputed that the appellant was not the Customs Broker concerned with the said exports. The fact of initiation of action against him under the CBLR provisions being entirely distinct, is not at all relevant to the present proceedings. The department has nowhere been able to show that the appellant had any knowledge about the material goods being exported or their value (inflated or otherwise), which rendered the said goods liable for confiscation. Also there is no evidence placed on record to connect the appellant with the said exports. Mere providing of contact/reference and documents

related to certain exports to a third person, cannot itself be considered as an offending cause, liable for penal action under law. The Revenue was required to corroborate this, with clear evidence to suggest that such an exercise was pre-mediated with ill design for export of consignments that were overvalued with intents for availment of higher amount of IGST credit. Without such knowledge being ascribed to on part of the appellant, it would be utterly improper to subject them to penal consequences under law. It indeed, is a fact that any mis-declaration in terms of valuation of goods is done by the exporter, may or may not be with the connivance of the Customs Broker associated with the matter. The appellant nowhere being in picture either by way of being an exporter themselves or the Customs Broker in the impugned shipment cannot be faulted upon, for not being a party to the mis-adventure. There is nothing on record to show that the appellant acted maliciously with intent to cause financial losses to the exchequer. The nexus, if any, between the aforesaid two exporters/their Customs Broker in the matter and the appellant is required to be proven and established by way of concrete proof in order to subject him to penal liabilities. This link in the chain is nowhere in existence.

8. The lower authority has noted that the impugned export consignments were received by Shri Babu Samanta and Shri Subrata Laha of M/s. SSS Sai Forwarders, who were given the requisite documents like invoice, packing list, authorization etc. after the goods had entered the CFS. This fact has however been strongly and very

categorically refuted by the appellant, in their reply to the impugned show cause notice, asserting that the two aforesaid persons were not in employment of the appellant's firm. Referring the two above named as employees of the appellant, in the absence of any proof thereto, is a grave error in consideration of the factual position by the lower authority. Shri Ramkrishna Kole is stated to be an ex employee of M/s. SSS Sai Forwarders Pvt.Ltd., while the appellant's firm – M/s. SSS Sai Forwarders is a proprietory concern. The two being legally separate entities in the eyes of law, no link between the two firms can ordinarily be supposed and presumed, when not so forthcoming from records.

9. The Ld.Adjudicating authority has categorically noted in his order that the gross misdeclaration of value was undertaken by the exporter. Para 62 of the impugned orders in the two cases are materially relevant for the purpose. Having arrived at such a specific finding, it does not behove the adjudicating authority for imposing penal consequences on the appellant. To place on record, in categoric terms, Para 62 of the impugned orders are extracted below :

<u>Customs Appeal No.75256 of 2023</u>

> *"62. I find from the investigation conducted so far, that gross mis-declaration in terms of valuation has been done by the exporter, M/s. Asian Enterprises with the connivance of Customs Broker, M/s. Advent Shipping Agency for the purpose of availing IGST refund fraudulently, thus causing loss to exchequer. The goods were seized on 18.12.2019 under section 110(1) of the Customs Act, 1962 under proper seizure/detention memo. Hence, the goods are liable for confiscation under section 113(i) of the Customs Act, 1962 and rendering the*

Exporter and Customs Broker liable for penal action under section 114(iii) & 114AA of the Act, ibid."

Customs Appeal No.75279 of 2023

"62. I find from the investigation conducted so far, that gross mis-declaration in terms of valuation has been done by the exporter, M/s. Asian Enterprises with the connivance of Customs Broker, M/s. Advent Shipping Agency for the purpose of availing IGST refund fraudulently, thus causing loss to exchequer. The goods were seized on 18.12.2019 under section 110(1) of the Customs Act, 1962 under proper seizure/detention memo. Hence, the goods are liable for confiscation under section 113(i) of the Customs Act, 1962 and rendering the Exporter and Customs Broker liable for penal action under section 114(iii) & 114AA of the Act, ibid."

10. The only basis as made out by the lower authorities for imposition of penalty is what is stated in para 63 of the two orders:

Customs Appeal No.75256 of 2023

"63. I find that during the course of investigation, statement of Sri Kousik Nandy of M/s. SSS Sai Forwarders was recorded and it is seen that it is M/s. SSS Sai Forwarders who provided the contact and documents related to the said export of M/s. Asian Enterprises to M/s. Advent Shipping Agency. The employees of M/s. SSS Sai Forwardes were actively involved in facilitating the export of M/s. Asian Enterprises along with M/s. Advent Shipping Agency, the authorized CB firm. From the statement of Sri Laha and Sri Samanta it is evident that they contacted Sri Becharam Das of M/s. Advent Shipping Agency for the subject export. It is further evident from the discussions above, that Sri Ramkrishna Kole joined M/s. Advent Shipping Agency to facilitate the export and to become an authorized signatory of the CB firm for clearance of the cargo and as soon as the consignments were cleared he again rejoined his former employer M/s. SSS Sai Forwards. From the above discussion it transpires that Sri Kousik Nandy of M/s. SSS Sai Forwarders was actively involved in the subject export and its

clearance. I also find that Sri Nandy is trying to seek refuge by placing the responsibility on his employees and denying having any knowledge that his company served as the contact between the exporter and the Customs Broker M/s. Advent Shipping Agency. Moreover, the statement of Sri Kousik Nandy, the documents recovered during the search of his office premises and the recorded statements of the employees of M/s.SSS Sai Forwarders appears to be indicating towards his collusion with fraudulent exports and its clearance, which rendering Sri Kousik Nandy of M/s. SSS Sai Forwarders liable for penal action under Section 114 (iii) & 114AA of the Customs Act, 1962."

Customs Appeal No.75279 of 2023

"63. I find that during the course of investigation, statement of Sri Kousik Nandy of M/s. SSS Sai Forwarders was recorded and it is seen that it is M/s. SSS Sai Forwarders who provided the contact and documents related to the said export of M/s. Asian Enterprises to M/s. Advent Shipping Agency. The employees of M/s. SSS Sai Forwardes were actively involved in facilitating the export of M/s. Asian Enterprises along with M/s. Advent Shipping Agency, the authorized CB firm. From the statement of Sri Laha and Sri Samanta it is evident that they contacted Sri Becharam Das of M/s. Advent Shipping Agency for the subject export. It is further evident from the discussions above, that Sri Ramkrishna Kole joined M/s. Advent Shipping Agency to facilitate the export and to become an authorized signatory of the CB firm for clearance of the cargo and as soon as the consignments were cleared he again rejoined his former employer M/s. SSS Sai Forwards. From the above discussion it transpires that Sri Kousik Nandy of M/s. SSS Sai Forwarders was actively involved in the subject export and its clearance. I also find that Sri Nandy is trying to seek refuge by placing the responsibility on his employees and denying having any knowledge that his company served as the contact between the exporter and the Customs Broker M/s. Advent Shipping Agency. Moreover, the statement of Sri Kousik Nandy, the documents recovered during the search of his office premises and the recorded statements of the employees of M/s.SSS Sai Forwarders appears to be indicating towards his collusion

> *with fraudulent exports and its clearance, which rendering Sri Kousik Nandy of M/s. SSS Sai Forwarders liable for penal action under Section 114 (iii) & 114AA of the Customs Act, 1962." liable for penal action under section 114(iii) & 114AA of the Act, ibid."*

11. However, this assertion has not only been strongly contested, but has been made without any substantiation. It has been stated by the lower authority that the persons named therein were not the employees of the firm at the material point in time. Furthermore attributing, the making over of documents through a person for purpose of export could not *ipso facto* lead to the conclusion of the involvement of the appellant, in such attempted unlawful exports. While the appellant may have denied having any knowledge that his company served as a conduit between the exporter and the Customs Broker, it is for the authorities, to on record administer by categorical evidence that the appellant actually acted as a conduit and with malicious intent. We do not find any indication to such effect from records. We would like to further assert that nobody can be prosecuted without direct evidence, howsoever strong an assumption may be. Unless there is direct evidence to establish misdemeanor no penal consequences can follow in law.

12. The ld. adjudicating authority, as can be observed from the extracts above, is himself quite not sure and has only arrived at a suggestive finding while recording at Para 63 in both the cases that "................ the documents recovered during the search of his office

premises and recorded statements of the employees of M/s. SSS Sai Forwarders appears to be indicating towards his collusion with fraudulent export and its clearance ……………………….” That being an important finding by the lower authority himself, we are clear that merely on circumspection, under the circumstances no case for imposition of penalty on the appellant is made out.

13. In view of the discussions above, we set aside the order of the lower authority *qua* the imposition of penalty under Section 114(iii) and under Section 114AA of the Customs Act, 1962 on the appellant in each of the two cases and allow the two appeals filed.

(Order pronounced in the open court on 21.04.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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