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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75437 of 2014

(Arising out of Order-in-Original No. Kol/Cus/Port/2014-S2-25/2013SIB dated 013.01.2014 passed by the Commissioner of Customs(Port) 15/1 Strand Road, Custom House, Kolkata-700001)

M/s. Deblines Pvt. Ltd. **: Appellant**
22,Place Court, 1 Kyd Street,
Kolkata-700016

VERSUS

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

APPEARANCE:

Shri Arnab Chakraborty, Advocate for the Appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75645/ 2026

DATE OF HEARING: 21.05.2026
DATE OF PRONOUNCEMENT: 25.05.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present Appeal has been filed by M/s. Deblines Pvt. Ltd, Kolkata (herein after referred as the Appellant assailing the Order-in-Original No. KOL/CUS/PORT/S2-25/2013 SIB/2014 dated 13.01.2014 (hereinafter referred to as the "impugned order") passed by the Learned Commissioner of Customs (Port), Kolkata, whereby a penalty of Rs.30,00,000/- has been imposed upon the Appellant under Section 112(a) of the Customs

Act, 1962, in connection with alleged non-declaration of retained onboard ("ROB") cargo of Butadiene carried onboard vessel LPG/C "CRIMSON GAS-3" Voyage No. 1212-04.

2. The brief facts leading to the present Appeal are that the vessel LPG/C "CRIMSON GAS-3" Voyage No. 1212-04 was scheduled to arrive at Haldia Port on or about 02.01.2013 for loading export cargo of Butadiene on behalf of Haldia Petrochemicals Ltd. The Appellant, acting as Steamer Agent of the said vessel, was appointed by its Principals, M/s Lauritzen Kozan, Singapore, and upon such appointment sought requisite vessel particulars and documents from the Master of the vessel on 27.12.2012. Pursuant thereto, the Master furnished *inter alia* the Berthing Information of PCS and Pre-Arrival Notification duly signed by him, wherein it was specifically declared that there was "No Hazardous Cargo" onboard the vessel and that the purpose of the vessel's visit was "Loading Butadiene".

2.1. Acting upon such declarations and documents furnished by the Master, the Appellant duly filed the Import General Manifest ("IGM") before the Customs Authorities on 28.12.2012 declaring the vessel as arriving in water ballast, which IGM was duly accepted by the Customs Authorities. Thereafter, on 29.12.2012, the Master sent an email mentioning "Cargo butadiene on board cargo = 526.146 MT in VAC"; however, in the subsequent email dated 31.12.2012, no reference whatsoever was made regarding any 'Retained Onboard' ("ROB") cargo. Subsequently, on 02.01.2013, the Appellant received confirmation from its Principals regarding the existence of ROB cargo onboard the vessel, whereupon the Appellant immediately approached the Customs Authorities on the very same date seeking amendment of the IGM under Section 30(3) of the Act. In the email communication dated 2.1.2013 despatched to the Principal of the steamer agent, M/s Lauritzen Kozan, Singapore, the appellant expresses surprise and concern at not being informed about the ROB Cargo on the said vessel, complaining that even the Principal had not intimated such fact to them. The appellant explained that it had filed an amendment application before the Customs Authorities and that it was attempting to have the said IGM dated 28.12.2012 amended.

2.2. In the meantime, the Customs Authorities boarded the vessel on 02.01.2013 and it was found that approximately 524.598 MT of Butadiene was retained onboard from the previous export voyage. The Master of the vessel, in his letter to the Customs Authorities dated 2.1.2013 and statements recorded on 03.01.2013 and 04.01.2013, admitted that the said ROB cargo had not been declared by him in the boarding documents and accepted such omission as his "mistake".

2.3. In his statements, the Master of the Vessel explained that since he thought that on his previous export voyage from Haldia, the vessel had loaded the exact grade of Butadiene, and could not unload the entire quantity at the discharge port and had retained onboard (ROB) cargo of Butadiene, and was due to load the same grade Butadiene once again, he did not think it was necessary to declare the same again. He reiterated this position in his statements dated 3.1.2013 and 4.1.2013 recorded before the Customs Authorities. Significantly, at no point, did he even once allege collusion, knowledge, intention, on the part of the appellant steamer agent to submit an erroneous IGM or misdeclare the goods to the authorities, or to carry out deliberate acts of commission/omission to evade payment of Customs duty. Rather, the Master took sole responsibility for the entire mishap, and apologised saying that he was "sorry for the mistakes he had committed" in his statement dated 4.1.2013.

2.4. It is pertinent to note that Haldia Petrochemicals Ltd. ("HPL"), the exporter of the said Butadiene Cargo, by its letter dated 21.6.2013 addressed to the Superintendent of Customs (Preventive), expressly clarified that HPL had originally exported 1534.963 MT of Butadiene on 23.12.2012 to Mitsubishi Corporation onboard vessel "Crimson Gas-3" for discharge at Penang, Malaysia. However, owing to operational reasons, the vessel could not unload 524.598 MT of the said cargo at Penang and consequently returned to Haldia carrying the said retained onboard ("ROB") quantity for loading fresh export cargo. HPL further clarified that on 02.01.2013, the vessel loaded fresh export cargo of 1528.795 MT of Butadiene against Shipping Bill Nos. 3133120 and 3133155 dated 21.12.2012, whereafter the vessel sailed carrying both the ROB cargo and the freshly loaded cargo for partial discharge of 1028.795 MT of Butadiene at Penang, Malaysia and balance discharge of 500 MT of Butadiene at Rayong, Thailand respectively. HPL categorically confirmed that no part of the ROB cargo from the earlier voyage was unloaded at Haldia when the vessel berthed on 02.01.2013 for fresh loading operations.

2.5. Thereafter, a Show Cause Notice dated 28.06.2013 bearing F. No. SIB/Port/19/2013 was issued to the Appellant *inter alia* alleging that the Appellant, acting as Steamer Agent of vessel LPG/C "CRIMSON GAS-3" Voyage No. 1212-04, had filed the Import General Manifest ("IGM") declaring the vessel to be in "water ballast" despite the vessel carrying approximately 524.598 MT / 526.146 MT of Butadiene as retained onboard ("ROB") cargo from its earlier voyage. It was alleged that the Appellant had failed to correctly declare the said quantity in the IGM and allied import documents and had thereby rendered the said goods liable to confiscation under Sections 111(d), 111(f) and 111(l) of the Customs Act. The said Show Cause Notice further alleged that the Appellant had knowingly concerned itself with and abetted the improper importation and attempted improper importation of the said goods into India and was consequently liable to penalty under Section 112(a) of the Customs Act.

2.6. On adjudication, the Learned Commissioner of Customs (Port), Kolkata passed the impugned order imposing penalty of Rs.30,00,000/- upon the Appellant under Section 112(a) of the Customs Act.

3. The appellant submits that the essential ingredients for invocation of Section 112(a) of the Customs Act, 1962 are wholly absent in the facts of the present case. The impugned order proceeds in the absence of any finding establishing conscious involvement, intentional omission, aiding, abetting, connivance or deliberate suppression on the part of the Appellant. It is now well settled that penalty under Section 112(a) of the Act in relation to aiding

and abetting, cannot be imposed in the absence of culpable conduct and mensrea. Mere procedural lapse, inadvertent omission or communication failure does not ipso facto attract penal consequences under Section 112(a) of the Act. Aiding and abetting, though not defined in the Act, has been interpreted over numerous decisions of judicial and quasi-judicial authorities as involving positive acts with intention to facilitate duty evasion. In the present case, it is apparent that the appellant had filed the Import General Manifest ("IGM") strictly on the basis of declarations and documents furnished and signed by the Master of the vessel, wherein it was specifically declared that there was "No Hazardous Cargo" onboard the vessel and that the purpose of the vessel's call was "Loading Butadiene". The Master himself subsequently admitted before the Customs Authorities that the retained onboard ("ROB") cargo had not been declared by him in the boarding documents and further admitted such omission to be his own mistake.

3.1. The appellant referred the decision of the Tribunal, Kolkata in the case of Century Star Shipping Ltd. v. Commissioner of Customs (Preventive), Kolkata, 2024 (387) E.L.T. 460 (Tri.-Kolkata), wherein this Tribunal has categorically held that non-filing of IGM without fraudulent intent, at best being an inadvertent omission arising out of communication failure, would not attract penalty under Section 112 of the Act. The Tribunal further held that in view of Section 2(31) of the Act, the responsibility for filing full and correct manifest primarily rests upon the Master of the vessel and other agencies cannot step into the shoes of the Master for the purpose of penal consequences. The

Tribunal further held that where the lapse arose essentially from failure of communication amongst the various parties concerned and there existed no fraudulent intent, Section 112 of the Customs Act was not invokable.

3.2. The appellant also referred the decision of the Tribunal, Kolkata in the case of Pandaw Cruise Co. Ltd. v. Commissioner of Customs (Preventive), Kolkata, (2024) 16 Centax 314 (Tri.-Cal.), wherein the Tribunal held that where there was no evidence implicating the steamer agent with prior knowledge, connivance, aiding or abetting, confiscation and penalty under Section 112(a) and 112(b) could not be sustained and that, at best, observance of customs compliances had merely been overlooked.

3.3. Notably, both the decisions in Century Star Shipping (supra) and Pandaw Cruise Co. Ltd (supra) expressly relied upon the earlier decision of this Hon'ble Tribunal in Essar Oil Ltd v. Commissioner of Customs, Mumbai, 2002 (142) ELT 657 (Tri-Mumbai). In the case of Essar Oil Ltd. (supra), the Tribunal categorically held that for imposition of penalty under Section 112 of the Act, malicious intent and knowledge on the part of the steamer agent must be clearly established and that mere omission or procedural lapse, absent deliberate intent, cannot attract penal consequences. The said principle was specifically reiterated and applied in Century Star Shipping Ltd. while holding that at best the lapse therein could be construed as unintended negligence arising from communication failure, for which Section 112 was not invokable. Reference may also be drawn to an earlier decision of this Tribunal in this regard in Shahi Containers v. Commissioner of

Customs (Import), Mum, 2003 (158) ELT 51 (Tri-Mumbai).

3.4. In the premises, it is intrinsic to any act of aiding and abetting that intention behind the same be established as a necessary criterion therefor, particularly in the case of steamer agents. The impugned order however, fails to establish such intent or refer to any evidence of the appellant harbouring such intent to collude with, aid, abet the Master of the Vessel or the exporter (Haldia Petrochemicals Ltd) to evade payment of duty. In the premises, it is submitted that the primary basis for attracting Section 112(a) of the Act is absent in the present case. The penalty of Rs. 30 lakhs sought to be imposed upon the appellant is therefore, liable to be set aside.

3.5. In the present case, there exists absolutely no evidence that the Appellant had connived with the Master or vessel owners; or aided or abetted any act rendering the goods liable to confiscation. On the contrary, the records unequivocally establish the bona fide conduct on the part of the Appellant inasmuch as the Appellant immediately sought amendment of the IGM upon receiving confirmation regarding the existence of ROB cargo from its Principals. The email dated 2.1.2013 of the appellant to the Principal, shows the patent surprise and concern as well as frustration towards both the Master and the Principal for not disclosing the ROB cargo on the said vessel. Significantly, as soon as the appellant obtained clarification of the undeclared ROB cargo, it filed the IGM amendment application before the Customs Authorities. The said email of the Principal dated 2.1.2013 shows that even the

Principal was not aware of the undeclared ROB Cargo and sought clarification from the appellant in this regard. Evidently, the sole person responsible for the entire mishappening was the Master of the said vessel, who confessed to his mistake, and took the entire blame upon himself without blaming any other person including the steamer agent during his witness examination or at the time of investigation.

3.6. Rob Cargo Never Acquired the Character Of Imported Goods. The appellant submits that the very foundation of the impugned proceedings proceeds on an erroneous assumption that the retained onboard ("ROB") cargo of Butadiene constituted "imported goods" within the meaning of Sections 2(23) and 2(25) of the Act.

3.7. In the facts of the present case, the ROB cargo:

(a) had originally been exported from Haldia;

(b) remained continuously onboard the vessel;

(c) was never unloaded in India;

(d) never entered the stream of domestic commerce; and

(e) was ultimately discharged at foreign ports.

3.8. It is undisputed from the records that no part of the ROB cargo was unloaded when the vessel was berthed at Haldia on 02.01.2013. Haldia Petrochemicals Ltd., by its letter dated 21.06.2013 addressed to the Customs Authorities, specifically confirmed that no quantity of the earlier cargo was unloaded at Haldia and that the vessel ultimately sailed carrying both the ROB cargo and the freshly loaded export cargo for discharge abroad.

3.9. The Appellant further submits that in Century Star Shipping Ltd. (supra), the Tribunal, relying inter alia upon Noble Asset Co. Ltd. v. Commissioner of Customs reported in 2006 (205) E.L.T. 901 (Tri.-Mumbai), held that where a vessel/conveyance continues to retain the character of a foreign-going vessel and no unloading or domestic importation takes place, the same cannot automatically be treated as "imported goods". The Tribunal further held that non-filing or defective filing of IGM cannot by itself convert goods into prohibited or improperly imported goods and specifically rejected the proposition that every procedural lapse under Section 30 of the Act would automatically attract confiscation under Section 111 of the Act. The appellant submits that no bill of entry was ever filed for the ROB cargo by any person claiming to be importer thereof In such circumstances, the ROB cargo never acquired the legal character of "imported goods" liable to confiscation under Section 111 of the Act and consequently the entire edifice of proceedings against the Appellant necessarily fails.

3.10. In view of the facts and circumstances aforesaid, the appellant submits that the proceedings against the Appellant are wholly unsustainable both on facts and in law. The Department has failed to establish any conscious involvement, aiding, abetting, connivance, mala fide intention or deliberate suppression on the part of the Appellant so as to justify invocation of Section 112(a) of the Customs Act, 1962. It is further submitted that the retained onboard ("ROB") cargo never acquired the legal character of imported goods inasmuch as the same remained continuously onboard the vessel, was never unloaded in India and was ultimately discharged abroad. Consequently, the very foundation for invoking Section 111 of the Act fails. Accordingly, the appellant prayed for setting aside the impugned order insofar as the same imposes penalty upon the Appellant under Section 112(a) of the Customs Act, 1962.

4. The Ld. A.R. submits that the appellant has filed an erroneous IGM and misdeclared the goods imported in the vessel to the authorities. Accordingly, he submits that penalty has been rightly imposed on them.

5. Heard both sides and perused the appeal documents.

6. We find that the appellant has been imposed a penalty of Rs.30,00,000/- under Section 112(a) of the Customs Act, 1962 on the allegation that they have not declared the cargo retained onboard ("ROB") in the IGM filed. It was alleged that the Appellant had failed to correctly declare the said quantity in the IGM and allied import documents and had thereby rendered the said goods liable to confiscation under Sections 111(d), 111(f) and 111(l) of the Customs Act. It is further alleged that the Appellant had knowingly concerned itself with and abetted the improper importation, thereby abetted the evasion of customs duty payable on the cargo retained onboard.

6.1. From the facts on record, we find that the appellant has not declared the 524.598 MT of Butadiene retained onboard from the previous export voyage, in the IGM filed by them. In this regard, we observe that the role of the appellant, a Steamer Agent, is to declare the goods as informed by the Master of the vessel in the IGM. It is an admitted fact that the Master of the vessel, in his letter to the Customs Authorities dated 2.1.2013 and statements recorded on 03.01.2013 and 04.01.2013, has admitted that the said ROB cargo had not been declared by him in the boarding documents and accepted such omission as his "mistake". In particular, in his letter dated 2.1.2013, the Master of the said Vessel wrote to the Customs Authorities as follows:

"I DID NOT DECLARE THE SAME EARLIER SINCE AS WE ARE ARRIVING TO LOAD SAME GRADE BUTADEINE AT HALDIA. IT IS MY MISTAKE [sic]"

6.2. Thus, we observe that the appellant, Steamer Agent cannot be faulted for the mistake of not declaring the ROB cargo in the IGM. Immediately on receipt of confirmation from its Principals regarding the existence of ROB cargo onboard the vessel, the Appellant had approached the Customs Authorities on the very same date seeking amendment of the IGM under Section 30(3) of the Act. It is on record that the Appellant had filed an amendment application before the Customs Authorities and carried out the amendment in the IGM, without any delay.

6.3. In the impugned order, it has been held that the appellant has abetted the improper importation of the said goods into India with an intent to evade the Customs Duty and consequently, it was held that the appellant is liable to penalty under Section 112(a) of the Customs Act. In this regard, we find that the ROB cargo had originally been exported from Haldia. The said cargo remained continuously onboard the vessel and the same was never unloaded in India. The cargo was ultimately discharged at foreign ports. Thus, it is an undisputed fact that no part of the ROB cargo was unloaded when the vessel was berthed at Haldia. Thus, in the present case, we find that there exists absolutely no evidence that the Appellant had connived with the Master or vessel owners and aided or abetted any act rendering the goods liable to confiscation. It is also a fact on record that no bill of entry was ever filed for the ROB cargo by any person claiming to be importer thereof. In such circumstances, we observe that the ROB cargo never acquired the legal character of "imported goods" liable to confiscation under Section 111 of the Act.

6.4. Regarding the penalty imposed on the appellant, we find that the essential ingredients for invocation of Section 112(a) of the Customs Act, 1962 are wholly absent in the facts of the present case. The impugned order proceeds in the absence of any finding establishing conscious involvement, intentional omission, aiding, abetting, connivance or deliberate suppression on the part of the Appellant. It is now well settled that penalty under Section 112(a) of the Act in relation to aiding and abetting, cannot be imposed in the absence of culpable conduct and mensrea. Mere procedural lapse, inadvertent omission or communication failure does not ipso facto attract penal consequences under Section 112(a) of the Act.

6.5. In support of the above view, we refer the decision of the Tribunal, Kolkata in the case of

Century Star Shipping Ltd. v. Commissioner of Customs (Preventive), Kolkata, 2024 (387) E.L.T. 460 (Tri.-Kolkata), wherein this Tribunal has categorically held that non-filing of IGM without fraudulent intent, at best being an inadvertent omission arising out of communication failure, would not attract penalty under Section 112 of the Act. The Tribunal further held that in view of Section 2(31) of the Act, the responsibility for filing full and correct manifest primarily rests upon the Master of the vessel and other agencies cannot step into the shoes of the Master for the purpose of penal consequences. The Tribunal further held that where the lapse arose essentially from failure of communication amongst the various parties concerned and there existed no fraudulent intent, Section 112 of the Act was not invokable.

6.6. The same view has been held by the Tribunal, Kolkata in the case of Pandaw Cruise Co. Ltd. v. Commissioner of Customs (Preventive), Kolkata, (2024) 16 Centax 314 (Tri.-Cal.), wherein the Tribunal held that where there was no evidence implicating the steamer agent with prior knowledge, connivance, aiding or abetting, confiscation and penalty under Section 112(a) and 112(b) could not be sustained.

6.7. Thus, by relying on the ratio of the decisions cited supra, we hold that the ingredients required for imposition of penalty under section 112(a) of the Customs Act, 1962 does not exists in this case and hence we set aside the penalty imposed on the appellant under section 112(a) of the customs Act, 1962.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 25.05.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP