# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**Customs Appeal No. 85110 of 2024**

(Arising out of Order-in-Original No. 151-2023-24-Commr/NS-II/CAC/JNCH dated 05.10.2023 passed by the Commissioner of Customs (NS-II), JNCH, Nhava Sheva.)

**M/s Rishad Shipping & Clearing Agency Pvt. Ltd.** .... **Appellant**
Office No. 406A/B, Plot 68/70,
Commercial Mansion, Liladhar Lakhamshi Shah Road,
Dana Bandar, Chinchbunder, Mumbai- 400 009.

Versus

**Commissioner of Customs, Nhava Sheva-II** .... **Respondent**
JNCH, Nhava Sheva, Tal- Uran,
Dist.- Raigad- 400 707.

Appearance:

Shri Vinay N.Ansulkar, Advocate for the Appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85411/2024**

Date of Hearing: 12.04.2024
Date of Decision: 12.04.2024

***Per: S.K. MOHANTY***

Briefly stated, the facts of the case are that the Special Intelligence & Investigation Branch (SIIB) in the Customs department had conducted the investigation with regard to export of 'high twisted cotton ropes hawser' and 'high twisted string ropes', falling under CTH 5607 9090. They observed that one of the exporter M/s Collabrative Inc. had overvalued the export goods, with an intention to avail excess benefit provided under MEIS scheme and duty drawback. On the basis of such investigation, proceedings were initiated against the exporter M/s Skyy Traders, alleging that the said exporter had exported 'cotton rope/twine made of polypropylene' under the guise of 'cable (copper/plastics coated other shield)' at a higher value in order to defraud the government revenue. The show cause notice dated 31.03.2022 issued by the department was adjudicated by the learned Commissioner of Customs, Nhava Sheva-II, JNCH vide the impugned order dated 05.10.2023, in confirming the proposals made against various noticees. With regard to the present appellant M/s Rishad Shipping and Clearing Agency Pvt. Ltd. (co-noticee), the impugned order has imposed a penalty of Rs.1,00,00,000/- (Rupees one crore) under Section 114(iii) of the Customs Act, 1962. The appellant is a customs broker, duly authorized by the exporter M/s Skyy Traders to file the shipping bills during the period June-July, 2015.

2. Heard both sides and perused the records.

3. We find that the learned adjudicating authority has imposed penalty on the appellant on the ground that he did not personally meet the exporter and had never brought its employees before the investigation authority. Further, we also find the impugned order at paragraph 44 has specifically recorded that the exporter alone, who declares the material particulars in the shipping bill, is liable for the consequential penalties and not the customs broker. On the said findings, he has dropped the proposals made in the SCN for imposition of penalty on the co-noticees under Section 114AB and 114AA ibid.

4. Insofar as Section 114 (iii) ibid is concerned, it has been mandated that any person who, in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to confiscation, shall be liable for the penalty. In the case in hand, it is not in dispute that the offending goods were exported and subsequently proceedings were initiated for confiscation of the same; imposition of redemption fine and penalties on the noticees. For confiscation of the goods, the corrigendum dated 20.11.2023 to the impugned order has invoked the provisions of Section 113 (i) and 113(i)(a) ibid. The said provisions contained in Section 113 ibid are attracted only when the goods are entered for exportation and not otherwise. In the present case, the goods were already exported,

which has also been admitted by the department. Thus, in our considered view, the said provisions cannot be applied for confiscation of goods and for imposition of consequential penalty. Further, on perusal of the case records, we find that the adjudicating authority has also not established any connivance of the appellant with the exporter in mis-declaring the value of the exported goods. The appellant, being a customs broker, is governed by the Customs Brokers Licensing Regulations, 2018 (CBLR) and any contravention or violation of such Regulation calls for separate proceedings; and the penal provisions contained in the Customs Act, 1962 shall not be applicable, without proper substantiation that the customs broker has in fact, indulged himself in the activity of fraudulent import/export, which is considered to be an offence under the Customs statue. Since, the appellant as a customs broker has dealt with the goods declared by the exporter in the shipping bill, it cannot be said that he is involved in fraudulent exportation of goods and thus, in our considered opinion, he cannot be exposed to the penal consequences provided under Section 114(iii) ibid.

5. In view of the above, we do not find merits in the impugned order, insofar as it has imposed penalty on the appellant. Therefore, the impugned order to such an extent is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

**(S.K. Mohanty)**
**Member (Judicial)**

**(M.M. Parthiban)**
**Member (Technical)**

Sinha