# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## MUMBAI

WEST ZONAL BENCH, MUMBAI

**Customs Appeal No. 85471 of 2021**

(Arising out of Order-in-Original No. Pr. COMMR./SKA/ADJN/04/2020-21 dated 27.01.2021 passed by the Pr. Commissioner of Customs, CSMI Airport, Mumbai.)

**M/s Unimarine Agencies Pvt. Ltd.** ........Appellant
**501-B, Kalpak Gulistan,**
**9, Perry Cross Road,**
**Bandra (W), Mumbai – 400 050**

*VERSUS*

**Commissioner of Customs, Airport, Mumbai** ........Respondent
**Chhatrapati Shivaji Maharaj International Airport,**
**Sahar, Mumbai, Maharashtra – 400 099**

**WITH**

**(i) Customs Appeal No. 85473/2021 (Shamshuddin A Shroff);**
**(ii) Customs Appeal No. 85585/2021 (Kiran Nagindas Vora);**
**(iiii) Customs Appeal No. 85790/2021 (Thakur N Mulani);**
**(iv) Customs Appeal No. 86009/2021 (Mukesh Nagindas Vora)**

(Arising out of Order-in-Original No. Pr. COMMR./SKA/ADJN/04/2020-21 dated 27.01.2021 passed by the Pr. Commissioner of Customs, CSMI Airport, Mumbai.)

**APPERANCE:**

Shri N.D. George, Advocate (C/85471 & 85473/2021)
Shri J.C. Patel, Advocate (C/85585/2021)
Shri R.V. Shetty, Advocate with S.R. Shetty, Advocate (C/85790/2021) and
Shri Anil Balani, Advocate (C/86009/2021) for the Appellants

Shri D.S. Mann, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 86092-86096/2025**

Date of Hearing: 06.06.2025
Date of Decision: 15.07.2025

In these five appeals, the Appellants have challenged the legality of the penalty imposed on them under Section 114(1) of the Customs Act, 1962 by the Pr. Commissioner of Customs, CSMI Airport, Mumbai.

2. Facts of the case, in brief, is that intelligence was gathered by DRI, Mumbai that M/s Megatop Impex having its registered office at Mulund (West), Mumbai had exported 108 consignments of readymade garments between November, 1998 and January, 1999 allegedly to Russia in terms of Letter of Credit opened under the 'State Credit Repayment Scheme' in the name of four other firms and received drawbacks through Reserve Bank of India on the basis of arrangement made between Government of India and its Russian counterpart but, those goods were exported up to Dubai and in the process, these Appellants were involved in aiding and abetting improper export, for which respective penalty ranging from ₹50,000/- to ₹2,00,000/- were imposed on them.

3. During course of hearing of the appeal, learned Counsels for the Appellants have taken the plea that delay of over 7 years in adjudicating the matter has vitiated the proceeding and sought to set aside the order but in view of the recent interim order passed by Hon'ble Supreme Court in *SLP (C) No. 5392/2025* in the case of *GMR Airport Infrastructure Ltd. (Respondent)*, as stay has been granted on 02.05.2025 on proceedings agitated on this ground, they agreed not to press for quashing of show-cause notice on the ground of prolonged delay in adjudication.

4. Learned Counsels for the Appellants have argued separately that show-cause notice was based on the statement recorded under Foreign Exchange Regulation Act, 1973 (FERA) and not recorded directly from these delinquents while statements of some Managers of one Dubai based company M/s. Sydneyco Shipping Services and proprietor of M/s. Megatop Impex were recorded under Section 108 of the Customs Act, 1962 but nowhere in their statement, they have directly implicated these Appellants. Learned Counsel for the Appellant Kiran Nagindas Vora, in giving reference of proceedings before FERA Authorities in his written note, also pointed out that proceedings under FERA, 1973 were dropped against the original violators like Divya Enterprises & Ors., Radheshyam Exports P. Ltd. etc. and the same were accepted by the Department. Learned Counsel for the Appellant Thakur Narayandas Mulani has pointed out that the only involvement of this Appellant in this case was that he had introduced the proprietor of M/s. Megatop Impex to the bank to open his account and obtain LC as he was a friend of Appellant Mulani. Some of the Appellants also, including this Mulani were stated to have been denied cross examination of the relied upon witnesses like Ram Punjwani, basing on whose statement he has been implicated. Learned Counsel for Appellant Mukesh Nagindas Vora argued that Section 113(d) of the Customs Act, 1962 would be applicable to export of prohibited goods, but in the instant case readymade garments, which are freely exportable, were exported and there was no mis-declaration made in the shipping bill nor mis-declaration in the value

or description or quantity of goods nor there was a mis-declaration regarding the destination of goods since it was to transit to Russia via Dubai and full remittance was received against those exports in Rupee-Ruble scheme, for which FEMA Authorities had dropped the proceedings. In citing decisions of M/s. *Enterprises International Ltd. Vs. Commissioner of Customs (Port), Kolkata reported in 2010 (259) ELT 629 (Tri.-Kolkata), Warren Trading Pvt. Ltd. Vs. Commissioner of Customs, Kandla reported in 2008 (222) ELT 313 (Tri.-Ahmd.), S.A. Dalal & Co. Vs. Commissioner of Customs (Import), Mumbai in order No. A/85495/2019* passed on *dated 20.02.2019,* learned Counsel for the Appellant Shamshuddin A. Shroff argued that no statement of the Director of the Appellant company was recorded under Section 108 of the Customs Act, 1962 nor Appellant was summons or investigated by DRI, for which no proceeding is maintainable against him. Not granting of cross examination by the Commissioner to Appellant Thakur N. Mulani was also raised, whose learned Counsel further informed that LCs were received by companies floated by Mukesh Vora, Kiran Vora alongwith Iqbal Mohan Amritlal Mehra and drawbacks were received by proprietorship firm M/s. Megatop Impex and Appellant had not signed on any export documents, nor received the LC for export to Russia. Similarly, Appellant M/s. Unimarine Agencies Pvt. Ltd. urged through his pleader that the Managing Director of the Company was not examined under Customs Act but his statement recorded under Section 40 of FERA, 1973 and 49 of FEMA by the Enforcement Director has been used in this case, when Appellant was discharged in those proceedings instituted under FERA and FEMA and basing on the statement of Manager Commercial or M/s. Sydneyco Shipping Services, Dubai recorded under Section 108 of Customs Act, 1962, this Appellant has been prosecuted though in the bill of lading it was specifically mentioned that goods were to be transported by sea to Dubai and by Air to Moscow from Dubai. More importantly, the allegation against this Appellant and its Director Shamshuddin A. Shroff is that they had no licence for 'multimodal transportation' but they had issued multimodal shipping bills, which learned Counsel for the Appellant stated is not an irregularity to be dealt under Customs Act since for violation concerning shipping bills, Director General of Shipping would be the appropriate authority to initiate action, which is not initiated against these Appellants, for which they all urged for setting aside the order passed by the learned Commissioner of Customs.

5. On the other hand, learned Authorised Representative Mr. D.S. Mann has submitted in his written note and argued that this is a case of misuse of "Re-payment Scheme of State Credits of erstwhile USSR" with claim of DEPB/DBK fraudulently and in the instant case, exporter M/s. Megatop Impex and another exporter M/s. Esvee Exports were ordered to repay back drawback amount but status of their appeal is not known. He further clarified that under the "Re-payment Scheme of State Credits of erstwhile USSR", the Bank for Foreign Economic Affairs, Moscow grants Letters of credit denominated in Rupees in favour of Indian Exporters of goods and services and sends the same to exporter's bank in India with an advise to RBI to honour the Letter

of credit and that in the instant case one 'Vora Group' of companies had conspired a fraud by over valuing goods, exporting it up to Dubai instead of Moscow but Indian exporters could encash LC and also received DBK in furtherance of which Act Appellants had played their respective roles. He further reiterated the findings of the Commissioner and requested for none-interference of the Tribunal in the order passed by the Commissioner against these Appellants who have defrauded the Government of India.

6. I have gone though the case record and the written submissions filed by the parties. Neither in the order passed by the Commissioner nor in any of the relied upon statements, which were taken on record without opportunity of cross examination, there is any reference of direct participation of any of these Appellants in the entire transaction that happened beyond the port of export in India and there is also no evidence available on record to establish that there was any overt Act of aiding and abetting the exporters in not exporting the goods up to Russia when on the other hand payment had been received from Russian Government through the Re-payment Scheme that would *prima-facie* establish that goods had reached Russia after being exported, for which payment scheme was activated and exporters were being paid the drawbacks through Reserve Bank of India channel. The only allegation in this appeal against exporter M/s. Unimarine Agencies Pvt. Ltd. is that it had no multimodal transportation permit but it had exported the goods to Dubai and allegedly from Dubai to Moscow which never happen as per the claim of the Respondent-

Department. However, such an allegation is not established through cogent evidence and Appellants are being subjected to the proceedings on the basis of statements of third parties recorded in connection with FERA and FEMA proceedings and during investigation also, most of the Appellant except Thakur N. Mulani were not examined nor their premises/offices were visited by the Customs or any documents were seized from them and as because Thakur N. Mulani participation was limited to helping the exporter in opening a bank account only, I am of the considered view that in the absence of any cogent evidence regarding aiding and abetting the Act of improper exportation of goods, penalty under Section 114(i) of the Customs Act, 1962 can't be imposed against these Appellants. Hence the order.

THE ORDER

7. The appeals are allowed and the order passed by the Pr. Commissioner of Customs, CSMI Airport, Mumbai *vide* Order-in-Original No. Pr. COMMR./SKA/ADJN/04/2020-21 dated 27.01.2021 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 15.07.2025)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

*Prasad*