CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH - COURT NO.III

Customs Appeal No.85525 of 2021

(Arising out of Order-In-Original No. 82/2020-21/Commr/NS-I/JNCH passed by Commissioner, Customs (NS-I) JNCH, Nhava Sheva)

M/s Kiran Acharya **.....Appellant**

(Proprietor M/s Seatrade Shipping (Export) Agencies
Shop No.26, Stand View Building,
Lokmanya Nagar, Plot No.394,
Behind S.T. Depot, Panvel,
Maharashtra 410206)

VERSUS

Principal Commissioner, Customs (NS-I), Nhava Sheva

....Respondent

(Jawaharlal Nehru Customs House
Nhava Sheva, Taluka Uran
Dist. Raigard, Maharashtra-400707)

AND

Customs Appeal No.85526 of 2021

(Arising out of Order-In-Original No. 82/2020-21/Commr/NS-I/JNCH passed by Commissioner, Customs (NS-I) JNCH, Nhava Sheva)

Shri Nirav Pasad **.....Appellant**

(M/s Ashtavinayak Inference LLP,
134, Ecstacy Park, City of Joy,
JSD Road, Mulund (West), Mumbai)

VERSUS

Principal Commissioner, Customs (NS-I), Nhava Sheva

....Respondent

(Jawaharlal Nehru Customs House
Nhava Sheva, Taluka Uran
Dist. Raigard, Maharashtra-400707)

APPEARANCE:

Shri Prashant Patankar, Consultant for the Appellant
Shri Deepak Sharma, Assistant Commissioner (A.R.) for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO:86249-86250/2025

DATE OF HEARING : 16.04.2025
DATE OF DECISION : 07.08.2025

P. K. CHOUDHARY:

Since both the appeals are against a common Order-In-Original dated 05.01.2021 both the appeals are taken up together for hearing and disposal.

2. The facts of the case in brief are that the Appellant no.1, is a Proprietor of Customs Broker [CB] M/s Seatrade Shipping (Export) Agencies. The Appellant referred the import clearance work to another CB Ashtavinayak Inference LLP (Appellant no.2) who filed bill of entry no. 3945642 dated 05/07/2019 for clearance of 50 MT of 'Citric Acid Monohydrate' for importer M/s Omega Enterprises, a proprietary firm of Mr. Narendra Sathe. The present Appellant referred the clearance work to another CB as his firm was primarily engaged in handling export clearances.

3. Following investigations by the DRI, the consignment was found to contain '29,775 kg of Ascorbic Acid (Vitamin C)' which attracted Anti-Dumping Duty (ADD) under notification no. 38/2015-Cus (ADD) dated 06/08/2015. The adjudicating authority has ordered confiscation of the subject imported goods (20,225 kg of 'Citric Acid Monohydrate & 29,775 kg of 'Ascorbic Acid (Vitamin C). However, he has given an option to redeem the goods on payment of redemption fine under section 125 of the Customs Act, 1962. He has imposed penalty of Rs. 9,00,000 each under section 112(b) and section 114AA on Raju alias Shamshir Alam Shams Tabrez Sayyed (the beneficial owner).

4. The Adjudicating Authority has imposed penalty of Rs. 1,00,000 on Shri Nirav Pasad, CB Ashtavinayak Inference LLP handling the import consignment under 112(a) of the Customs Act, 1962. The Adjudicating Authority has also imposed penalty

of Rs. 1,00,000 on Kiran Acharya, the intermediary referring the clearance work to CB Ashtavinayak Inference LLP under section 112(a) of the Customs Act, 1962. Hence, the present appeals before the Tribunal.

5. The learned Consultant appearing on behalf of the Appellants submits that the penalty imposed on the Appellant CB is not sustainable on following grounds which are without prejudice to each other. The Principal Commissioner had merely reproduced the charges in the Show Cause Notice[1] in a mechanical manner without considering the submissions of the Appellants and the related legal provisions.

6. He further submits that the SCN suggested that the Appellant undertook the clearance of the subject imported consignment. The Appellant was not responsible for filing of the subject bill of entry and had no role in the clearance work in the capacity as 'Customs Broker'. The Appellant actually refused to undertake the import clearance of the subject consignment. It was therefore incorrect to suggest that the Appellant 'accepted the clearance work from a person other than the IEC holder'. The Appellant only referred the import clearance work to another Customs Broker and as a courtesy coordinated between Mr. Shamshir Alam alias Raju and the Customs Broker for the exchange of documents/messages.

7 The Appellant had clarified in the statement dated 08/08/2019 recorded during investigations that he was not handling the import consignments and was looking after exports only. There is no admission or suggestion that Shri. Raju put forward to him the option of carrying out import in the name of a company M/s Omega Enterprises. Mr. Raju only proposed to handle the import clearance in the name of Omega Enterprises. There is no admission that the Appellant was in any way involved in the act of arrangement of IEC or the importation. Mr. Shamshir Alam (Raju) had arranged the imports in the name of

[1] SCN

Omega Enterprises (Proprietor Mr. Narendra Sathe) as admitted by him in his statement dated 07/08/2019 Mr. Shamshir Alam had proposed to Mr. Narendra Sathe and not to the Appellant Kiran Acharya as observed by the Commissioner.

8. There is no admission that the Appellant Kiran Acharya was responsible for 'the arrangement of IEC by using documents of Shri Narendra Sathe'. The Commissioner has ignored the deposition of Shamshir Alam (Raju) dated 07/08/2019 (RUD-7, Para 4.2 of the impugned order / SCN) that -

➢he (Shamshir alias Raju) met Mr. Narendra Sathe during his train journey from Thane to Kalyan and discussed the idea of import of citric acid;

➢ Requested him (Narendra Sathe) to allow an IEC in his name for imports for a commission'

Thus, Mr. Shamshir alias Raju in understanding with Mr. Narendra Sathe arranged for the IEC in the name of Omega Enterprises. The Commissioner has not appreciated that Shamshir alias Raju has not implicated the Appellant Mr. Kiran Acharya in any manner for any role in arranging the IEC.7.

9. Learned Departmental Representative appearing on behalf of the Revenue has justified the impugned order and submitted that the Appeals filed by the Appellant being devoid of any merits be dismissed.

10. Heard both the sides and perused the appeal records.

11. I find that that the IEC holder in his statement recorded by the investigating officer on 30/09/2019, has not blamed the Appellant as the person for getting the IEC or its mis-use. The IEC Holder in his statement has apparently suggested that his Aadhar and PAN were misused to get IEC in the name of Omega Enterprises and one another firm. He has indicated the possible misuse by his friends Arun / Deepak Thakur & Rajesh Tiwari. However, no inquiry has been made with Mr. Deepak Thakur &

Rajesh Tiwari. He seems to have suggested that he does not know the beneficial owner Mr. Shamshir Alam Shams Tabrez Sayyed @ Raju. It is relevant that the IEC holder is an ex-Bank Employee and is expected to know the importance of identity / address proofs and signatures made. However, the SCN seems to overlook the alternate possibility that Mr. Narendra Sathe was trying to distance himself from the offending consignment in self-preservation. It is inexplicable that he would accept some cash from the friends to whom he stated to have given the identity / address documents.

12. Though there is a mis-match between the depositions of the IEC holder and Mr. Shamshir, it is more likely that the beneficial owner has explained the correct arrangement between them. Remarkably, none of them have indicated any role of the Appellant no.1, Kiran Acharya or the Appellant no.2, Customs Broker Mr. Nirav Pasad, for that matter. There is no reason why any of them would shield either Kiran Acharya or the Customs Broker, Nirav Pasad. Similarly, Mr. Shamshir Alam (Raju) in his statement dated 07/08/2019 has named Mr. Kamlesh for mediation with the overseas supplier Mr. Jerad. He has also stated that he (Shamshir) spoke directly with Mr. Jerad for the subject consignment of citric acid. He has also deposed that Mr. Kamlesh helped him sell the first consignment of soda ash in the local market. Mr. Shamshir also offered to provide the details of Kamlesh or Mr. Jerad. However, conspicuously no further investigations/inquiry is conducted with Kamlesh or Mr. Jerad. Thus, the investigations are apparently incomplete as no inquiries have been made with the key persons named by the IEC holder (Arun / Deepak Thakur & Rajesh Tiwari) or those named by the beneficial owner (Kamlesh or Mr. Jerad). But the Commissioner has chosen to presume that the Appellant knew the entire conspiracy, even without IEC holder or the beneficial owner pointing any accusing finger to the Appellant.

13. The Commissioner is in error in suggesting that the Appellant Mr. Kiran Acharya was connected with transportation

of the imported goods in the earlier consignment of Soda Ash. The Commissioner has ignored the factual deposition of the Appellant dated 08/08/2019 that he requested Nirav Pasad to arrange the transportation (as required by Mr. Raju) since the Appellant was not having any contacts of transporters.

14. The contention of the Appellant was never disputed during the course of investigations as well as in the SCN. Moreover, the contention of the Appellant in this regard is verifiable from the record with Customs (EDI System Record) rather than expecting a negative proof from the Appellant. The Commissioner has observed that it was beyond common sense to accept that while roaming at JNCH, Mr Raju had chance meeting with Shri Kiran Acharya who accepted his request of clearance of import consignment but instead of clearing on his own, Shri Kiran handed over the work to other Custom Brokers on the pretext that he was handling only export that too without any documentary evidences to support such claim of handling only exports.

15. The observation of the Commissioner is very much presumptuous and ignores the practical reality. It is common that the Customs Brokers develop expertise in either import or export and only some undertake the work related to both import as well as export clearance. It is also common that the Customs Brokers develop expertise in specific commodities. Therefore, the Commissioner is in error in doubting the bonafide of the Appellant because he refused to undertake some import clearance work in which he had no expertise. It is presumption that the Customs Broker do not refuse work in which they do not have expertise.

16. The SCN was clearly in error in charging that the Appellant was fully aware that Shamshir Alam was not the actual importer, contrary to the averment in the SCN. The SCN was clearly in error in charging that the Appellant 'was fully aware that Shamshir Alam was not the actual importer'. There is no evidence to the effect that the Appellant was having knowledge

that the impugned imported vitamin 'C' would be smuggled with the sole intention of evasion of payment of ADD.

17. No accusation by the importer (IEC Holder or the beneficial owner) or the Customs Broker concerned with assessment and clearance- The SCN or the impugned order do not provide specific detail in any of the statements or otherwise which would indicate the knowledge on the part of the Appellant about the concealment of Vitamin C in the subject consignment. The IEC holder suggested that he had handed over the KYC documents to Mr. Arun/Deepak Thakur & Rajesh Tiwari and the beneficial owner indicated the involvement of one Mr. Kamlesh/Mr. Jerad, while stating that he used to collect the documents from Mr. Sathe (the IEC Holder). It is relevant to note that the Appellant has not dealt with any aspect of the importation of the subject consignment such as negotiations with the overseas supplier, documentation, packing/transport etc. The Appellant had no role in the local sale of the imported consignment as well.

18. The Appellant merely handed over the import documents received from the importer (now identified as beneficial owner) to the Customs Broker who accepted the clearance work. The Appellant in his statement dated 08/08/2019 has clarified that he did not go through the import documents but merely handed over the documents to Mr. Nirav Pasad as received from Mr. Raju. The SCN did not make a case that the import invoices or the documents handed over by the present Appellant to CB M/s Ashtavinayak based on which the bill of entry was filed, were manipulated / tampered/forged / fabricated by the present Appellant. In any event, there is no charge that the Appellant was anyway responsible for the making of the invoice or related shipping documents. The beneficial owner Shamshir Alam (Raju) in his statement dated 07/08/2019 has categorically submitted that he received the documents related to the import of the consignment of citric acid through courier from the supplier company. Regarding the earlier consignment he has stated that

the import documents used to come by FedEx to Sathe's (IEC Holder) residence.

19. Referral of the importer to a Customs Broker cannot be considered as guarantee against any lapse by the importer about which the Appellant may not be aware. Moreover, even a Customs Broker who actually undertakes the clearance work cannot be held responsible for the correctness of the documents forwarded by the importer client.

20. The Appellant referring the Customs clearance work to a Customs Broker is not liable for penalty under section 112(a) of the Customs Act, 1962 as-

➢ No omission or commission by the Appellant making the imported goods liable for confiscation

➢ Bill of entry not filed by the Appellant

Only referral role: Giving business reference not an offense

➢ Goods not liable for confiscation due to use of IEC by person other than IEC Holder

➢ Charge of aiding and abetting: presumptuous and unsubstantiated. The Appellant did not know about the offence being committed by the importer and also did not benefit in any manner from the offence detected.

21. Further, it is submitted on behalf of Nirav Pasad that he had no occasion to examine the subject consignment before the Customs Authority examined the consignment. As such he has not done anything or omitted to do something which can be considered as leading to confiscation of the concealed goods. It is also submitted that the proceedings for penalty under Section 112(a) are distinct from the proceedings under CBLR, 2018. The inquiry under CBLR, 2018 has been completed and the Principal Commissioner Customs (General), New Customs House, Mumbai has revoked the license vide Order-In-Original dated 25.02.2021. It is the case of the Appellant that he is a partner

in the CB Firm and is not liable for penalty under Section 112(a) only for the reason that he has apparently violated some provisions of CBLR, 2018. It is also submitted that the import consignment does not become liable for confiscation under Section 111 of the Customs Act, for violation of the CBLR.

22. I find that the correctness of the importer exporter code and the identity of the importer is not in doubt or dispute. The SCN and also the impugned order has not made any averment that IEC was forged, and the IEC holder was fictitious or non-existent. The importer (IEC holder) in fact presented himself during investigation and his statement was recorded. The self certified KYC documents were duly received by the CB and are on record. There is no discrepancy in IEC and the address of the importer. Moreover the signature of the IEC holder was also certified by Bank of Maharashtra besides receiving other documents such as Udyog Aadhar (Registration under MSME Act) license under Food Safety and Standards Act, 2006. Moreover, there is no bar under CBLR to receive the documents through an intermediary. In this context, the Notice refers to the decision of the Tribunal in the case of K.S. Sawant & Co. Vs CC (Gen., Mumbai) reported in 2012 (284) ELT 363 (Tri.-Mum). The CB, therefore, submits that they were justified in trusting the authenticity of the KYC documents received from a reliable intermediary (Mr. Kiran Acharya) who has confirmed this fact.

23. I find that the subject goods have become liable to confiscation for mis-declaration by the importer/ beneficial importer. It needs to be appreciated that the said bill of entry was filed consistent with the import documents received from the importer through a trusted intermediary. There is no case allegation by the beneficial owner that the bill of entry was filed on the basis of documents different from the documents forwarded by him for clearance.

24. It is also relevant that the subject import consignment has not become liable for confiscation for any act or omission of the Appellant / CB in the nature of failure to verify the credentials of

the importer. It may be appreciated that the import consignment could not be held liable for confiscation if the consignment was found to be as declared even of the Customs Broker had failed to verify the credentials of the importer.

25. The beneficial owner of the imported goods has admitted about submitting the import documents through Kiran Acharya to the Appellant who in turn submitted those to the Customs Authorities. The Appellant CB submits that the responsibility of the truthful declarations in the bill of entry and correct assessment of duties (which included the correct description and value of the imported goods) was of the importer. The Appellant/ CB was not required to go into the authenticity of declarations made by the importer, his job was confined to the submission of documents given by the importer.

26. It may be appreciated that the Appellant/ Customs Broker in the present case has discharged its obligations by filing the bill of entry as per the documents given by the importer. It may be noted the beneficial owner as well as the IEC holder have appeared before the investigating officers and their statements have been recorded.

27. In view of the above the penalty of Rs.1,00,000/- each on both the Appellants under Section 112(a) of the Customs Act, 1962, is set aside and the Appeals are allowed with consequential relief, as per law, if any.

(Pronounced in open court on 07.08.2025)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Nihal