CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 86442 of 2022

(Arising out of Order-in-Original No. 145/2021-22/CAC/CC (Import-II)/MKK dated 11.03.2022 passed by the Commissioner of Customs (Import-II), Mumbai)

Chem Trader Tankers Co. Ltd. **.....Appellant**
Room no 1510, Wing Tuck, Commercial centre,
177-183 Wing Lok Street,
Hongkon

VERSUS

Commissioner of Customs, Import -II **.....Respondent**
2nd Floor, New Customs House,
Shoorji Vallabhdas Rd.,
Ballard Estate, Mumbai

WITH

Customs Appeal No. 86445 of 2022

(Arising out of Order-in-Original No. 145/2021-22/CAC/CC (Import-II)/MKK dated 11.03.2022 passed by the Commissioner of Customs (Import-II), Mumbai)

Shri Dadi Suyadi **.....Appellant**
c/o 4th Floor, State Bank Bldg.
NGN Vaidya Marg
Mumbai

VERSUS

Commissioner of Customs, Import -II **.....Respondent**
2nd Floor, New Customs House,
Shoorji Vallabhdas Rd.,
Ballard Estate, Mumbai

APPEARANCE:

Shri Anupam Dighe, Advocate for the appellant
Shri L B D'Costa, DC(AR) for the respondent

<u>CORAM:</u>
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 86814-86815/2025

DATE OF HEARING : 08.07.2025
DATE OF DECISION : 20.11.2025

Per: AJAY SHARMA

These appeals have been preferred against the Order-in-Original No. 145/2021-22/CAC/CC (Import-II)/MKK dated 11.3.2022 whereby the learned Commissioner confirmed the differential freight amount u/s. 28(8) of the Customs Act, 1962 alongwith interest recoverable from the importers-M/s. C.J. Shah & Co. and M/s. Jupiter Dye Chem Pvt. Ltd. respectively and further ordered confiscation of the impugned goods with an option of redemption on payment of fine. The Commissioner had also imposed penalties on the main noticees i.e. the importers u/ss. 114A, 114AA ibid and also on the co-noticees (i.e. the appellants herein) u/s. 112(a) and 114AA ibid.

2. I have heard learned counsel for the appellant and learned Authorised Representative on behalf of Revenue. The case records, synopsis and case laws placed on record have been duly perused. It has been brought to my notice by learned counsel that the impugned order had been challenged by both the importers before this Tribunal in the matter of *Jupiter Dye Chem Pvt. Ltd. vs. CC(Import-II) , Mumbai, CJ Shah & Co. vs. CC (Import-II); reported in 2023(5) TMI 670-CESTAT Mumbai*

wherein this Tribunal vide its common order dated 11.5.2023 set aside the impugned order and allowed the appeals filed by the main noticees i.e. importers. The relevant paragraphs of the said decision are extracted hereunder: -

> *"1. Four appeals against two adjudication orders of Commissioner of Customs (Import-II), New Custom House, Mumbai, on identical issue of addition of freight for computation of assessable value and confiscation for misdeclaration of country of origin, are disposed of by this common proceedings. The adjudicating authority proceeded on the finding that the cargo, covered by import general manifest no. 224501/23.01.2020 of MT Braveworth filed for discharge at Mumbai and purportedly taken on board at Sohar in Oman during the voyage out of Fujairah in UAE from 9th January 2020, was, in fact, loaded during clandestine call at Dayyer in Iran between 15th January 2020 and 18th January 2020, and cargo, covered by import general manifest no. 2244928/22.01.2020 of MT Chem Trader filed for discharge at Mumbai and purportedly taken on board at Jebel Ali on 16th January 2020 was, in fact, loaded during clandestine call at Bamder Imam Khomeini in Iran between 12th January 2020 and 14th January 2020, necessitating enhancement of freight component for recovery of additional duty and confiscation under section 111(m) of Customs Act, 1962 for concealment of place of origin with option to redeem on payment of fine under section 125 of Customs Act, 1962 along with penalties under section 114AA Customs Act, 1962. The vessel, MT Braveworth, valued at ₹ 43,00,00,000, was also confiscated under section 115 (2) of Customs Act, 1962 with option to redeem on payment of fine of ₹ 10,00,000 granted to M/s Braveworth Shipping Co Ltd along with penalty of ₹*

*1,50,000 under section 112 (a) of Customs Act, 1962 and ₹ 3,50,000 under section 114AA of Customs Act, 1962. Likewise penalty of ₹ 5,00,000 was imposed on Shri Mohammed Zakir Hossain, master of the vessel, under section 114AA of Customs Act, 1962. The vessel, MT Chem Trader, valued at ₹ 57,00,00,000, was also confiscated under section 115 (2) of Customs Act, 1962 with option to redeem on payment of fine of ₹ 10,00,000 granted to **M/s Chem Trader Tankers Pvt Ltd** along with penalty of ₹ 90,000 under section 112(a) of Customs Act, 1962 and ₹ 5,00,000 under section 114AA of Customs Act, 1962. Likewise penalty of ₹ 5,00,000 was imposed on **Shri Dadi Suyadi** master of the vessel, under section 114AA of Customs Act, 1962 while, interestingly and only in this matter, penalty of ₹ 90,000 under section 112(a) of Customs Act, 1962 and ₹ 3,00,000 under section 114AA of Customs Act, 1962 was imposed on M/s Atlantic Global Shipping Pvt Ltd, the agent of vessel in India. These details are narrated here, and only in passing, as the vessel owners/charterers and agents are not in appeal in this proceeding.* *(Emphasis supplied)*

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*3. In the second order **[order-in-original no. 145/2021-22/CAC/CC (Import-II)/MKK dated 11th March 2022]**, the Commissioner of Customs (Import-II), New Custom House, Mumbai adjudicating offences related to cargo, totaling 4083.53 metric tons supplied by M/s Kriscon DMCC, Dubai against bills of lading no. CTV2001TUL-05-06, intended for delivery of 1050 metric tons of 'toulene' to M/s Jupiter Dyechem Pvt Ltd and bills of lading no. CTV2001TUL-05-06 and no. CTV2001TUL-05-06 intended for delivery of 950 metric tons of 'mixed xylene' and 2083.35 metric tons of 'toulene' to M/s CJ Shah & Co, all dated 17th January*

2020 issued by M/s Atlantic Global Shipping Ltd, enhanced the assessable value for recovery of differential duty of ₹ 7,17,858 towards additional freight in bills of entry no. 7007117/25.02.20, no. 6600759/23.01.20 and no. 6608417/24.01.20 filed by M/s CJ Shah & Co for clearance of 950 metric tons of 'mixed xylene' and 2083.35 metric tons of 'toluene' and ₹ 2,47,934 towards additional freight in bills of entry no. 6611107/24.01.20 and no. 6613383/24.01.20 filed by M/s Jupiter Dyechem Pvt Ltd for clearance of 2083.35 metric tons of 'toluene'. The goods imported by M/s CJ Shah, valued at ₹ 16,58,54,337.40, inclusive of freight of ₹ 33,78,952.26, were confiscated under section 111(m) of Customs Act, 1962 with offer of option to redeem on payment of fine of ₹ 3,00,000 under section 125 of Customs Act, 1962 while imposing penalty of ₹ 7,17,858 under section 114A of Customs Act, 1962 along with penalty of ₹ 3,00,000 under section 114AA of Customs Act, 1962. The goods imported by M/s Jupiter Dyechem Pvt Ltd, valued at ₹ 5,87,35,253.30, inclusive of freight of ₹ 11,67,021, were confiscated under section 111(m) of Customs Act, 1962 with offer of option to redeem on payment of fine of ₹ 3,00,000 under section 125 of Customs Act, 1962 while imposing penalty of ₹ 2,47,934 under section 114A of Customs Act, 1962 along with penalty of ₹ 3,00,000 under section 114AA of Customs Act, 1962.

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8. The first issue that comes up relates to the place of origin. There is no contention on the part of customs authorities that appellants had insisted upon sourcing from Iran or that they had any commercial engagements with suppliers in Iran that was sought to be obfuscated by a paper trail through Dubai/Sharjah.

On the contrary, the entire proceedings have been carried through on the presumption that there is no engagement other than with the contracted suppliers. The sole evidence of goods not being of Taiwanese/Omani origin, as contained in the bills of lading, are the records of passage by MT Braveworth from Fujairah to Sohar en route to India having been interrupted by allegedly calling at Dayyer in Iran and of MT Chem Trader having called at Bander Imam Khamenei in Iran before arrival at Jebel Ali for the next voyage to Mumbai. There is no evidence on record, elicited through official channels, of the facts relating to the movement of the vessels. The impugned orders have placed emphasis on the statements recorded from the master of the respective vessels but, in the absence of official confirmation from authorities at Oman/UAE about the port clearance submitted for entry at Sohar/Jebel Ali where, acknowledgedly, the two vessels departed for arrival in Kandla/Mumbai, it cannot be concluded that such evidence can be relied upon to visit detriment upon importers who had no commercial engagement with the vessels or her masters.

9. In the light of such tenuous evidence of movement of the vessels, let alone the cargo contained therein during the alleged voyage to the last port of call before arrival in India, it must only be assumed that the price in the invoices reflect the qualifications embodied in section 14 of Customs Act, 1962 for acceptance as transaction value. In terms of rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of imported goods is, subject to rule 12 therein, the transaction value adjusted in accordance with the provisions of rule 10 therein. Rule 10 provides for addition of specified costs and services subject to the conditions prescribed therein and, inter alia,

mandates cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation as well as the cost of insurance to place of importation. There is no prescription as to the circumstances in which such addition shall be made except by reference to the contracted value being 'free on board (FOB)' and that the mandatory loading is contingent upon the cost of such services not being ascertainable.

10. The assessments had been taken up on the value corresponding to that in the invoice with addition of purported freight from Iran to Mumbai. The invoices had been issued by M/s Trade Unity FZE on 'cost insurance freight (CIF) terms and by M/s Kriscon DMCC, Dubai on 'cost and freight (CFR)' terms and having freight cost separately therein do not, of themselves, warrant invoking of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 except on finding that the freight was payable by the importer to the carrier or that the freight had been absorbed by the seller. These are the only circumstances in which the payment terms of the invoice, insofar as the inclusions mandated by rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, may be suspected to be non-compliant for recourse to the addition prescribed therein. Furthermore, the mechanism for additions thereto provides that the ascertained actual cost or, in absence thereof, the enhancement by prescribed percentage be added.

11. The freight that has been ascertained does not even pretend to be representative of the actual payment made, either by exporter or by importer, to the carrier. It is clear from the records that the adjudicating authority had arrived at a mathematical computation

that had nothing to do with any payment made to the carrier. This is not the intent of adjustment necessitated by rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. For this reason, the enhancement, for the purposes of determining differential duty, in the impugned orders must be set aside.

12. It is also of importance to note that, insofar as the cargo on MT Chem Trader is concerned, the last port of call before arrival in India was Jebel Ali in UAE and, with the invoices being issued subsequent to her arrival at the purported load port, there is no ground for inferring that the invoice value did not reflect the freight paid for any part of the voyage, along with cargo if any, preceding the arrival. Insofar as MT Braveworth is concerned, the sailing from Sohar, the last port of call before arrival at Kandla, was not interrupted by calling at any other port for loading of cargo and the allegation is limited to loading having occurred before the last port of call where bill of lading was issued by the carrier. It is, therefore, inconceivable that the cost of transportation for any voyage, carrying cargo, preceding thereto was not included in the freight incorporated in the invoice value. As we have noted supra, there is no finding that any additional payment was made by either importer or exporter to the carrier. On the set of facts too, the enhancement order in the impugned orders merit setting aside.

13. We have deliberately not touched upon any of the decisions cited by both sides in support of their legal submissions. We have relied entirely upon the factual matrix of the case, in the records as well as submissions, and the law as set out in Customs Act, 1962 to render the finding here. We did so, with deliberate intent, for demonstrating that it is obligatory

on the part of adjudicating authority to evaluate the proposals put forth in the show cause notice on the basis of available facts and law and that any detriment, of duty or fine/penalties, visited upon an importer without examination of the role of the noticee on the circumstances leading to the conclusion of having breached Customs Act, 1962 is not only inappropriate but tantamount to executive overreach that rule of law abhors.

14. For the above reasons, we set aside the impugned orders and allow the appeals."

In the aforesaid decision (supra) the duty liability and penalties etc. imposed by learned Commissioner against the importers i.e. main noticees under various provisions including Sections 114A & 114AA of the Customs Act, 1962 has been set aside by this Tribunal entirely upon the factual matrix of the case. Revenue has not produced any order of Hon'ble Supreme Court or High Court either staying or setting aside the aforesaid decision (supra). Hence, as per settled principles of judicial discipline and consistency, I am bound to follow the same in entirety.

3. As the impugned order has already been set side, there is no need to go into detailed facts as they have already been dealt with extensively in the aforesaid decision (supra). Confiscation of impugned goods has already been set aside, hence no penalty can sustain u/s. 112(a) ibid on the appellant's herein. Likewise, the penalty imposed u/s 114AA ibid also cannot be sustained, as this Tribunal has already held on the same set of facts, that

there was no use of false or incorrect material by the importers and the Revenue's case was based on presumptions unsupported by evidence. Resultantly, the penalties imposed on the present appellants are set aside.

4. The impugned order is accordingly set aside and the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 20.11.2025)

(Ajay Sharma)
Member (Judicial)

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