

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 1

Customs Appeal No.53566 Of 2018

[Arising out of Order-in-Original No. 13/2018 dated 30.03.2018 passed by the Commissioner of Customs (Export) ICD, TKD, New Delhi-110020]

HIM Logistics Private Limited : **Appellant**
(Through its Director-Prakash Chand Sharma)
2151/3D, New Patel Nagar, New Delhi

Vs

Commissioner of Customs : **Respondent**
Export (ICD TKD), New Delhi
110020

APPEARANCE:

Shri Shivendu Sharma, Advocate for the Appellant

Shri Rajesh Singh, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50586/2025

Date of Hearing:10.02.2025

Date of Decision:05.05.2025

HEMAMBIKA R. PRIYA

The present Appeal has been filed against the Order-in-Original No. 13/2018 dated 30.03.2018¹ passed by the Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi whereby the Commissioner imposed a penalty of Rs. 5,71,532/- under Section 112

1 **The impugned order**

(a) and under Rs. 20,04,659/- under Section 114 AA of the Customs Act, 1962.

2. The brief facts of the case are that M/s. Him Logistics Pvt. Ltd.² is a Customs Broker holding CHA Licence No. 07/2004 issued by the Commissioner of Customs (I&G) New Delhi under Regulation 9(1) of CHALR, 2004 valid upto 02.12.2018. The appellant is, inter-alia engaged in the business of the clearance of the import and export consignments. The proprietor and IEC holder of M/s. Jagdamba Enterprises- Sh. Naresh Kumar Jha, met the director of the appellant Sh. Ashok Sharma, in his office along with Sh. Pawan Ralli and sought their services for the clearance of the import consignment in October 2013. Thereafter, the appellant obtained the IEC copy, authority letter, ID proof from Sh. Pawan Kumar Ralli who had visited along with the importer. Sh. Pawan Kumar Ralli was an importer and freight forwarder, who besides M/s. Jagdamba Enterprises, had introduced five to six other importers to the appellant. The appellant cleared eleven consignments of M/s Jagdamba Enterprises prior to the impugned consignment. The appellant filed the Bill of Entry No. 6907998 dated 27.09.2014 on behalf of the importer viz., M/s. Jagdamba Enterprises declaring the items as per the import documents i.e., kids cotton belt, photo frame, candle stand glass, scrubber, scales. However, on examination of the goods, some undeclared goods as well some the declared goods in varying quantities were found. Consequently, the container was detained on

01.10.2014 and vide seizure memo dated 23.01.2015, the goods were seized. Subsequently the statement of the proprietor of M/s. Jagdamba Enterprises was recorded on 15.10.2014, who stated that the firm was opened in October, 2013 and all the paper work in the firm was done by Pawan Kumar Ralli. The IEC holder Naresh Kumar Jha in his statement dated 15.10.2014 disowned the ownership of the goods imported vide Bill of Entry No. 6907998 dated 27.09.2014 and stated that his IEC had been misused by Sh. Pawan Kumar Ralli. On completion of the investigations, the appellant was made co-noticee to the show cause notice dated 28.03.2015 for imposition of penalty under Section 112(a) and 114AA of the Customs Act, 1962. The adjudicating authority passed the Order-in-Original dated 29.08.2017 and imposed penalty of Rs. 1,00,00,000/- under Section 112(a) of the Customs Act, 1962. Being aggrieved by the said order dated 29.08.2017, the appellant filed a Writ Petition bearing W.P. (C) No. 10786 of 2017 before the Delhi High Court for quashing the order-in-original bearing No. 12/2017 dated 29.08.2017 as it was passed in violation of provisions of Section 112 (a)(ii) of the Customs Act, 1962. The Hon'ble High Court directed the Department to hear the appellant on 29.01.2018. Thereafter, the Appellant's authorized representative appeared before the adjudicating authority on 29.01.2018 and filed his written submissions. Vide the impugned order dated 30.03.2018, the adjudicating authority imposed penalty under Section 112 (a) and also under Section 114AA of the Customs Act, 1962. The present appeal is filed against the said impugned order.

3. Learned counsel for the appellant submitted that the adjudicating authority had imposed penalty not only under Section 112 (a) of the Customs Act, 1962 but also under Section 114AA of the Customs Act, 1962 which had been dropped by the adjudicating authority in the previous order dated 29.08.2017. Learned counsel contended that the adjudicating authority has not given any reason as to why the penalty has been imposed under Section 114AA of the Customs Act, 1962 when based on the same set of facts, the penalty had not been imposed earlier. He further submitted that the adjudicating authority had failed to appreciate that the Hon'ble Delhi High Court had remanded the matter, it had categorically referred to consider the same with regard to issue of penalty. The Hon'ble High Court had not given any finding with regard to any fresh material or evidence which could justify the imposition of penalty under Section 114AA of the Customs Act, 1962. Learned counsel went on to state that the adjudicating authority had failed to appreciate that in the absence of charge of aiding and abetting, even the penalty under Section 112 (a) of the Customs Act, 1962 could not have been imposed. Learned counsel stated that the adjudicating authority had failed to appreciate that it was the appellant who had challenged the order dated 29.08.2017 since the penalty which was imposed was in excess of provision of Section 112 (b) (ii) of the Customs Act, 1962.

3.1. Learned counsel contended that the High Court had passed categorical direction that only the issue of penalty and the sections/provisions applicable would have to be examined afresh. Learned

counsel stated that the physical verification of the premises of the importer or firm are neither mandated under the CBLR, 2013 nor the circular dealing with the KYC norms to be followed by the Customs Broker indicates such procedure. He submitted that the Tribunal in the matter of **M/s. Setwin Shipping Agency Vs. Commissioner of Customs (General) Mumbai**³ held that the Customs House Agent (now known as customs broker) need not verify the genuineness physically of the exporter/importer. Thereafter, the Tribunal in the case of **M/s. Him Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi**⁴ had reiterated that physical verification was not required. Further, the learned counsel relied on the Delhi High Court judgement in **Commissioner of Customs Vs. Yogesh Kumar**,⁵ wherein the court reiterated that the CHA was not under any obligation to physically verify the particulars. Similarly, in the case of **International Cargo Services Vs. Commissioner of Customs (Export), New Delhi**,⁶ and **M/s. Setwin Shipping Agency Vs. Commissioner of Customs (General), Mumbai**,⁷ it was held that physical verification is not required to be done by CHA.

3.2 Learned counsel for the appellant further added that the Bombay High Court in the case of **Hamid Fahim Ansari Vs. Commr. of Cus. (Import), Nhava Sheva**,⁸ has held that if imports have been done in the name of the petitioner but for some other person, in so far

3 2010 (250) ELT 141 (Tri.-Mumbai)

4 2016 (338) ELT 725 (Tri-Del)

5 2017 (349) E.L.T. 12 (Del.)

6 2015 (323) ELT 206 (Tri-Del.)

7 2010 (250) ELT 141 (Tri.-Mumbai)

8 2009 (241) E.L.T. 168 (Bom.)

as respondents/Customs Authorities is concerned, there is no provision under the Customs Act or any Rule or Regulation framed thereunder by which the person having valid IEC Number and having paid the custom duty is prevented from importing goods. Similarly, the Hon'ble Kerala High Court in the case of **Proprietor, Carmel Exports & Imports Vs. Commr. of Cus., Cochin**,⁹ had held that even if the importer is only a "name lender" for the import of goods but the actual beneficiary of the import is someone else, even that is not an offence under the Customs Act, 1962.

3.3 Learned counsel added that to impose penalty on the Customs Broker with regard to such imports wherein imports were being made by the beneficiary and not by the importer himself is unsustainable in law. Learned counsel relied on the decision of Hon'ble Gujarat High Court in the case of **Commissioner of Customs Vs. VAZ Forwarding Ltd.**¹⁰ wherein it was held that with regard to the Custom Broker therein, there was no evidence on record to show any knowledge on the part of the respondent that the advance licences in question were forged and hence, in the light of the aforesaid findings, there was no justifiable reason to impose the penalties under Section 112(a) of the Customs Act, 1962.

3.4 Similarly, the Tribunal in the case of **R.P. Sethi Vs. Commissioner of Customs, New Delhi**¹¹ held as under:

9 2012 (276) E.L.T. 505 (Ker.)

10 2011 (266) E.L.T. 39 (Guj.)

11 2002 (140) E.L.T. 482 (Tri. Del.)

"5.2 For a penalty under Clause (b) of Section 112, the person sought to be penalized must have possessed, carried, removed, deposited, harboured, kept, concealed, sold, purchased or otherwise dealt with, any import goods which, to his knowledge or belief, are liable to confiscation under Section 111. In the instant case, there was no allegation involving any of the ingredients of Section 112, against R.P. Sethi. On the other hand, the SCN connected him with the proposal for confiscation of the books under Section 119. Therefore the very proposal for imposing penalty on him under Section 112 was unwarranted. Further, the Commissioner in his order appears to have invoked Sections 112(a) and (b) against R.P. Sethi on the basis of a finding that he had failed to discharge his responsibility as a CHA. This finding, as rightly submitted by Counsel, is beyond the scope of the SCN. If a CHA commits, or omits to do, something in violation of the CHA Licensing Regulations, he has got to be proceeded against under the relevant provisions of those Regulations, and not under Section 112 or other penal provisions contained in Chapter XIV of the Act. For the above reasons, the penalty imposed on R.P. Sethi under Sections 112(a) and (b) cannot be sustained and the same is set aside."

3.5 Learned counsel also submitted that penalty under Section 114AA of the Customs Act, 1962 has not been proposed either against the importer/IEC holder or against Pawan Ralli who has been held to be the main person importing the goods. Therefore, to propose the penalty under Section 114AA of the Customs Act, 1962 against the Customs Broker is not justifiable and penalty is liable to be set-aside on the ground earlier.

4. Learned authorized representative reiterated the submissions and findings of the impugned order. He stated that Shri Ashok Kumar (Director of M/s Him Logistic Pvt. Ltd.) in his statement dated

26.11.2014 recorded under section 108 of the Customs Act, 1962 admitted that they had obtained the KYC and all required documents in respect of said importer from Shri Pawan Kumar Ralli, who was neither an employee nor an authorized representative of the importer. All the dealings, including delivery and payments related to said importer was done through Sh. Pawan Kumar Ralli. Similarly, all the documents related to clearance of impugned goods as well as other documents were given by Sh. Pawan Kumar Ralli to the appellant. The statement of Shri Naresh Kumar Jha, also established that the Shri Ashok Kumar, Director of Appellant firm had met the importer in his office. This fact is corroborated by the statement of Shri Prakash Chandra Sharma, the other director of the appellant firm. Learned authorized representative stated that the statements of both the Directors of the appellant firm were contradictory in respect of their meeting with importer and business dealing with the third person Shri Pawan Kumar Ralli. Learned authorized representative contended that it was apparent that the appellant did not have authorization nor did he verify the legal sanctity of third person from whom he claimed to have received the KYC details. The appellant had also failed to verify the identity and functioning of his client.

4.1. Learned authorized representative further submitted that there was serious contradiction in the appellant's stand. On one hand, he claimed that the fraud was committed by Sh. Pawan Kumar Ralli and Shri Naresh Kumar Jha and on the other hand he claimed that he had obtained both authorization required under Regulation 10(a) and KYC

required under Regulation 10(n) from Shri Pawan Kumar Ralli. However, the appellant could not provide all the authorization during the investigations, hence, learned authorized representative submitted that it was evident that he was in connivance with Sh. Pawan Kumar Ralli and the importer in the mis-declaration of goods. Since, there was gross undervaluation and mis-declaration and CB had filed such Bills of Entry for monetary gain, hence, he was liable for penalty under section 112(a) and 114AA.

4.2. Learned authorized representative further contended that the appellant being the licensed, and authorized under the Custom Broker Licensing Regulation 2018 was required to undertake the work of clearance of consignments on behalf of his clients (importer/exporter) in the manner as prescribed. He stated that both the Directors of appellant had admitted in their statements that they had only caused the verification of the documents and no physical verification of the premises or the importer had been undertaken. Further, Shri Naresh Jha, Proprietor, of importing company, in his statement, had denied meeting the appellant. He admitted that apart from one visit to the appellant's office, the said importer had not met the appellant for any of the 11 imports. Learned authorized representative relied on the Hon'ble Supreme Court's decision in the case of **K.I. Pavunny vs. Assistant Collector**¹². As the appellant had connived in the nefarious activity, hence, he was liable for penalty under section 112 and 114AA

12 1997 (3) SCC 721

Customs Act, 1962. He relied on the decision of the Tribunal in the case of **Skytrain Services vs. Commissioner of Customs (Airport & General), New Delhi**¹³ wherein the Tribunal held that:-

"21. Admittedly, Shri Chaman Kumar Verma is the G-Card holder of the appellant who was physically and actually involved in the entire series of acts. Apparently and admittedly his activities had never been objected by the appellant nor ever had been questioned nor even been informed to the competent authorities. Otherwise also, without the knowledge of the Customs Broker, the goods could not have been diverted. He is equally bound by the act of his authorised representative/agent. Keeping in view the same and the observation of Hon'ble Supreme Court in K.M. Ganatra & Co. (supra) case about the important duties of the CHA and the amount of due diligence as is required to be observed on their part, we are of the firm opinion that CHA has violated the obligations imposed upon him under CBLR, 2013/2018. The above observations are sufficient to hold that the violation of relevant Regulations is so grave that principle of proportionality is not opined to have been compromised as is impressed upon by the appellant. The failure thereof invites the penalty as that of revocation of licence".

4.3 In view of above submissions, learned authorized representative prayed that the present appeal may be dismissed and the impugned order may be upheld.

5. We have heard the learned counsel for the appellant and the learned authorized representative for the Department, and perused the records.

6. In the instant case, we note that the impugned order has imposed a penalty of Rs. 5,71,532/- under Section 112 (a) and under Rs. 20,04,659/- under Section 114 AA of the Customs Act, 1962.

7. In terms of Section 112(a) of the Customs Act, penalty for improper importation of goods is chargeable from any person specified in Clauses (a) and (b) of the said Section. For the purposes of the present controversy, Clause (a) of Section 112 of the Customs Act is relevant and is reproduced below:

*"112. Penalty for improper importation of goods, etc. Any person-
(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act"*

8. It is clear from the above that Section 112(a) of the Customs Act includes two categories of persons, who may be liable for fine. The first category of persons are those who, in relation to any goods, do or omit to do any act which renders the goods liable for confiscation under Section 111 of the Customs Act. The second category of persons comprises of those who abet the doing or omission of such acts. In the present case, penalty has been imposed on the appellant on the allegation that he had abetted the act of misdeclaration of the imported goods. However, we note that the appellant had been regularly filing the Bills of Entry for the importer viz., M/s Jagadamba Enterprises and the goods had been cleared by the department. In the context of Section 112(a) of the Customs Act, by definition, the

expression 'abet' means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation. It is thus apparent that the knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under Section 111 of the Customs Act, is a necessary element for the offence of abetting the doing of such an act.

9. In **Shree Ram v. State of U.P.**¹⁴ the Supreme Court held as under:

"6.....Section 107 of the Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who "Intentionally aids, by any act or illegal omission, the doing of that thing". Explanation 2 to the section says that "whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act". Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person

14 1975 3 SCC 495

inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third para of Section 107."

10. In **Amrit Lakshmi Machine Works vs. The Commissioner of Customs (Import), Mumbai**¹⁵ a Full Bench of the Bombay High Court had considered the aforesaid issue and held that the word 'abetment' is required to be assigned the same meaning as under Section 3(1) of the General Clauses Act, 1897. The Court further opined as under:

"31.Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "Any person - (a) who in relation to any goods does or omits to do any act" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of [Section 112\(a\)](#) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to

15 2016 (335) E.L.T. 225 (Bom.)

cover such cases that [Section 112\(a\)](#) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty."

10.1 In the instant case, it is seen that the appellant had simply facilitated the customs transaction on behalf of the importer/exporter and no evidence has been led by Revenue to establish that he was directly involved in any wrongdoing in respect of the impugned consignment. Consequently, the penalty under Section 112(a) cannot be upheld.

11. We now address the issue of imposition of penalty under Section 114 AA of the Customs Act, 1962. This section is reproduced below:-

"114AA. Penalty for use of false and incorrect material.

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

12. From the above, it is apparent that such a penalty cannot be imposed unless there is explicit evidence of collusion or wilful mis-

statement or suppression of facts by the appellant, which are essential ingredients for imposing penalty under section 114A.

13. In the instant case, we note that the appellant was in possession of the required KYC documents as mandated by the provisions of the law. The said KYC documents have not found to be fake or forged. It is an admitted fact that the appellant had in the past filed customs clearance documents for the said importer which had been cleared by the authorities. Revenue has not been able to clearly establish either active or passive role or any deliberate or mala fide act on part of the appellant. We find that the allegations that the appellant did not physically verify the premises of the importer, are not sufficient to fasten the appellant with the penalty. It has not been established that the appellant handled this consignment with any malafide motive. It is essential to establish an intentional or deliberate act or omission and to the act of abetment for imposition of penalty under Section 114AA of the Customs Act.

14. In this context, we are further persuaded by the fact that for this very same offence, action had been initiated for violation of Regulation 11(a), 11(d), 11(e) of the CHALR, 2013. Vide Order-in-Original No. 13/2018 dated 30.03.2018, the CB license of the appellant was revoked along with the forfeiture of the security deposit. The said order of revocation of the licence was set-aside by the Tribunal vide its Final Order No. 50532 of 2019 dated 10.04.2019. The relevant paras of the said order is reproduced hereinafter:-

"7. After hearing both the sides and perusing the record of the appeal, we find that so far as the compliance of the Regulation 11 (a) of CBLR is concerned which provides that Customs Broker shall obtain the authorization from each of the companies, firms or individuals with whom he is for the time being employed as Customs Broker and produce authorization whenever required of Deputy Commissioner of Customs or Assistant Commissioner as the case may be. In this regard, we find that the appellants had not only taken the appropriate authorization from the importer, namely M/s. Jagdamba Enterprises but all the KYC documents such as IEC registration copy, authority letter, ID proof, PAN card etc. It is also matter of record that when the investigating agency has recorded statement of Shri Ashok Sharma on 26.11.2014 and Shri Prakash Chand Sharma on 10.02.2015, they have produced a copy of KYC submitted by M/s. Jagdamba Enterprises which included copy of Bill of Entry, copy of IEC Code Number, authorization letter to the investigating officer. This proves that the appellant have taken due caution as was mandated under the Customs Broker License Regulation and same has been produced to the investigating agency. Therefore, we are of the view that findings on this count by the adjudicating authority are not legally sustainable and thus, we hold that obtaining copy of the IEC Code number, Pan card and other details after verification of same with the original documents, including a proper authorization letter for trading, clearing work of the importing firm is an enough compliance of CBLR 11 (a). In this regard, we also place our reliance on the co-ordinate Bench's decision in the case of **M/s. APS Freight & Travels Pvt. Ltd. vs. CC (Gen), New Delhi.**¹⁶

8. So far as compliance of Regulation 11(d) and 11(e) of the CBLR 2013 is concerned, we find that these regulations require the Customs Broker shall;

(i) Advise his client to comply with the provisions of the Act;

(ii) In case of non-compliance, the Customs Broker should bring the matter to the notice of Deputy Commissioner or Assistant Commissioner of Customs; and

(iii) Exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage from customs.

9. After analyzing the facts of this matter, we find that the appellant was regularly engaged by the importer for clearing their import consignment and as stated above they have cleared 11 consignments of same importer on the previous occasions wherein no violation of the Customs Act have been detected. This very fact proves that the appellants have ensured the compliance of Customs provisions from the importer on the previous occasions and thus, we see no reason why he would not advise him correctly to follow provisions of law for the impugned import consignment. The entire investigations in this matter does not establish any case of connivance of the appellant in mis-declaration of the contents of the import consignment. We feel that as the importer was a bonafide client for the appellant, the clearing work of the impugned goods was also undertaken as has been the case in the previous eleven occasions.

10. Thus, we find that there was no conscious lapse on the part of the appellant in comply with the mandate of Regulation 11(d) and 11(e) of CBLR, 2013, while holding this

view, we also follow the Hon'ble Delhi High Court's order in case of **Commissioner of Customs vs. Him Logistics Pvt. Ltd.**¹⁷ In view of above observations, we find that the violation of regulation 11(a), 11 (d) and 11(e) of CBLR 2013 is not established against the appellant and therefore, we feel that revocation of Customs Broker License is not justified. Therefore, we feel that the order-in-original dated 30.8.2018 is without any merit and same is set aside. The appeal is allowed with consequential relief, if any."

15. In view of the above discussions, we set aside the impugned order and the penalties imposed on the appellant. Consequently, the appeal is allowed.

(Order pronounced in the open Court on 05.05.2025)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.