

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 51117 of 2022

(Arising out of Order-in-Original No. 04/2021/L.Y./COMMR/ICD/EXPORT/TKD dated 15.09.2021 passed by the Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi)

Evergreen Shipping Agency India Pvt Ltd. ...Appellant

51, 1st Floor,
Okhla Indl. Estate,
New Delhi- 110020

VERSUS

Commissioner of Customs (Export) ...Respondent

Inland Container Depot
Tughlakabad, New Delhi

APPEARANCE:

Shri G.K. Sarkar and Shri Prashant Shrivastava, advocates for the appellant
Shri Rakesh Kumar, authorised representative of the department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing : 23.12.2024

Date of Decision : 04.06.2025

FINAL ORDER NO. 50829/2025

JUSTICE DILIP GUPTA :

M/s Evergreen Shipping Agency India Private Limited¹, which is a shipping line company engaged in carrying goods through sea route, is aggrieved by the order dated 15.09.2021 passed by the Commissioner of Customs, Inland Container Depot, Tughlakabad² to the extent it imposes penalty of Rs. 10 lakhs upon the appellant under section 114 (iii) of the Customs Act, 1962³ as also a penalty of Rs. 10 lakhs under section 114AA of the Customs Act.

**1 the appellant
2 the Commissioner
3 the Customs Act**

2. M/s Colour Cottex Pvt Ltd.⁴ is engaged in the manufacture and export of Ready Made Garments. It entered into contracts for supplying Ready Made Garments⁵ with Lagoon Trading LLC, Lagcy Trading LLC, and Royal Readymade Garments based in U.A.E. To encourage exports to remote markets, the Government introduced the Focus Market Scheme⁶, designed to offset higher freight costs borne by buyers. Under the FMS, exporters often offer reduced prices to customers in designated countries like Panama. This approach ensures competitiveness by partially absorbing the elevated freight costs, aligning with the objectives of the FMS. As per the contracts, the appellant was required to supply the goods on the prices stated in the agreement on FOB terms and to a place notified by the buyer. In terms of the contract, Concorde Shipping & Logistics India⁷ was solely responsible for undertaking shipping as per the instructions of the buyer. According to Colour Cottex, the buyer used to instruct the appellant telephonically to export the goods to a particular country, which was 'Panama' in this case, and accordingly Colour Cottex would send the goods along with the export documents, such as commercial invoice and packing list to the Customs House Agent for customs clearance for making exports to Panama who would send the exporter copy of Shipping Bills to Colour Cottex.

3. Out of the 211 shipping bills, the appellant carried the goods pertaining to only five shipping bills dated 13.03.2014. The appellant claims that there were no amendments carried out in TR-1/TR-2. According to the department, the appellant had filed the Export

4. Colour Cottex
5. the Goods
6. FMS
7. the Freight Forwarder

General Manifest for transportation of the container stuffed with the export goods covered under the five shipping bills to Panama, as the "Port of Discharge" but the said container was actually discharged at Jebel Ali, a port in United Arab Emirates. The Freight Forwarders involved were M/s Concorde Shipping & Logistics India and M/s Safewater Lines India Private Limited⁸. Imran Mirza, proprietor of M/s Concorde Shipping in his statement dated 11.08.2017 made under section 108 of the Customs Act admitted that Rajesh Dhandha, Director of Colour Cottex had instructed him to divert the container to Jebel Ali and, accordingly, he had instructed Safewater Lines, an intermediate freight forwarding agency, to divert the container to Jebel Ali. The Deputy Manager (Finance) of Safewater Lines in his statement dated 17.04.2017 recorded under section 108 of the Customs Act stated that Safewater Lines had further directed the appellant to change the destination of the said container from Panama to Jebel Ali. The Assistant Manager (Finance and Supervising) of the appellant in his statement dated 23.03.2017 recorded under section 108 of the Customs Act stated that as per the instructions received from Safewater Lines, the appellant had brought back the said container from Panama and discharged the same as Jebel Ali. The Director of Color Cottex, in his statement dated 06.07.2017 recorded under section 108 of the Customs Act, admitted that as per instructions received from the buyer, he had instructed Imran Mirza for discharging the container at Jebel Ali.

4. The case of the department is that though the appellant in the Export General Manifest had mentioned the same "Place of Delivery" which was printed in the shipping bills against the "Port of

8 Safewater Lines

Discharge”, but it discharged the said container at a different place and so M/s Concorde Shipping (Freight Forwarding Agency), M/s Safewater Lines (Intermediate Freight Forwarding Agency), the appellant (Shipping line) and M/s Colour Cottex (Exporter) had assisted and connived with each other in diverting the export consignment covered under the five shipping bills to Jebel Ali to assist the exporter to fraudulently avail the benefit of the Focus Market Scheme without exporting the goods to the notified country.

5. A finding has been recorded in the impugned order that the “Port of Discharge” and “Country of Destination” in the five shipping bills were not amended, but the goods were diverted to Jebel Ali, a country which was not notified under the Focus Market Scheme.

6. The issue that arises for consideration in this appeal is whether penalty under section 114(iii) and section 114AA could have been imposed upon the appellant.

7. Before examining this issue, it would be pertinent to state that the Commissioner has found as a fact that the goods exported through the 211 shipping bills were liable for confiscation under section 113(d), (g) and (i) of the Customs Act. This finding has been recorded for the reason that the goods were diverted to Jebel Ali, though they were to be delivered at Panama and this was done wilfully by Colour Cottex with the help of Imran Mirza, Safewater Lines and the appellant. It needs to be noted that the impugned order has been passed in respect of Color Cottex, Imran Mirza, Evergreen Shipping Agency (appellant) and Safewater Lines. Color Cottex had filed Customs Appeal No. 55760 2023 and by an order of date, the confiscation of the goods under section 113 of the Customs Act has been set aside.

8. The case of the appellant is that it had delivered the container at Jebel Ali on the directions of Safewater Lines. Safewater Lines, in its defense stated that they had instructed the appellant to divert and deliver the container at Jebel Ali on the instructions of M/s Concorde Shipping, a Freight Forwarding Agency. The case of the appellant is that it carried the container to Panama but when the said container reached Colon Free Zone at Panama, the appellant was requested by the booking party to deliver the goods at Jebel Ali because of some dispute between the exporter and the buyer. This fact has been stated by the Assistant Manager (Finance and Supervising) of the appellant. The appellant has further stated that it received request on e-mail to move the shipment to Dubai due to some payment dispute between the buyer and the shipper. It was also mentioned in the e-mail that the buyer in the Colon Free Zone, Panama refused to take delivery of the shipments. Thus, after the appellant carried the container to Colon Free Zone, Panama, at the request made by the exporter and the buyer it further carried the container to Jebel Ali, UAE. To support this contention, the e-mail communication and the container tracking report was submitted by the appellant before the Adjudicating Authority. According to the appellant, the aforesaid documents show that the charges for carrying the shipment further from Colon Free Zone, Panama to Jebel Ali was also negotiated and, accordingly, invoices were issued by the appellant.

9. The Commissioner has relied upon a reply dated 19.01.2019 said to have been submitted by the appellant wherein it was stated that an undertaking had been given by the appellant that the consignment were to be transported to Jabel Ali by the appellant and

thereafter the same was to be carried to the final destination as per own arrangement of the consignee/buyer.

10. The appellant has contended that such a reply dated 19.01.2019 was never submitted by the appellant. In fact, the appellant had submitted a reply dated 24.01.2019 in which there is no averment that an undertaking had been given by the appellant that consignment were to be carried to Jebel Ali by the appellant and thereafter would be carried to the final destination as per the own arrangements of consignee/buyer.

11. It is the case of the appellant that it is merely a shipping line engaged in carrying goods as per the booking receipts and instructions given. The appellant had no knowledge that any benefit was likely to arise to the exporter out of the transaction and the finding recorded by the Commissioner that the exporter and the appellant connived with each other in diverting the container containing the goods under the five shipping bills is without any basis.

12. Penalty has been imposed on the appellant holding that the appellant assisted and connived with the forwarders and the exporter in diverting the container containing the export goods covered under subject five shipping bills. The Commissioner has observed that the appellant did not file any amendment in the Export General Manifest with regard to the port of discharge/place of delivery as mandated by law but issued landing certificate, Bill of Lading for transportation to Jebel Alo Port which shows willful intention of the appellant.

13. Section 114 (iii) of the Customs Act provides 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 under

section 113 of the Customs Act shall be liable to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Customs Act, whichever is greater. The Commissioner confiscated the goods under section 113 of the Customs Act. As noticed above, the confiscation of goods has been set aside by order of date in Customs Appeal No. 55760 of 2023 filed by Color Cottex. Consequently, penalty under section 114(iii) of the Customs Act cannot be levied upon the appellant.

14. Section 114AA provides that if a person, knowingly or intentionally makes, signs or uses or causes to be made, any material particular, in the transaction, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty not exceeding five times the value of goods.

15. Penalty has been imposed upon the appellant for the reason that it had not complied with the particulars mentioned by them in the Export General Manifest in as much as the goods were delivered at Jebel Ali instead of Panama.

16. A manifest has to be filed before departure of the goods and has to be delivered to the proper officer containing the specified particulars. The container was booked to export the goods to Colon Free Zone, Panama and the same was mentioned in the Shipping Bill as well. It is a fact that there were no fraudulent amendments in the five Shipping Bills pertaining to goods carried by the appellant. According to the appellant, the goods were carried to Colon Free Zone Panama and thereafter, on the request of the booking party, the consignment was carried to Jebel Ali Port, Dubai and the appellant charged freight for carrying the goods from exporting port in India to Colon Free Zone, Panama and then to Jebel Ali port at

Dubai, which fact has been stated by V.K. Krishna Kumar in his statement. In support of this contention, the appellant also filed e-mail communication and the container tracking report to show that the charges for carrying the shipment after it had arrived at Panama to Jebel Ali was negotiated and invoices were raised by the appellant. Knowledge and intention is *sine qua non* for imposing penalty under section 114AA of the Customs Act. The department has not been able to establish knowledge on part of the appellant or intention on the part of the appellant to help the exporter in obtaining the alleged undue export advantage. In such circumstances, penalty under section 114AA of the Customs Act cannot be imposed upon the appellant.

17. Thus, the imposition of penalties under section 114(iii) and section 114AA of the Customs Act upon the appellant are set aside.

18. The impugned order dated 15.09.2021 passed by the Commissioner in so far as it imposes penalty upon the appellant is set aside and appeal is allowed.

(Order pronounced on **04.06.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)