IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 42439 of 2016

(Arising out of Order in Original No. 50673/2016 dated 18.10.2016 passed by the Commissioner of Customs, Chennai – IV)

Shri S. Kishore, Managing Director **Appellant**
M/s. Nandhishiv Impex Pvt. Ltd.
No. 9, MSS Complex
Uthukuli Road, Tirupur – 641 601.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri M. Kannan, Advocate for the Appellant
Shri Vineet Goyal, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40559/2026

Date of Hearing: 16.04.2026
Date of Decision: 05.05.2026

This appeal challenges Order in Original No. 50673/2016 dated 18.10.2016 passed by the Commissioner of Customs, Chennai – IV.

2. Brief facts of the case are that M/s. Chromaprint India P. Ltd. Coimbatore (**CIPL**) had imported machineries / capital goods under EPCG Scheme using the EPCG licenses issued by the Jt. DGFT, Coimbatore. They availed the benefit of Customs Notification No.97/2004 dated 17.0.2004 and 103/2009 dated 11.9.2009 respectively and fulfilled their export obligation allegedly through some unaccounted third party firm's (manufacturer cum exporter of readymade garments) shipping bills and fraudulently obtained the

EODC from the DGFT, Coimbatore. Hence, it appeared that the importer became not eligible for the benefit of the said notification, making them liable to pay customs duty forgone amounting to Rs.3,17,96,116/- along with applicable interest in terms of Conditions No. 2 and 4 of the Notification No. 97/2004-Cus dated 17.9.2004 and 103/2009-Cus dated 11.9.2009 and also making the impugned goods valued at Rs.11,89,28,866/- liable for confiscation under section 111(d) and (o) of the Customs Act, 1962. The conduct of the noticees attracted penal provisions under sec. 112/114A and also under section 114AA of the Customs Act, 1962. Show Cause Notice dated 17.2.2015 was issued to the persons involved including the appellant. After due process of law, the Ld. Commissioner of Customs among other things, held that the appellant herein acted as a mediator in getting the shipping bills for fulfilment of export obligation from unconnected third party exporters and by doing so, he was liable for penalty under section 112(a) and for knowingly arranging the shipping bills from unconnected third party exporters to fraudulently meet out the export obligation by giving false or incorrect third party shipping bills for obtaining EODC, the appellant is liable for penalty under Section 114AA of the Customs Act, 1962. After following due process, the Ld. Commissioner of Customs imposed penalties of Rs. One lakh each on the appellant under both the sections. Hence the present appeal. Except for the appellant herein, other co-noticees have statedly approached the Settlement Commission and are not before me.

3. The Ld. Advocate Shri M. Kannan appeared for the appellant and Ld. Authorized Representative Shri Vineet Goyal appeared for the respondent.

Submission made by the Appellant

3.1 Shri M. Kannan Ld. Advocate for the appellant submitted as follows:

A. Of the six noticees', five including the main noticee Chromaprint (but excluding the appellant), approached the Hon'ble Settlement Commission, Chennai, and the matter was settled vide Final Order No. 27/2016-Cus dated 30-06-2016, which has been complied with by those noticees. The Settlement Commission, Chennai vide Final Order No. No. 27/2016-Cus dated 30-06-2016, imposed penalty on the applicant and co-applicants as mentioned in the table below.

S. No.	Applicant / co-applicants	Penalty
1.	Cromaprint India Pvt. Ltd.	10,00,000
2.	R. Lakshmi Narayana Moorthy, MD of M/s. Cromaprint India Pvt. Ltd.	1,00,000
3.	R. Saravanan, Chartered Accountant	50,000
4.	Shri Sundaramurthy, Proprietor, M/s. Hero Fashion	1,00,000
5.	A. Kondasamy, Partner Aviram Knitters	1,00,000

B. The appellant only handled documentation for EPCG licences and EODC. The shipping bills and related declarations/ forms were provided by Chromaprint after exports, and he merely submitted documents signed by the exporter. He denied any role in the export transactions or in preparation/ procurement of shipping bills.

C. No proceedings were initiated against him under the Foreign Trade (Development & Regulation) Act, 1992.

D. Once the main noticee's case was settled before the Hon'ble Settlement Commission, adjudication proceedings ought not to continue against the appellant.

D. A penalty under Section 112(a) can arise only where imported goods are liable for confiscation under Section 111, and that none of the ingredients of Section 111 are attracted.

E. A penalty under Section 114AA is unwarranted since the Custom House Agent who handled shipment/export declarations has not been impleaded, and the shipping bills were processed and scrutinised by the Customs authorities.

F. Had the appellant approached the Hon'ble Settlement Commission to settle the SCN, the penalty would likely have been limited to Rs. 50,000/- or Rs. 1,00,000/-.

In view of the above, the appellant prays that the Hon'ble Tribunal may be pleased to reduce the penalty and render justice.

Submission made by the Respondent-Revenue

3.2 Shri Vineet Goyal Ld. Authorized Representative took me through the impugned order. He submitted as under:

A. Investigation by DRI revealed that M/s Chromaprint, in collusion with its consultant S. Kishore (appellant), a chartered accountant, and two exporters—M/s. Aviram Knitters and M/s. Hero Fashion—falsely declared exports under Chromaprint's EPCG licences despite having no business nexus with these firms.

B. Accordingly, a show cause notice dated 17.02.2015 was issued to Chromaprint and five others proposing recovery of differential duty of ₹3,17,96,089 and imposition of penalties under Sections 112(a) and 114AA.

C. Statements of the parties confirmed lack of any interconnection with the two firms mentioned at A above, except through S. Kishore. The appellant in his statement admitted that Chromaprint had no

intention to export and that he arranged third-party shipping bills on commission to falsely show fulfilment of export obligations. Payments of ₹41,42,605/- was made to him for this purpose.

D. The appellants statement has not been retracted, weakening his later denial of involvement.

E. Evidence also establishes his role in obtaining EPCG licences, coordinating with third-party exporters, and acting as a mediator. Hence, his claim of having no connection with the exports is untenable.

F. The EODCs issued for the EPCG License's dated 08.03.2006 and 09.10.2012 were cancelled by JDGFT on 02.09.2014 and 10.09.2014.

G. The main noticee along with others settled the matter before the Settlement Commission by voluntarily paying the duty along with fine and penalties imposed by the Commissioner. The appellant, though having this option, did not approach the Commission and cannot claim similar relief.

The Ld. A.R. prayed that the appeal may be rejected.

4. I have gone through the appeal and have heard the parties to the dispute. I find that the prayer at the Bar by the appellant is limited to reducing the penalties and render justice.

5. I find that this is a case of fraudulent export using EPCG license's. The said EPCG License's were subsequently cancelled by JDGFT, thus establishing the fraud. The appellant has also admitted to his role in the fraud by his statement which is not retracted. The main notice has settled the matter before the Settlement Commission. Section 112(a) pertains to a penalty on 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 111, or abets the doing or omission

of such an act. The appellant admitted his role in the fraud, including receiving money for obtaining the third-party Shipping Bills which were not connected to any export made by the main noticee. Hence the act of the appellant has rendered the impugned goods liable to confiscation under section 111 and he is liable for a penalty under section 112(a).

5.1 Similarly, section 114AA pertains to a person who 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 the Customs Act. The above-mentioned action of the appellant in submitting fraudulently purchased documents like Shipping Bills as proof of non-existent exports, which he knew were false or incorrect has rendered him liable for a penalty under section 114AA.

5.2 The imposition of penalty under section 112(a) and 114AA in the impugned Order against the appellant, hence, cannot be faulted and merits to be upheld.

6. Considering the Appellant’s plea for moderation of the penalties imposed, requires the proportionality of the penalty imposed, to be examined. While imposing a penalty the adjudicator is required to consider all relevant and material circumstances, including the extenuating factors on which the appellant relies. This is especially so in a situation where strict liability is not discernible from the statutory provisions under consideration.

7. I find that Shri R. Lakshmi Narayana Moorthy, MD of M/s. Cromaprint India Pvt. Ltd. who allegedly initiated the fraudulent act by approaching the appellant has been met with a penalty of Rupees one

lakh only, by the Settlement Commission. In such a situation the proportional liability of the appellant could not be more than that amount, even if he is found to have an equally important role in perpetuating the fraud. Hence, I am of the opinion that reducing the penalty to fifty thousand only each, under sections 112(a) and 114AA (totally Rupees one lakh only) of the Customs Act 1962, would meet the ends of justice.

8. Considering the above the impugned order is modified and the penalty is proportionately reduced to Rs 50,000/- (Rupees fifty thousand only) each, under sections 112(a) and 114AA of the Customs Act 1962 (totally Rs 1,00,000/- Rupees one lakh only). The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 05.05.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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