CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50997 of 2025

[Arising out of Order-in- Appeal No. D-I/Export/NCH/27/2025 dated 01.04.2025 passed by the Commissioner of Customs, Air Cargo Complex (Exports), New House, New Delhi-110037]

M/s. InterContinental Carriers **...Appellant**
Customs Broker,
08, Prakash Chambers,
6, Netaji Subhash Marg,
Darya Ganj, New Delhi-110002

VERSUS

Commissioner of Customs
Air Cargo Complex (Export) **...Respondent**
New Custom House,
New Delhi-110037

APPEARANCE:
Shri. B.L. Garg, Advocates for the Appellant
Shri. Ram Pravesh Prasad, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 10.04.2026
DATE OF DECISION: **14.05.2026**

FINAL ORDER NO. 50966/2026

DR. RACHNA GUPTA

Present appeal is filed to assail the Order-in-Appeal no.27/25-26 dated 02.04.2025 vide which penalty imposed upon the appellant under section 114 AA of the Customs act, 1962 is held sustainable and established against the appellant.

2. Briefly stated, the Directorate of Revenue Intelligence received an information that some fraudsters are indulged in forging the duty scripts/licenses/authorization such as Focus Product Scheme (FPS), Focus Market Scheme (FMS), Status Holder Incentive Scrips (SHIS) etc. and were using the same against the payment of Customs Duty at the time of import Despite the fact that the actual scrips issued by DGFT already been registered and being utilized. However, those got re-registered in the EDI system of different ports. During investigation it was found that while re-registering the forged scrips/licenses at different ports same particulars of previously registered/utilized scrips/licenses, vis-à-vis license no. and value as were mentioned in the original scrips/licenses were used. DRI has objected following three scrips.

		Actual Duty Credit Scrips/License				Forged Duty Credit Scrips/License			
S.N.O	License No/Date	Registration No/Date	End Date	Port	Duty Amount	Registration No/Date	End Date	Port	Duty Amount
1	410143428 18/02/2013	3000263010 22/02/2013	17/07/2014	INTUT1	45,28,332	3000309325 13/06/2013	17/08/2014	INTKD6	45,28,320
2	410144516 28/03/2013	3000280218 03/04/2013	30/09/2014	INTUT1	61,99,369	3000309029 12/06/2013	27/09/2014	INTKD6	61,99,369
3	410138357 25/05/2012	3000192142 27/07/2012	31/07/2014	INTUT1	51,50,937	3000309329 13/06/2013	24/05/2014	INTKD6	51,50,937
			Total		**1,58,78,638**		**Total**		**1,58,78,626**

Three of the said original licenses were called from Commissioner of Customs Export ICD Tughlakabad (where the scripts/licenses got re-registered fraudulently), however he denied receiving original scripts.

3. from further Investigation it got revealed that the said forged/non-existent scrips/licenses were utilized by 29 different importers including M/s Flexchem Impex Pvt Ltd, the importer of the appellant for discharging the custom duty liability at the time of import. The importers had engaged seven custom brokers for filling bills of entry including the appellant. When those importers were examined two were found to have debited duty amount less than rupees 100/- Hence the investigation against two of them were dropped. The importers used to handover the documents to their CB/CMA after filling the Bill of Entry. Some of the duty was used to be paid by the importers themselves through ICEGATE and remaining amount was used to be paid by their CHA by utilizing license/scrips/authorizations including those in question. It was noticed that the invoices/debit notes had no detail as from whom those scrips/licenses got procured. The importers including M/s Flexchem acknowledged that they had not provided the copies of those scrips/licenses to the Customs broker (CB) nor those were ever demanded by the Customs broker. This is alleged as the

violation of the duty of custom broker, as an agent, to not to ask for the instrument which the importer had purchased in lieu of the consideration paid. This violation of duty by all the CBs including appellant is alleged to be committed due to malafied intent of using the forged/non-existence scrips/licenses despite knowledge of those being forged, with intent to evade customs duty.

4. In the light of these observation that the show cause notice (SCN) no.9/2016/4239 dated 04.06.2018 was served upon all the 27 importers and the seven custom house agents as named in SCN. The demand of duty totaling to Rs. 1,52,53,107/- was proposed to be recovered along with interest at appropriate rates. Imposition of penalties against all said importers as named in Table-A of the show cause notice) and against all the custom brokers including appellant was proposed under section 114 AA and section 112 (a) of Customs Act,1962 (table-B of SCN). The penalty of Rs.53,63,151/- was proposed against the present appellant. The proposal was initially confirmed vide the order in original no.18/2020 dated 26.05.2020. Appeal against the said order has been rejected vide the impugned order in appeal. Being aggrieved, the appellant is before this Tribunal.

5. We have heard Shri B.L Garg Learned Counsel for the appellant and Shri Ram Pravesh Prasad, Ltd DR.

6. Learned counsel for the appellant submitted that the forged scrips/license had been used by the Appellant for payment of Customs duty amounting to Rs.31,96,940/- in respect of goods imported by M/s Flexchem Impex Pvt. Ltd. (previously M/s Bhavisya Merchandise Limited) vide Four number of Bills of Entry filed at ICD, Tughlakabad, New Delhi.

6.1 It is submitted that the Appellant however, did not have any role in the original registration of the license/scrip at Tuticorin ICD or its re-registration in the EDI System at ICD, Tughlakabad. The Appellant had never dealt with nor purchased the said scrip and the purchase was done by the importer i.e., M/s Flexchem Impex Pvt. Ltd., directly from M/s Rakesh Industries, Kolkata. Payment for the said purchase had also been made by the importer directly. Further, the said scrip had already been registered at ICD, TKD, New Delhi before its purchase by M/s Flexchem Impex Pvt. Ltd. and utilization thereof Hence, it was either the fault/negligence or connivance of M/s Rakesh Industries (represented by Sh. Lalit Jain and his employees) or of the concerned Customs officers who again registered the VK&GUY scrip No. 410144516 | dated 28.03.2013 at

ICD Tughlakabad, New Delhi. The said scrip was found to have already been manipulated when it was transferred for a limited value to the importer represented by the Appellant.

6.2 It is further submitted that the Departmental officers, at the time of registration of the scrips/license in question, at ICD-Tughlakabad, failed to exercise due diligence and did not verify the particulars of the original duty credit scrip/license including the port at which such license could be registered. However, once License/scrips No. 410144516 dated 28.03.2013 got registered in the EDI System at ICD, Tughlakabad, New Delhi in June, 2013, there was no reason for the Appellant to doubt the genuineness of the said license and there was no indication of any fraud.

7. Learned Counsel further submitted that it was not necessary on the part of appellant to produce the hard copy of the scrips/licenses at the time of presentation or clearing of the Bills of Entry. The adjudicating authority has referred to notification no 95/2009 dated 11.09.2009 but the same has to be read in conjunction with the CBI circular no 17/2012- cus dated 05.07.2012 according to which the hard copy of license is required to be produced before the proper officer of Custom only at the time of registration of license but the appellant was not involved in the

registration process. There is no evidence on record to establish that the appellant was aware of manipulation in scrips/ licenses in question rather the appellant and its importer became the victim of the fraud. Therefore, order of imposing penalty on the appellant is without any basis and thus is liable to be set aside. With these submissions and the absolute absence of mensrea on part of appellant to knowingly use the forged re-registered scrips. Another show cause notices where for the same allegations the custom broker was held to not be involved and the penalty under section114 AA of the Customs Act was not imposed on CBs not even was imposed on the importers is also referred Ld. Counsel has also relied upon the department's decision for the same. With these submissions Ld. Counsel has prayed for the order under challenge to be set aside and for the present appeal to be allowed.

7.1 While rebutting the submissions made on behalf of the appellants, Ld. DR submitted that the scrips/ licenses were though found having numbers as were originally issued by the DGFT but the scrips did not correspond to the, validity or port endorsement in the DGFT database. The re-registered- forged scrips were not existing in DGFT records at the time in question. Hence it is clear that scrips have not been lawfully used by the appellant (CB) for debiting Customs duty. He knowingly used the re- register forged

scrips/licenses at ICD Tughlakabad. Infact many importers and their respective Custom house agent including M/s Flex Camp Impex Pvt Ltd and M/s. International Carriers i.e. the appellant has knowingly used the forged scrips/licenses the act was done with sole intent to defraud the ex-chequer.

8. Ld. DR further upon that the importer has clearly admitted of not producing the copy of scrips/licenses to the CB who in turn did not ask for same. The importer rather admitted to purchase those bogus duty scrips/licenses through broker instead through original license holder. The appellant has also admitted to not to receive the hard copy of the license/ scrips which were used by them to pay the customs duty. It is also submitted that as per the procedure prescribed in the Notification No.93/2009-Customs and 95/2009-Customs both dated 12.0.2009, it is mandatory condition that the Scrips/Licenses are to be produced before the proper officer of the Customs at the time of clearance, while debiting the scrips for payment of Customs duty of the appellant as the Customs Broker, had the responsibility Customs clearance by producing correct and genuine documents at the time clearance of the imported goods. However, he failed miserably in his duty as much as he failed to adhere to mandatory requirement in terms of the said notification and not taking the requisite and reasonable

care and diligence required of a prudent person as observed in Para 12.2 of impugned OIO. This was the least thing expected from the appellant a customs broker to get the same verified from DGFT website before using the same for duty payment. It is rather an admitted fact that CB/appellant did not even asked for the copy of the scrips from the importer before utilizing the said scrips/licenses and did not ascertain the genuineness before they were utilized. It was the responsibility of the Customs Broker which appellant CB has failed to fulfil. Rather, their silence facilitated their concealed plan and subterfuge to cause Revenue loss to the government.

9. Learned DR has finally submitted that the findings of the adjudicating authority's below are sound and based on ample evidence and that all the penal provisions have been correctly invoked. Learned DR has also relied upon the decision of Hon'ble Supreme Court in the case of **Commissioner of Customs V/s K.M Ganatra and Company in civil appeal no.2940 of 2008**. With these submissions the impugned order is prayed to be upheld and the appeal is prayed to be dismissed.

10. Having heard the rival contentions, formost I have perused the decision of hon'ble Supreme Court in the case of Commissioner of Customs V/S. K.M. Ganatra and Co. (Supra)

where while upholding the observations of CESTAT Mumbai in the case of M/s. Noble Agency Vis. Commissioner of Customs, [2002 (142) E.L.T. 84 (Tri. - Mumbai)] Mumbai it has been held:

"the CHA occupies a very important position in the Custom House. The Custom procedures are complicated. The importers have to deal with a multiplicity of agencies viz carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations i.e. customs, broker licensing Regulation,2013(CBLR) are framed. Regulation of those Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations"

This Tribunal (Delhi Bench) in case of **M/s. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) 2024 TAXSCAN (HC) 1685, held that: -**

The provisions of CBLR require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advice the client accordingly. Through the CHA was accepted as having no mensria of the noticed mis-

declaration/under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above-mentioned Regulations. These Regulations caused a mandatory duty upon the CHA. who is an important link between the Customs Authorities and the importer exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudication authority has rightly imposed the penalty upon the appellant herein.

The Mumbai bench of this Tribunal in case of **Noble Agency Versus Commissioner of Customs, Mumbai wherein has also followed decision of Hon'ble open court in K.M. Ganatra (Supra)** This Tribunal Delhi bench in another case of **Rajesh Maikhuri Versus Commissioner of Customs (Export), New Delhi 2018 (363) E.L.T. 274 (Tri. - Del.)** that deterrent penalty needs to be imposed on defautly importers and their accomplices including custom brokers.

Reverting to the facts of the present case, the issue is about use of forged scrips/license used by the customs broker/the appellant for debiting those scrips for payment of customs duty. Holding it to be the deliberate act that commissioner (appeals) has imposed penalty under section 114 AA of customs act 1962 on

appellant for knowingly making and using incorrect and false declaration in relation to imported goods. Commissioner (Appeals) has held the appellants conduct amounts to abetment and participation in illegal import activities. Thus, the issue to be adjudicated here is.

Whether the appellant- CB had the knowledge about the scrips/licenses which are utilized for paying custom duty on behalf of importer M/s Flex Camp Impex Pvt Ltd to not to be authentic but were fraudulently re-registered in the ICD Tughlakabad.

11. We observe that there is no denial of the appellant to the fact that the DGFT scrips were initially issued and were registered at different port which were fully debited however those scrips subsequently got duplicated and got re-registered in the EDI system at ICD Tughlakabad without any corresponding issuance or endorsement by DGFT but with fabricated license value. It is also not denied that such re-registered scrips and licenses were used by multiple importers through their CHA/ at different ports, including the importer of the appellant also. Further it is the clear-cut admission in the statement not only of the appellant but of the importers as well that the importers supplied the details of the impugned scrips/ licenses to the appellant-CB without physical

copies thereof. In terms of regulation 11 of Customs Broker Licensing regulations CBLR 2013 it is the duty of custom broker/CBA to verify the authenticity of scrips and to advice their clients about the legal compliances. Thus, it was the duty of appellant to ask for physical copy of the scrips which he was asked for debiting against the payment of customs duty. Even notification no 95 /2009 dated 11.09.2009 mandates the said obligation in following words

"that the said scrip has been issued to an exporter of products specified in paragraph 3.13.2 of the Foreign Trade Policy by the Licensing Authority or Regional Authority and it is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods;"

12. The perusal falsifies the plea of appellant that physical copy of scrips/licenses were required at the stage of registration but the scrips were already registered in EDI at ICD Tughlakabad as the physical copies are to be produced at the time of clearance for debit of duties. When the physical copies of scrips/licenses were not provided to the appellant by the importer that the appellant should have advised its importer to hand over the physical copies of those scrips/licenses. In alternative, the appellant should have confirmed the particulars of those scrips/licenses from the DGFT site. Had this simple act of diligent compliance of its obligation under CBLR would be done by the appellant, the non- existing, forged status of scrips

would have been revealed prior those scrips/licenses could be used by the appellant against payment of customs duty. The appellant apparently and admittedly has failed to fulfil the said obligation. It is rather established on record that the appellant repeatedly used those scrips against various Bills of Entry filed by him.

13. M/s Flexchem Impex Pvt. Ltd. in their submission dated 05.04.2018, have clearly informed that they did not have the copy of Licenses. They purchased those duty bogus duty scrip licenses through broker and payment was not made to the original license's holder. Appellant also stated that the importer used to provide only registration no. date and amount to be debited over phone. Admissions are the best evidences and need no further proof specifically when those have not been retracted. Apparently, none of the statement has been retracted. Nor any evidence brought on record to falsly the statement which otherwise amounts to admissions.

14. The investigation conducted by the Directorate of Revenue Intelligence otherwise established that twelve licenses issued under various schemes of the Foreign Trade Policy, including FPS, VKGUY, SHIS and others, were fraudulently duplicated got re-registered in the EDI system at ICD Tughlakabad. These licenses,

although bearing genuine numbers originally issued by DGFT. did not correspond to any actual value, validity or port endorsement in the DGFT database. The forged scrips never existed in DGFT records and could not have been lawfully used for debiting customs duty. Yet, the same license numbers were re-registered and reused at ICD Tughlakabad by many importers including M/s. Flexchem Impex Pvt. Ltd., (appellant's importer) and their Customs Brokers including M/s. Intercontinental Carriers (the appellant), resulting into loss of exchequer.

15. We observe that both the orders of adjudicating authority below are quite detailed and meticulous which are based on the ample evidence invoking the penal provision in question. The appellant has not brought on record anything contrary to those findings. On the contrary the conduct of the appellant, as observed above, shows failure to excise due diligence and failure to fulfill statutory obligations but the conscious facilitation of forged scrips/licenses in violation of statuary obligation on him. Even the Hon'ble Supreme Court in the case of KM Ganatra (Supra) Has held as follows: -

"the CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz carriers, custodians like BPT as well as the Customs. The importer would find it

impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interest of both importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations".

Any negligence vis-à-vis duty and the violation thereof is sufficient to reflect element of knowledge with the appellant/broker and to invoked section 114 AA of customs act.

16. Through the learned counsel has relied upon the final order no.51860 of 2025 dated 11.12.2025 in customs appeal no. 51310 of 2025 titled as M/s A.J Mill Store Agency Pvt Ltd V/s Commissioner of Customs. However, it is observed that the Commissioner Appeals in the said case was found to had not dealt with the issue of intent/knowledge due to which the order imposing penalty was set aside. The same is not the fact of the present case.

17. In view of the entire above discussion the order under challenge is hereby up held. Consequence there to the appeal is dismissed.

[Order pronounced in the open court on **14.05.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

YR