CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20804 of 2018

(Arising out of Order-in-Original No.COC-CUSTOMS-000-COM-65/17-18 dated 15.03.2018 passed by the Commissioner of Customs, Cochin.)

M/s. K. C. Jacob & Company
K. J. George, Managing Partner
Opp. Ernakulam Wharf,
Willington Island,
Cochin – 682 003. — Appellant(s)

VERSUS

The Commissioner of Customs
Custom House,
Wellingdon Island,
Cochin – 682 009. — Respondent(s)

APPEARANCE:

Shri M. A. Baby, Advocate for the Appellant.

Shri Vikalp Jain, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20588 /2026

DATE OF HEARING: 27.03.2026

DATE OF DECISION: 30.04.2026

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. K. C Jacob & Company against Order-in-Original No. COC-Customs-000-COM-65/17-18 dated 15.03.2018 passed by the Commissioner of Customs, Cochin.

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2. Briefly the facts are that the appellant M /s. K. C. Jacob and Company, is a Customs Broker who facilitated the importer M/s. Thankam Cashew Factory (TCF), which is a proprietorship concern of Shri Jose Samuel engaged in the processing of raw cashew nuts in shell to cashew kernels. The importer imported raw cashew nuts without payment of customs duty availing concession under Notification No. 18/2015-Customs dated 01.04.2015 based on the advance authorization licences issued by the DGFT in terms of Para 4.16 of the Foreign Trade Policy, 2015-2020. On investigation by the DRI officers, it was found that these cashew nuts were being diverted to local market in violation of the conditions of the above said Notification; accordingly, notice was issued demanding duty on the imported goods that were being diverted and also proposed imposition of penalty both on the importer and the appellant (Customs Broker). The Commissioner in the impugned order taking into consideration all the facts and based on the investigations conducted and the statements held that the importer was liable to pay customs duty to the extent of Rs.2,55,65,855/- and imposed penalty on the importer. The Commissioner also observing that the customs broker M/s. K. C. Jacob and company who facilitated the importer in filing the Bills of Entry and in transporting the goods to places other than what was mentioned in the Advance Authorization Licences abetted in committing the offence in defrauding the Government and accordingly, imposed a penalty of Rs.2,00,000/- on M/s. K. C. Jacob and Company who is the appellant in appeal before us.

3. The Learned Counsel submits that the appellant is a Custom House Agent (CHA) and one of the partners of the transportation company namely M/s. JCD Transport which undertakes the transportation for the importer M/s. Thankam Cashew Factory. He submits that the appellant filed 8 Bills of

Entry and in all these cases, Form-15 and Form-8FA which were required for transportation of goods within the state was generated by the importer themselves and the appellant had no role to play. It is further stated that penalty under Section 112(b) of the Customs Act, 1962 can be imposed upon a person only if he acquires position or in any way concerned is knowingly acquiring, possessing etc. or in any manner dealing with the goods which he knows or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. It is his contention that since the goods were imported against advanced licences and the clearance of the same was approved by the proper officers of customs and the goods being transported by the appellant as per the directions of the importer, cannot attract the provisions of Section 112(b) of the Customs Act, 1962.

4. The Learned Authorised Representative (AR) who appeared on behalf of the Revenue submitted that the Commissioner has categorically mentioned the role of the appellant who is a Customs Broker and had violated the provisions of the Customs Broker Licencing Regulations by transporting the goods to a place other than what is mentioned in the Advanced Authorization Licence and hence, made himself liable for penalty under Section 112(b) of the Customs Act, 1962. It is further submitted that the appellant in his statement has categorically admitted that he was aware of the fact that as per the licence, the goods had to be delivered to the places mentioned in the Advance Authorization Licences but they arranged transportation to places other than what was mentioned in the advance authorization licences. Hence, it is the contention of the Revenue that appellant having violated the conditions, implicated himself to attract penalty under Section 112(b) of the Customs Act, 1962.

5. Heard both sides. There is no dispute that as per Customs Notification 18/2015-Cus. dated 01.04.2015 read with the provisions of the Foreign Trade Policy and the Handbook of Procedures 2015-2020 during the relevant period; in order to enjoy the duty-free concession of customs duty, they had to follow the following conditions:

> (a) The goods imported against this authorization shall only be utilised in accordance with the provisions of paragraph 4.16 of the FTP 2015-2020 and other provisions and relevant Customs Notification No.18/ 2015 dated 01.04.2015
>
> (b) The authorization holder shall abide by the instruction contained in the paragraph 4.21 of the HBP 2015-2020, as the case may be, for maintenance of true and proper account of consumption and utilisation of inputs and furnish return to the concerned Regional Authority as per the provisions of FTP and procedure laid there under.
>
> (c) The authorization holder to comply with the provisions of paragraph 4.10 and 4.35 of HBP 2015-2020 and amended from time to time, with regard to transfer of any material from one unit of the authorization holder to another unit of authorization holder included in the IEC or to supporting manufacturer/jobber.
>
> (d) The factory address is where the goods imported shall be processed are:
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> (i) M/s.Thankam Cashew Factory, Kunnathoor Village, Anayadi P.O. Kollam.
>
> (ii) M/s.Thankam Cashew Factory, Sooranad North, Anayadi P.O.Kollam.
>
> (e) No Co-Licensee was mentioned in terms of Para 4.35 of HBP 2015-2020.

5.1 Mr. Rapheal Vinisten, Executive representing the appellant in his statement dated 19.12.2016 submitted that they filed 8 Bills of Entry and all the 8 Bills of Entry were for import of raw cashew nuts in shell from Ivory Coast. He also submitted that

they despatched all cashew nuts to various units of the importer M/s. Thankam Cashew Factory as per the telephonic instructions received from the office of the said importer. It is stated that the sales tax delivery notes and Form 15 and Form 8FA was mailed to them and based on the addresses given in these sales tax documents, the goods were cleared to the respective premises mentioned in the sales documents. It is also admitted that the vehicles for the transportation of the containers were arranged by them for which payments were received directly from the importer. In his statement, he also mentions that he was aware of the fact that as per the provisions of the Advance Authorization Licences the goods had to be processed only at the units mentioned in the condition sheet to the licences. It is also admitted that despite that the goods were sent to the premises other than those mentioned in the licences as per the directions of the importer. It is also stated that the authorities concerned were not informed about the diversion since the importer mentioned that the premises were their own units where the processing would be carried out and insisted for transportation of goods mentioned in the sales tax forms and accordingly, they had obliged.

5.2. Taking note of the above submissions made by the Executive representing the appellant, the Commissioner in the impugned order observed that the appellant had aided and abetted the wrongful acts of the importer in duty evasion. He also takes note of the fact that the vehicles for transportation of the containers were arranged by the appellant who was a partner in the transportation firm and payment was directly made to them by the importer. Since the representative of the appellant admitted to the fact that they were aware of the provisions of the Advance Authorization Licences and they were not supposed to divert the goods to places other than the

premises mentioned in the advance licences, knowing well they had diverted the consignments thus violating the provisions of advance authorizations. From the records, we find that the importer has admitted the fact that the goods were diverted and also remitted partial amount of the duty evaded; thus, clearly establishing the fact that the provisions of the said Notification and the Foreign Trade Policy were violated. It is also pertinent to mention that sales tax delivery notes which were handed over to the appellant and in turn, one of the copies was handed over to the truck driver knowing very well that the goods were being diverted for sale clearly establishes the fact that the appellant was aware that the goods are being diverted against the provisions of the Advance Authorization Licences. Therefore, the Revenue having clearly established the involvement of the appellant in aiding transportation of the imported goods to the places other than the premises mentioned in the Advance Authorised Licences, hence, the provisions of Section 112(b) of the Customs Act, 1962 are attracted since the goods are liable for confiscation. Accordingly, we sustain the penalty imposed by the Commissioner in the impugned order.

Appeal is dismissed.

(Order pronounced in Open Court on 30.04.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv

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