CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 42347 of 2016

(Arising out of Order-in-Original No.266/2016-AIR dated 30.03.2016 passed by Principal Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 016.)

Shri Satheesan B Menon **.... Appellant**
No.4, Liza Villa, 7th Street,
Ganesh Nagar, Puzhuthivakkam,
Chennai 600 091.

VERSUS

The Principal Commissioner of Customs ... Respondent
New Custom House,
Chennai VII Commissionerate,
Meenambakkam,
Chennai 600 027.

WITH

(2) Customs Appeal No. 42349 of 2016

(Arising out of Order-in-Original No.266/2016-AIR dated 30.03.2016 passed by Principal Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 016.)

Smt. Liza Sathish **.... Appellant**
M/s. Cappithan Agencies,
36, Kamaraj Steet,
Meenambakkam,
Chennai 600 027.

VERSUS

The Principal Commissioner of Customs ... Respondent
New Custom House,
Chennai VII Commissionerate,
Meenambakkam,
Chennai 600 027.

AND

(3) Customs Appeal No. 42355 of 2016

(Arising out of Order-in-Original No.266/2016-AIR dated 30.03.2016 passed by Principal Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 016.)

M/s. Cappithan Agencies .... Appellant
36, Kamaraj Street,
Meenambakkam,
Chennai 600 027.

VERSUS

The Principal Commissioner of Customs ... Respondent
New Custom House,
Chennai VII Commissionerate,
Meenambakkam,
Chennai 600 027.

APPEARANCE :

Shri G. Madan, Advocate for the Appellant
Shri Vineet Goyal, Authorized Representative for the Respondent

CORAM :

HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER Nos.40511-40513/2026

DATE OF HEARING : 09.04.2026
DATE OF DECISION :21.04.2026

These Appeals arise out of the common impugned Order-in-Original No.266/2016-AIR dated 30.03.2016 passed by the Principal Commissioner of Customs, Chennai-VII. In the common Show Cause Notice dated 18.10.2013, it is *inter alia* alleged that the consignments of raw materials imported by M/s.Antoine & Becouerel Organic Chemical Co. which were used in the manufacture of pharmaceuticals, covered under the past 31 Bills of Entry were made without import license / Assistant Drug Clearance (ADC clearance), but, however, restricts to the confiscation in respect of the two live consignments covered under Bills of Entry dt. 02.04.2013 & 03.04.2013. The SCN thus proposes to confiscate the goods covered under the above 2 Bills of Entry within the meaning of Section 111 (d) of the Customs Act, 1962 read with provisions of Drugs and Cosmetics Act, 1940, apart from levy of penalty under Section 112 (a) *ibid* on all co-noticees. It appears that some of the co-noticees filed their reply which were considered during adjudication and *vide* impugned Order-in Original dt. 30.03.2016 the Principal Commissioner confirmed the proposals made in the SCN. It is ascertained during the course of hearing that none of the other co-noticees has filed any Appeal against the respective

charges confirmed/penalties levied *vide* impugned order, other than the present Appellants.

2. Heard Shri G. Madan, Ld. Advocate for the Appellant and Shri Vineet Goyal, ld. Superintendent for the Respondent-Principal Commissioner, perused the documents placed on record and also the decisions relied in support during the course of arguments. After hearing both the sides, I find that the only issue to be decided is, 'whether the levy of penalty under Section 112 (a) of the Customs Act, 1962 on these Appellants is proper and justified ?'

3. Ld. Advocate would contend, at the outset, that the only allegation in the SCN as well as the impugned order is the violation of CHALR, 2004 but no specific role has been attributed to bring the alleged guilt within the meaning of Section 112 of the Customs Act and hence, without admitting, even if the case is made out for violation of CHALR, the same is not sufficient to levy penalty under the Customs Act.

4. *Per contra,* Shri Vineet Goyal, ld. A.R. supported the findings of the Principal Commissioner in the impugned order.

5. I find from a perusal of the impugned order as well as the SCN that the Revenue has alleged that there was import of raw materials used for manufacture of pharmaceuticals which were made without import license / ADC clearance as per the provisions of Drugs and Cosmetics Act, 1940, which are all past consignments. Insofar as the live consignments are concerned, the reason given in the impugned order is that '*attempt was made by them to clear the consignments by way of receiving all relevant import documents from the importer and filing Bs/E for the same. By the above mentioned act, Shri R. Souri Rajan has rendered himself liable for penal Action under Section 112 (a) of the Customs Act, 1962*'. What emerges from the above finding is that the 1st Appellant has abetted one Souri Rajan and the cause was 'attempt' made by him. It is not clear as to the exact role of the present Appellants in the alleged 'attempt'. Further, what is relevant act is an act of omission or commission or abetment in relation to any goods, which is not the case here. It is, however, clear that nothing is placed

on record regarding past imports, like SCNs or orders, but the allegation is held to be sufficient to impose penalty in respect of live consignments, which are the matter of present dispute.

6. Further, even from a perusal of the impugned order, particularly paragraphs 54, 55 & 56, I find that some other persons who are the co-noticees actually actively participated in the clearance of both the past consignments as well as live consignments. In this regard, I find that this Bench in similar circumstances and in respect of the 1st Appellant, has *vide* Final Order Nos.40722-40723/2017 dated 19.05.2017 clearly held that a CHA cannot be penalized under the Customs Act, 1962 in the absence of any positive evidence on record to show *mala fide* intention on his part or to establish him as an abettor. Facts being more or less similar, I am of the view that the ratio in the above Final Order squarely applies to these Appeals as well.

7. In view of the above, I am of the view that the Revenue has not made out a clear case for levy of penalty under Section 112 (a) of the Customs Act, 1962 on the Appellants and hence, such levy is unsustainable, for which

reason the impugned order which becomes liable to be set aside, stands set aside.

Resultantly, the Appeals are allowed.

(Order pronounced in open court on 21.04.2026)

sd/-

(P. DINESHA)
Member (Judicial)

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