

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 40678 of 2018

(Arising out of Order-in-Original No.60310/2017 dated 15.12.2017 passed by Commissioner of Customs, Chennai-III, Custom House, No.60, Rajaji Salai, Chennai 600 001)

Shri B.A. Suresh Kumar,

.... Appellant

Proprietor, M/s. Arunachalam Shipping,
No.14/10, Murugesan Street,
Tondiarpet,
Chennai 600 081.

VERSUS

The Commissioner of Customs,

... Respondent

Chennai III Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

WITH

(2) Customs Appeal No. 42293 of 2018

(Arising out of Order-in-Original No.60310/2017 dated 15.12.2017 passed by Commissioner of Customs, Chennai-III (Import), Custom House, No.60, Rajaji Salai, Chennai 600 001)

Shri C. Solomon Selvaraj

.... Appellant

Proprietor of M/s.Thivya Agencies,
4/9, 2nd Floor, 7th Street,
First Main Road, Thiruvallur Nagar,
Chennai 600 018.

VERSUS

The Commissioner of Customs,

Chennai III Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

... Respondent

APPEARANCE :

Shri Ramkumar C., Advocate for the Appellant (Sl.No.1)
Smt. Maithili. L., Advocate for the Appellant (Sl.No.2)

Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER Nos.40701-40702/2026

DATE OF HEARING : 20.04.2026

DATE OF DECISION : 02.06.2026

These two Appeals viz. C/40678/2018 and C/42293/2018 are filed by Shri B.A. Suresh Kumar, Proprietor of M/s.Arunachalam Shipping and Shri C. Solomon Selvaraj, Proprietor of M/s.Thivya Agencies respectively against common Order-in-Original No.60310/2017 dated 15.12.2017 passed by Commissioner of Customs, Chennai-III whereby the Commissioner has *inter alia* imposed a penalty of Rs.35,00,000/- under Section 112 (a)

of the Customs Act, 1962 and under Section 114AA *ibid* on each of the Appellants.

2. It appears that the Directorate of Revenue Intelligence, Chennai Zonal Unit (DRI-CZU) received specific intelligence that M/s. Thivya Agencies (IEC: 0414009703) of No.18, K.H. Road, Ayanavaram, Chennai, Tamil Nadu-600 023 was attempting to smuggle cigarettes of foreign origin/brand in the guise of declared cargo i.e. 'MALAYSIAN CORE VENEER' through the Chennai Seaport in 1x40' container No. IALU 4553829 covered under Bill of Lading No. BLPLPKG1602368 dated 14.08.2016 issued by M/s. BLPL Singapore Pte. Ltd., with IGM No. 2144725 dated 17.03.2016 and line number 421. Pursuant to the said intelligence, the officers appear to have examined the said container No. IALU 4553829 (40 HC) which was lying in the custody of M/s. Gateway Distriparks (South) Pvt. Ltd. in the presence of witnesses as well as officers. It was claimed that a copy of the said Bill of Lading No. BLPLPKG1602368 dated 14.08.2016 was furnished, wherein the shipper was mentioned as M/s. L. Naga Trading, Lot 13144, Jalan Dengkil, Kampung Olak Lempit 42700, Banting, Selango. Appellant here, in this Appeal, was named as the consignee and the phone number of a person viz. one Shri Sharvesh

Bulchandani of Mahalingapuram, Chennai was mentioned in the Shipping Bill.

3. The above prompted the Revenue to cause visit/search the premises/address mentioned in the Shipping Bill i.e. consignee which was found to be locked. On enquiry with the landlord of the said tenanted premises, he appears to have revealed that the Proprietor of the consignee was occupying the space, name board was replaced recently; the officers appear to have collected a copy of the rental agreement from the landlord. Consequently, a Show Cause Notice dt. 21.02.2007 came to be issued to the Appellants herein proposing *inter alia* the confiscation of smuggled goods apart from imposing penalties under Section 112 (a) and Section 114AA *ibid* on these Appellants for their alleged roles in the attempted smuggling of goods in question. It appears that the Appellants filed their respective replies and thereafter the Adjudicating Authority confirmed the proposals made in the SCN *vide* Order-in-Original No. 60310/2017 dated 15.12.2017. Strangely, neither in the SCN nor in the impugned Order-in-Original does the Revenue whisper about the actual importer, though they have missed a crucial link of the phone number and without any further action, have exonerated one Sharvesh

Bulchandani, when only the uncorroborated allegations remained against these Appellants. The Revenue has very conveniently accepted the *bona fides* claimed by the said Sharvesh Bulchandani whereas the *bona fides* claimed by these Appellants have not been accepted.

4. Heard Shri Ramkumar C., Id. Advocate for the 1st Appellant and Smt. L. Maithili, Id. Advocate for the 2nd Appellant and Shri N. Satyanarayana, Id. Departmental Representative defended the impugned order. I have carefully perused the SCN, replies filed by these Appellants to the above SCN and the Order-in-Original whereby the Commissioner has not at all bothered to consider the explanations filed by these Appellants.

5. I do not find any revelations as to the terms and conditions of the said rental agreement being brought out on record, especially with regard to the duration of tenancy, was there any provision to sub-let that had resulted in changing the name etc. These details have remained conspicuously absent from the Order-in-Original.

6. There is also nothing brought out on record as to the investigation being carried out other than mere recording of statement of Sharvesh Bulchandani where he has naturally

denied his role and claimed to be innocent. This is very difficult to comprehend as sharing address may be easy as any consignment needs destination address, the addressee need not be the importer, but when specific phone number actually is available, then an attempt to investigate further should have been made. It is also a mystery that the Revenue has not bothered to check the call history of the phone number before at least drawing a conclusion as to the innocence of the holder of phone number and exonerating the said person. From this itself it appears that the investigation has been carried out as if it is a formality and to give a clean chit to the person whose number was given and to target someone else.

7. Whether abetment could stand in the absence of the actual importer is the question. It cannot be said that the Appellants conspired with himself or themselves and caused import of goods in question. Nothing is available on record nor is it the case of the Revenue that any of these Appellants is the importer. They have failed in pursuing the crucial lead of phone number nor is there any attempt made to get the call history of the phone.

8. Further, the SCN has made bald allegations against the Appellant and is entirely based on the statement of the Appellant obtained on 19.09.2016, which statement was retracted by the Appellant at the earliest point in time. Much reliance has been placed on the uncorroborated statement of Suresh Kumar, especially when his own employee viz. Vasanth did not reveal the name of either M/s. Thivya Agencies or Shri C. Solomon Selvaraj of M/s. Thivya Agencies. When such an accusation was levelled, then he should have been subjected to cross-examination to bring out the truth as its but natural that a culprit would pull someone into the crime to mitigate the consequences of severity of the punishment against oneself. Hence, cross-examination should have been allowed despite the fact whether asked for or not.

9. The Appellant, Shri C. Solomon Selvaraj has contended that when his IEC was known to have been misused by the said Suresh Kumar i.e. 1st Appellant, it is on record that he had filed a police complaint against said person and this fact has not been countered by said Suresh Kumar nor appreciated by the Commissioner. It is all the more a good reason for the said Suresh Kumar to drag Appellant's name perhaps to settle a score. In these

circumstances, Revenue should have afforded cross-examination of Suresh Kumar and not doing so, coupled with not taking a lead from the phone number and the call history, only suggests that the investigation was not done in a fair manner. The half-hearted attempt in the so-called investigation resulting in imposing penalty on the present Appellants therefore cannot stand.

10. Paragraph 8 of the impugned order reveals that previous clearances for M/s. Thivya Agencies i.e. 2nd Appellant were made by M/s. Zone Shipping and the original documents were handled by sub-agent M/s. Arunachalam Shipping Services of which 2nd Appellant Shri B.A. Suresh Kumar Appellant is the Proprietor. One Vasanth was also an employee of M/s.Arunachalam Shipping Services.

10.1 Para-10 indicates that enquiry with IndusInd Bank disclosed the fact of both the bank accounts remained inactive, in respect of M/s.Thivya Agencies and Shri C. Solomon Selvaraj. This fact, in fact establishes the inaccuracy in so far as the statement of Suresh Kumar is concerned, when he appears to have alleged that there was payment from Solomon Selvaraj who approached him to get customs clearance and that all such payments were made

through banking channels only. There is also no documentary evidence placed on record by Suresh Kumar that he had acted as a commission agent for Solomon Selvaraj and received commission. These are all, as indicated elsewhere in the earlier part of this order, only to settle a score since Solomon Selvaraj had lodged a police complaint for misuse of his IEC by this Suresh Kumar.

10.2 A perusal of the impugned Order-in-Original further reveals that the investigating agency did not bother at all to bring on record the name of the actual importer since it is clear from the facts borne on record that neither Thivya Agencies nor Suresh Kumar is the actual importer.

11. Section 112 (a) under which penalty has been imposed reads as under :

“SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) 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, or

... ..

shall be liable, -....

12. The charge against these Appellants is that though they had abetted in doing or omission to do an act that had rendered the goods in question liable for confiscation. This pre-supposes the existence of 'import', by an 'importer' which would lead to 'improper importation' of the goods in question; in the absence of the importer himself being absent, it has to be seen whether the charge against these Appellants stands.

13. The term 'abet' is legally defined as 'assisting, encouraging, commanding or procuring another person to commit an offence'. It broadly means actively setting on or facilitating commission of a crime, regardless of whether the abetter is physically present at the scene. It is well known that meaning of 'abet' is to aid, to assist or to give aid, to command, to procure or to counsel, to countenance, to encourage or set another one to commit. The above definition thus makes it clear that abetment occurs only when there are at least two persons involved – one committer and the other abetter. Hence, when the actual committer is absent or is not found, then there is no question of abetment since abetter cannot conspire with himself to commit a crime. In the case on hand, the alleged crime is the import and the importer could be treated as the

'committer'. In a nut shell, the takeaway from the above is that as long as the actual committer i.e. the actual importer is not found or charges against him for improper importation are not established, then there could be no penal action for an alleged act of abetment merely on such other persons who are otherwise least interested in the act of import.

14. Though the statement of Suresh Kumar is clearly an afterthought and does not at all inspire any confidence but nevertheless that alone cannot lead to conclude that he is responsible for abetting an improper importation. In view of the above, I do not find any reasons to sustain the levy of penalty under Section 112 (a) *ibid*.

15. Section 114AA is not invokable in the case of imports as the said provision was inserted into the Customs Act, 1962 for the specific purpose of penalizing the fraudulent exports that took place only on paper and where no actual/physical exports took place as is forthcoming from the objects and reasons of insertion of the said Section into the provisions of the Customs Act, 1962. Hence, Section 114AA can be invoked against any person for imposition of penalty only in the case of fraudulent exports where exports take place only on paper and no physical exports take place.

16. Resultantly, the impugned order levying penalty against these Appellants are set aside and the Appeals are allowed as indicated above.

(Order pronounced in open court on 02.06.2026)

sd/-

(P. DINESHA)
Member (Judicial)

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