**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 75240 of 2023**

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/78/2023 dated 01.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Kousik Nandy** **: Appellant**
Proprietor of M/s. SSS Sai Forwarders,
Room No. 222, HMP House,
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

**Customs Appeal No. 75255 of 2023**

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/124/2023 dated 14.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Kousik Nandy** **: Appellant**
Proprietor of M/s. SSS Sai Forwarders,
Room No. 222, HMP House,
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

**Customs Appeal No. 75257 of 2023**

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/123/2023 dated 14.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Kousik Nandy** **: Appellant**
Proprietor of M/s. SSS Sai Forwarders,
Room No. 222, HMP House,
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**WITH**

**Customs Appeal No. 75270 of 2023**

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/87/2023 dated 07.02.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Kousik Nandy** **: Appellant**
Proprietor of M/s. SSS Sai Forwarders,
Room No. 222, HMP House,
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**AND**

**Customs Appeal No. 76578 of 2024**

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/70/2023 dated 31.01.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

**Kousik Nandy** **: Appellant**
Proprietor of M/s. SSS Sai Forwarders,
Room No. 222, HMP House,
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

**APPEARANCE:**

Shri Nilotpal Chowdhury and Shri Prabir Bera, both Advocates, for the Appellant

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NOs. 75805-75809 / 2026**

DATE OF HEARING / DECISION: 01.07.2026

**ORDER: [PER SHRI ASHOK JINDAL]**

The appellant is in appeal against the impugned orders insofar as the same have upheld the imposition of penalties on the appellant under Section 114(iii) and 114AA of the Customs Act, 1962.

2. As all these appeals are having a common issue, they were heard together and taken up together for disposal by way of a common order. The details of the present appeals are tabularized as follows: -

| Sl. No. | Appeal No. Before CESTAT | Order-in-Original No. & Date | Order-in-Appeal No. & Date | Name of Exporter | Amount of Penalty (in Rs.) | Shipping Bill Details |
|---|---|---|---|---|---|---|
| 1. | C/75240/2023 | KOL/CUS/JC/55/SIB/ 2021 dated 29.07.2021 | KOL/CUS/PORT/KS/ 78/2023 dated 01.02.2023 | M/s. Spica Overseas | 50,000/- u/s 114(iii) 1,00,000/- u/s 114AA | 4735565 Dated 07.06.2019 4728016 Dated 07.06.2019 |
| 2. | C/75270/2023 | KOL/CUS/JC/38/SIB (Port)/2021 dated 29.06.2021 | KOL/CUS/PORT/KS/ 87/2023 dated 07.02.2023 | M/s. Mercury Overseas | 2,00,000/- u/s 114(iii) 4,00,000/- u/s 114AA | 4849706 dated 13.06.2019 4849034 dated 13.06.2019 4848527 dated 13.06.2019 4847397 dated 13.06.2019 |
| 3. | C/75255/2023 | KOL/CUS/JC/63/SIB/ 2021 dated 13.08.2021 | KOL/CUS/PORT/KS/ 124/2023 dated 14.02.2023 | M/s. Laxmi Trading | 1,00,000/- u/s 114(iii) 2,00,000/- u/s 114AA | 4835264 dated 12.06.2019 |
| 4. | C/75257/2023 | KOL/CUS/JC/47/SIB/ 2021 dated 27.07.2021 | KOL/CUS/PORT/KS/ 123/2023 dated 14.02.2023 | M/s. Green Plus Impex | 1,00,000/- u/s 114(iii) 2,00,000/- u/s 114AA | 4793093 dated 11.06.2019 4793469 dated 11.06.2019 4791219 dated 11.06.2019 4793522 dated 11.06.2019 |
| 5. | C/76578/2024 | KOL/CUS/JC/59/SIB/ 2021 dated 03.08.2021 | KOL/CUS/PORT/KS/ 70/2023 dated 31.01.2023 | M/s. KB Enterprises | 1,00,000/- u/s 114(iii) 2,00,000/- u/s 114AA | 4793457 dated 11.06.2019 4793459 dated 11.06.2019 4791402 dated 11.06.2019 4791553 dated 11.06.2019 |

3. The facts of the case are that the appellant, namely, Shri Kousik Nandy is the proprietor of M/s. SSS Sai Forwarders, a Customs Broker, having valid licence issued by the Kolkata Customs Commissionerate. The proceedings emanated from investigations initiated by the Special Investigation Branch (Port), Kolkata, on the basis of intelligence received from the Directorate of Revenue Intelligence alleging that certain exporters had attempted to fraudulently avail higher IGST refunds by declaring export goods at grossly inflated values and by adopting incorrect tariff classifications. Separate investigations were conducted in respect of the shipping bills filed by the respective exporters, during which the export consignments were detained/seized and subjected to market enquiry. Upon such enquiry, the Department formed the view that the declared Free on Board (FOB) value of the export goods was substantially inflated vis-à-vis the prevailing market value, resulting in an alleged attempt to avail excess IGST refund.

4. Consequently, separate Show Cause Notices were issued inter alia to the present appellant, Shri Kousik Nandy, along with the concerned exporters and other co-noticees, proposing penal action against him under Sections 114(iii) and 114AA of the Customs Act, 1962 on the allegation that he had facilitated the alleged fraudulent export transactions.

4.1. The matters were adjudicated by way of various adjudication orders, wherein the adjudicating authority held that the exporters had grossly misdeclared the value of the export goods with the object of wrongfully claiming higher IGST refunds and further observed that the appellant had acted in connivance with the exporters and the concerned Customs Brokers in facilitating such exports. Accordingly, the penalties proposed, inter alia, against the appellant under Sections 114(iii) and 114AA of the Customs Act, 1962 in each of the five proceedings were during the adjudication proceedings.

4.2. Aggrieved by the aforesaid adjudication orders, the appellant preferred separate appeals before the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata. The Ld. Commissioner (Appeals), by way of the impugned orders, affirmed the findings of the authorities below and upheld the penalties imposed upon the appellant, as indicated above.

4.3. Against the said orders, the appellant is before us.

5. The Ld. Counsel appearing on behalf of the appellant submitted that the issue involved in the present batch of appeals is no longer res integra and stands concluded in favour of the appellant by the decision of this Tribunal rendered in the appellant's own case arising out of separate proceedings initiated on identical facts and circumstances, vide *Final Order Nos. 75531-75532 of 2026 dated 21.04.2026 in Customs Appeal Nos. 75256 & 75279 of 2023 (CESTAT, Kolkata)* passed by the CESTAT, Kolkata. It was submitted that, in the said decision, the Tribunal, while considering identical allegations, had set aside the penalties imposed upon the appellant under Sections 114(iii) and 114AA of the Customs Act, 1962. It was, therefore, contended that the facts and issues involved in the present appeals being identical, the ratio of the aforesaid decision squarely applies and deserves to be followed. Accordingly, the Ld. Counsel

for the appellant prayed that the penalties imposed upon the appellant under Sections 114(iii) and 114AA of the Customs Act, 1962 in the present proceedings be dropped.

6. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us reiterated the findings in the impugned orders. Accordingly, he prayed for rejection of the instant appeals.

7. Heard the parties and considered their submissions.

8. We find that the entire case of the Revenue against the appellant rests upon the allegation that he had facilitated the alleged fraudulent exports undertaken by the concerned exporters and had thereby rendered himself liable to penalties under Sections 114(iii) and 114AA of the Customs Act, 1962. However, on a careful appreciation of the materials placed on record, we find that there is no cogent or independent evidence establishing any active role, conscious knowledge or deliberate involvement on the part of the appellant in the alleged overvaluation of the export consignments or the attempted wrongful availment of IGST refund. The Revenue has failed to establish, by way of any direct or corroborative evidence, the existence of any nexus between the appellant and the alleged fraudulent exports. Mere suspicion, conjecture or the fact that certain documents may have passed through intermediaries cannot, by itself, justify the imposition of penal consequences under the Customs Act. It is well settled that penalties of this nature can be sustained only upon proof of conscious involvement supported by

credible evidence, and not on assumptions or presumptions. In such circumstances, merely on circumspection, no case for imposition of penalty upon the appellant can be said to have been made out.

9. Further, we find that the issue is no longer res integra. An identical dispute arising out of substantially similar facts in the appellant's own case has already been considered by this Tribunal in *Final Order Nos. 75531-75532 of 2026 dated 21.04.2026 in Customs Appeal Nos. 75256 & 75279 of 2023 (CESTAT, Kolkata)*, wherein the Tribunal has observed as under: -

> *"7. Having heard the two sides, we find that there is nothing on record to expressly insinuate the appellant with the action of certain persons who incidentally were not even the employees of the appellant at the material time. It is undisputed that the appellant was not the Customs Broker concerned with the said exports. The fact of initiation of action against him under the CBLR provisions being entirely distinct, is not at all relevant to the present proceedings. The department has nowhere been able to show that the appellant had any knowledge about the material goods being exported or their value (inflated or otherwise), which rendered the said goods liable for confiscation. Also there is no evidence placed on record to connect the appellant with the said exports. Mere providing of contact/reference and documents related to certain exports to a third person, cannot itself be considered as an offending cause, liable for penal action under law. The Revenue was required to corroborate this, with clear evidence to suggest that such an exercise was pre-mediated with ill design for export of consignments that were overvalued with intents for availment of higher amount of IGST credit. Without such knowledge being ascribed to on part of the appellant, it would be utterly improper to subject them to penal consequences under law. It indeed, is a fact that any mis-declaration in terms of valuation of goods is done by the exporter, may or may not be with the connivance of the Customs Broker associated with the matter. The appellant nowhere*

*being in picture either by way of being an exporter themselves or the Customs Broker in the Impugned shipment cannot be faulted upon, for not being a party to the mis-adventure. There is nothing on record to show that the appellant acted maliciously with intent to cause financial losses to the exchequer. The nexus, if any, between the aforesaid two exporters/their Customs Broker in the matter and the appellant is required to be proven and established by way of concrete proof in order to subject him to penal liabilities. This link in the chain is nowhere in existence.*

*8. The lower authority has noted that the impugned export consignments were received by Shri Babu Samanta and Shri Subrata Laha of M/s. SSS Sai Forwarders, who were given the requisite documents like invoice, packing list, authorization etc. after the goods had entered the CFS. This fact has however been strongly and very categorically refuted by the appellant, in their reply to the impugned show cause notice, asserting that the two aforesaid persons were not in employment of the appellant's firm. Referring the two above named as employees of the appellant, in the absence of any proof thereto, is a grave error in consideration of the factual position by the lower authority, Shri Ramkrishna Kole is stated to be an ex employee of M/s. SSS Sai Forwarders Pvt.Ltd., while the appellant's firm M/s. SSS Sai Forwarders is a proprietory concern. The two being legally separate entities in the eyes of law, no link between the two firms can ordinarily be supposed and presumed, when not so forthcoming from records.*

*9. The Ld. Adjudicating authority has categorically noted in his order that the gross misdeclaration of value was undertaken by the exporter. Para 62 of the impugned orders in the two cases are materially relevant for the purpose. Having arrived at such a specific finding, it does not behove the adjudicating authority for imposing penal consequences on the appellant. To place on record, in categoric terms, Para 62 of the Impugned orders are extracted below:*

*Customs Appeal No.75256 of 2023*

*"62. I find from the investigation conducted so far, that gross mis-declaration in terms of valuation has been done by the exporter, M/s. Asian Enterprises with the connivance of Customs Broker, M/s. Advent Shipping Agency for the purpose of availing IGST refund fraudulently, thus causing loss to exchequer. The goods were seized on 18.12.2019 under section 110(1) of the Customs Act, 1962 under proper seizure/detention memo. Hence, the goods are liable for confiscation under section 113(1) of the Customs Act, 1962 and rendering the Exporter and Customs Broker llable for penal action under section 114(iii) & 114AA of the Act, Ibid."*

*Customs Appeal No.75279 of 2023*

*"62. I find from the investigation conducted so far, that gross mis-declaration in terms of valuation has been done by the exporter, M/s. Asian Enterprises with the connivance of Customs Broker, M/s. Advent Shipping Agency for the purpose of availing IGST refund fraudulently, thus causing loss to exchequer. The goods were seized on 18.12.2019 under section 110(1) of the Customs Act, 1962 under proper seizure/detention memo. Hence, the goods are liable for confiscation under section 113(i) of the Customs Act, 1962 and rendering the Exporter and Customs Broker liable for penal action under section 114(iii) & 114AA of the Act, ibid."*

*10. The only basis as made out by the lower authorities for imposition of penalty is what is stated in para 63 of the two orders:*

*Customs Appeal No.75256 of 2023*

*"63. I find that during the course of investigation, statement of Sri Kousik Nandy of M/s. SSS Sal Forwarders was recorded and it is seen that it is M/S. SSS Sai Forwarders who provided the contact and documents related to the said export of M/s. Asian Enterprises to M/s. Advent Shipping Agency. The employees of M/s. SSS Sal Forwardes were actively involved in facilitating the export of M/s. Asian Enterprises along with M/s. Advent Shipping Agency, the authorized CB firm. From the statement of Sri Laha and Sri Samanta it is evident that they contacted Sri Becharam Das of M/s. Advent Shipping Agency for the subject export. It is further evident from the discussions above, that Sri Ramkrishna Kole joined M/s. Advent Shipping Agency to facilitate*

*the export and to become an authorized signatory of the CB firm for clearance of the cargo and as soon as the consignments were cleared he again rejoined his former employer M/s. SSS Sai Forwards. From the above discussion it transpires that Sri Kousik Nandy of M/s. SSS Sal Forwarders was actively involved in the subject export and its clearance. I also find that Sri Nandy is trying to seek refuge by placing the responsibility on his employees and denying having any knowledge that his company served as the contact between the exporter and the Customs Broker M/s. Advent Shipping Agency. Moreover, the statement of Sri Kousik Nandy, the documents recovered during the search of his office premises and the recorded statements of the employees of M/s.SSS Sal Forwarders appears to be indicating towards his collusion with fraudulent exports and its clearance, which rendering Sri Kousik Nandy of M/s. SSS Sai Forwarders liable for penal action under Section 114 (iii) & 114AA of the Customs Act, 1962."*

*Customs Appeal No.75279 of 2023*

*"63. I find that during the course of investigation, statement of Sri Kousik Nandy of M/s. SSS Sai Forwarders was recorded and it is seen that it is M/s. SSS Sai Forwarders who provided the contact and documents related to the said export of M/s. Asian Enterprises to M/s. Advent Shipping Agency. The employees of M/s. SSS Sai Forwardes were actively involved in facilitating the export of M/s. Asian Enterprises along with M/s. Advent Shipping Agency, the authorized CB firm. From the statement of Sri Laha and Sri Samanta it is evident that they contacted Sri Becharam Das of M/s. Advent Shipping Agency for the subject export. It is further evident from the discussions above, that Sri Ramkrishna Kole joined M/s. Advent Shipping Agency to facilitate the export and to become an authorized signatory of the CB firm for clearance of the cargo and as soon as the consignments were cleared he again rejoined his former employer M/s. SSS Sal Forwards. From the above discussion it transpires that Sri Kousik Nandy of M/s. SSS Sal Forwarders was actively involved in the subject export and its clearance. I also find that Sri Nandy is trying to seek refuge by placing the responsibility on his employees and denying having any knowledge that his company served as the contact between the exporter and the*

*Customs Broker M/s. Advent Shipping Agency. Moreover, the statement of Sri Kousik Nandy, the documents recovered during the search of his office premises and the recorded statements of the employees of M/s.SSS Sai Forwarders appears to be indicating towards his collusion with fraudulent exports and its clearance, which rendering Sri Kousik Nandy of M/S. SSS Sal Forwarders liable for penal action under Section 114 (l) & 114AA of the Customs Act, 1962." liable for penal action under section 114(III) & 114AA of the Act. ibid."*

*11. However, this assertion has not only been strongly contested, but has been made without any substantiation. It has been stated by the lower authority that the persons named therein were not the employees of the firm at the material point in time. Furthermore attributing, the making over of documents through a person for purpose of export could not ipso facto lead to the conclusion of the involvement of the appellant, in such attempted unlawful exports. While the appellant may have denied having any knowledge that his company served as a conduit between the exporter and the Customs Broker, it is for the authorities, to on record administer by categorical evidence that the appellant actually acted as a conduit and with malicious intent. We do not find any indication to such effect from records. We would like to further assert that nobody can be prosecuted without direct evidence, howsoever strong an assumption may be. Unless there is direct evidence to establish misdemeanor no penal consequences can follow in law.*

*12. The Id. 'adjudicating authority, as can be observed from the extracts above, is himself quite not sure and has only arrived at a suggestive finding while recording at Para 63 in both the cases that the documents recovered during the search of his office premises and recorded statements of the employees of M/S. SSS Sai Forwarders appears to be indicating towards his collusion with fraudulent export and its clearance That being an important finding by the lower authority himself, we are clear that merely on circumspection, under the circumstances no case for imposition of penalty on the appellant is made out.*

*13. In view of the discussions above, we set aside the order of the lower authority qua the imposition of penalty under Section 114(iii) and under Section 114AA of the Customs Act, 1962 on the appellant in each of the two cases and allow the two appeals filed."*

10. It is a fact that the decision rendered by the Tribunal in the appellant's own case (*supra*) arose out of similar facts and circumstances and involved identical issues for consideration and thus, we find no justifiable reason to take a different view in the present cases on hand. The Revenue has also not brought any decision to the contrary on record. Therefore, applying the ratio laid down by this Tribunal in the appellant's own case (*supra*) and in view of the discussion hereinbefore, we hold that the penalties imposed upon the appellant under Sections 114(iii) and 114AA of the Customs Act, 1962 in the present cases are unsustainable in law and accordingly, the penalties imposed on the appellant stand set aside.

11. The impugned orders are, therefore, set aside to the aforesaid extent and all the appeals filed by the appellant are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

Sd/-
**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

Sdd