IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 42343 of 2016

(Arising out of Order-in-Appeal No. 139/2016-TTN(CUS) dated 01.11.2016 passed by Commissioner of Customs (Appeals-II), No. 1, Williams Roa, Cantonment, Tiruchirappalli – 620 001)

M/s. PL Shipping and Logistics Ltd. **...Appellant**
(Formerly Peirce Leslie Agencies Ltd.,),
No. 4B/69, CGE Colony,
First Street,
Tuticorin – 628 008.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

For the Appellant : Mr. S. Krishnanandh, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 07.08.2026
DATE OF DECISION : 08.09.2026

FINAL ORDER No. 41012 / 2026

Order: -

This appeal has been filed by M/s. PL Shipping and Logistics Ltd. (formerly M/s. Peirce Leslie Agencies Ltd.), hereinafter referred to as "the appellant", against Order-in-Appeal No.139/2016 dated 01.11.2016 passed by the Commissioner of Customs (Appeals-II), Tiruchirappalli, whereby the appeal filed by the appellant against Order-in-

Original No.45/2016 dated 22.03.2016 passed by the Additional Commissioner of Customs, Tuticorin, was rejected. The appellant, a Customs Broker, was imposed a penalty of Rs.2,00,000/- under Section 114(i) read with Section 117 of the Customs Act, 1962 in connection with an attempted export of red sanders.

2. The facts briefly stated are that the appellant, a Customs Broker, handled Shipping Bill No. 7953846 dated 21.02.2015 filed by M/s. Sam (CBE) Impex for export of "Cotton Tufted Floor Mat" to UAE. The container was granted Let Export Order and, after leaving the CFS, was subsequently examined on 18.03.2015, when it was found to contain 4.030 MT of red sanders valued at about Rs.1.81 crore, allegedly substituted for the declared cargo. No material connected the appellant with such substitution. The appellant had obtained authorisation, verified the exporter's IEC through DGFT/ICEGATE and examined the previous shipping bill. The SCN dated 16.09.2015 proposed penalty under Section 114(i) read with Section 117 for alleged omission. The adjudicating authority, in paragraph 51 of the OIO, found inadequate verification of the exporter's antecedents/KYC and imposed penalty of Rs.2,00,000/-, which was upheld in appeal. Being aggrieved, the appellant is before the Tribunal.

3.1 The Ld. Advocate Shri S. Krishnanand for the appellant, submitted that the impugned order travelled beyond the allegations contained in the Show Cause Notice, which did not specify any particular failure of KYC verification or any positive act of participation or abetment. The appellant had obtained authorisation, verified the IEC through DGFT and ICEGATE and examined the previous shipping bill of the exporter, giving it reasonable grounds to believe that the exporter was genuine. Mere absence of personal contact with the exporter could not establish knowledge of or involvement in the attempted smuggling.

3.2 It was further submitted that the red sanders were substituted only after the declared cargo had been cleared and the container had left the Customs area, and there was no evidence that the appellant had any control over the container thereafter or had participated in its substitution. The appellant contended that an alleged regulatory deficiency in verification could not, by itself, satisfy the requirements of Section 114(i) or Section 117.

3.3 Reliance was placed on *International Cargo Services v. Commissioner of Customs (Export), 2015 (323) E.L.T. 206 (Tri.-Del.),* as also the other decisions cited in the

appeal, to submit that penalty under Section 114 could not be sustained in the absence of evidence connecting the Customs Broker with the fraudulent export.

4.1 The Ld. Authorized Representative Shri N. Satyanarayanan for the Revenue, supported the impugned order and submitted that a Customs Broker carries a substantial responsibility to know the persons for whom Customs documents are filed. The appellant had admittedly no direct contact with the exporter and had failed to verify the antecedents and KYC particulars of the exporter. This omission, according to the Revenue, facilitated the export of prohibited red sanders which attracted penalty under Section 114(i) read with Section 117.

4.2 Relying upon the decision in *S. Chandrasekaran v. Commissioner of Customs, Tuticorin, 2014 (310) E.L.T. 826 (Tri.-Chennai),* the Ld. AR has submitted that *mens rea* was not an essential requirement for imposition of penalty and that the failure of the Customs Broker to discharge the obligation of knowing the client was sufficient to sustain the penalty.

5. I have carefully considered the Show Cause Notice, the investigation records, the Order-in-Original, the impugned Order-in-Appeal and the submissions made before me. The following short issue arises for determination: -

Whether the alleged failure of the appellant to verify the antecedents /KYC particulars of the exporter constituted an act or omission rendering the red sanders liable to confiscation, or amounted to abetment thereof, so as to attract penalty under Section 114(i) read with Section 117 of the Customs Act, 1962?

6. I now proceed to examine the above issue.

7. There is no dispute that the red sanders found in the container were prohibited goods liable to confiscation. The short question before me is whether the alleged KYC/antecedent verification lapse of the appellant had the statutory nexus required under Section 114(i). Section 114(i) requires an identifiable act, omission or abetment attributable to the person which rendered the goods liable to confiscation under Section 113. Mere involvement in export documentation or a regulatory lapse, by itself, is not sufficient.

8. In the present case, the SCN does not allege that the appellant procured, stuffed or transported the red sanders, participated in their substitution, tampered with the container, or knowingly prepared or filed false documents. The investigation disclosed that the substitution took place after the container had left the CFS, but no material connects the appellant with that operation.

9. On the contrary, the appellant had obtained the exporter's authorisation, verified the IEC through DGFT and ICEGATE and examined the previous shipping bill. The only adverse finding was that the appellant had not adequately verified the antecedents/KYC particulars of the exporter. In my view, such deficiency may constitute a regulatory lapse, but it cannot, without further evidence, be equated with an act or omission which rendered the prohibited goods liable to confiscation.

10. The fact that the appellant had no direct contact with the exporter also does not, by itself, establish knowledge, collusion or facilitation. There is no evidence that the appellant had possession or control of the container when

the substitution occurred, received any consideration for facilitating the attempted export, participated in the substitution, or knowingly filed false documents. The subsequent substitution was therefore not shown to be attributable to any act or omission of the appellant.

11. The Revenue relied upon *S. Chandrasekaran v. Commissioner of Customs, Tuticorin, 2014 (310) E.L.T. 826 (Tri.-Chennai).* I have considered the said decision. The facts therein were materially different, as the CHA had acted through a proxy, signed blank documents and permitted another person to use his identity, which provided positive evidence of his involvement in the offending transactions. The present case contains no comparable evidence of participation, collusion or facilitation.

12. The decision in *International Cargo Services v. Commissioner of Customs (Export), 2015 (323) E.L.T. 206 (Tri.-Del.),* relied upon by the appellant, is more apposite. In that case, the Tribunal noted that the CHA had obtained proper authorisation, verified the exporter and IEC and other particulars, and that there was no evidence of its knowledge of the fraudulent export; the mere absence of personal contact with the exporter was held insufficient to sustain

penalty under Section 114. The present case is substantially similar, as the appellant had obtained authorisation and verified the IEC, while no evidence connects it with the subsequent substitution or attempted export of red sanders.

13. I also find support from *M/s. Bhavani Shipping Services (I) Pvt. Ltd. & Ors. v. Commissioner of Customs, Tuticorin, 2018 (1) TMI 499 (CESTAT Chennai),* which arose out of the same attempted export of red sanders. In that case, the Tribunal distinguished a mere lapse in KYC/antecedent verification from actual participation or abetment in the smuggling activity and set aside the penalty in the absence of evidence establishing such participation. The said principle is directly applicable to the facts of the present case.

14. I am conscious of the Revenue's submission that *mens rea* is not an essential requirement for penalty under Section 114. However, this does not dispense with proof of an intended act, omission or abetment contemplated by Section 114(i). On the material available, the Department has not established such nexus. The alleged KYC deficiency, therefore, cannot by itself sustain the penalty.

15. As regards Section 117, being a residuary provision, it cannot be invoked in the absence of an identifiable contravention of the Customs Act or failure to comply with a statutory obligation attracting such penalty. In Sai Sea Logistics (I) Pvt. Ltd. v. Commissioner of Customs (Import), Nhava Sheva, 2009 (246) E.L.T. 543, the Tribunal set aside the penalty under Section 117 where the adjudicating authority had not specified the provision of law contravened by the appellant or established the requisite contravention. In the present case also, once the alleged omission is found insufficient to attract Section 114(i), the same omission cannot, without an independently established contravention, sustain a penalty under Section 117.

16. I therefore find that the Department has established, at the highest, an alleged deficiency in the extent of KYC/antecedent verification. It has not established any act, omission or abetment of the appellant having the requisite nexus with the prohibited goods. The circumstances relied upon in S. Chandrasekaran are absent, whereas International Cargo Services and Bhavani Shipping Services support the appellant's case.

17. In view of the foregoing, I hold that the Department has failed to establish that the appellant has committed or omitted any act which rendered the red sanders liable to confiscation or abetted their attempted export. The alleged KYC/antecedent verification deficiency, without any evidence connecting the appellant with the substitution or smuggling operation, is insufficient to attract Section 114(i). Section 117 also cannot independently sustain the penalty.

18. Thus, the penalty of Rs.2,00,000/- imposed on the appellant under Section 114(i) read with Section 117 of the Customs Act, 1962 is accordingly set aside. The impugned Order-in-Appeal No.139/2016 dated 01.11.2016 is modified to this extent. The appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 08.09.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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