IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.40978 of 2013

(Arising out of Order-in-Original No. 77/2013 dated 31.01.2013 passed by the Commissioner of Customs (Airport), Chennai)

Shri Chirag Jayant Shah **Appellant**
No.B-702, Firence, LC Extension
Kanderpada, Dahisar West
Mumbai – 400 068.

Vs.

Commissioner of Customs **Respondent**
Chennai Airport Commissionerate
Integrated Cargo Complex, Meenambakkam
Chennai – 600 027.

APPEARANCE:

Shri N. Balaji, Advocate for the Appellant
Shri P. Sree Ramamurthy, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41089/2026

Date of Hearing : 12.10.2026
Date of Decision: 15.10.2026

This appeal is filed by the appellant against Order-in-Original No. 77/2013 dated 31.01.2013 passed by the Commissioner of Customs (Airport), Chennai.

Brief Facts

2. The DRI gathered intelligence that branded glass chatons were being imported through Chennai Air Cargo Complex and Seaport under the guise of artificial/ imitation stones, by gross undervaluation and misuse of genuine or fictitious IECs. One such case involved Bill of Entry No. 295493 dated 16.09.2010, filed in the name of M/s. Sai

Communication, Agra, which was taken up for investigation. The investigation revealed an alleged scheme to import branded glass chatons by gross undervaluation and misuse of IECs obtained for consideration, with the goods ultimately delivered to Mumbai. Shri Chirag Jayant Shah, Assistant Manager of M/s. A.E. Logistics Pvt. Ltd., Mumbai, in his statements dated 07.10.2010 and 20.10.2010, is stated to have admitted that he handled international freight forwarding for imitation stones, introduced Shri Jatin Bachani to Shri Rajesh Jhaver of M/s. Sky Speed Freight Forwarders, Chennai, for Customs clearance, and provided a contact who could arrange IECs on rent. He also stated to have acknowledged knowledge of the goods as imitation stones but denied knowledge of who arranged the IEC of M/s. Sai Communication, Agra. The investigation alleged that he assisted the import and clearance arrangement involving Shyamlal Bachani, Jatin Bachani and Deepak Bachani. The Commissioner imposed a consolidated penalty of ₹1 lakh on Shri Chirag Jayant Shah under Sections 112(a) and 114AA of the Customs Act, 1962, which is challenged in the present appeal.

3. Shri N. Balaji, Ld. Counsel appeared for the appellant and Ld. Authorized representative Shri P. Sree Ramamurthy appeared for the respondent.

Submissions made by the Appellant

3.1 Shri N. Balaji, Ld. Counsel for the appellant submitted as under:

A. The allegation that the appellant was the actual owner of the imported glass chatons was unsupported by evidence. Shri Shyamlal Bachani had neither disclosed the name of the Appellant's alleged Hong Kong firm nor produced any documentary evidence, such as invoices

or financial correspondence, to substantiate his claim. His evasive replies and failure to respond to repeated summons, undermined the credibility of the allegation.

B. The Appellant was merely an Assistant Manager of M/s. A.E. Logistics Pvt. Ltd., Mumbai. His role was limited to providing Shri Jatin Bachani with the contact details of a person who could arrange an IEC and introducing him to Rajesh Jhaver of M/s. Sky Speed Freight Forwarders, Chennai, for Customs clearance at Chennai. He was unaware of who had arranged the IEC of M/s. Sai Communication, Agra, and that his knowledge of the goods being described as imitation stones did not establish ownership or participation in undervaluation.

C. It was submitted that the circumstances pointed instead to the Bachanis as the persons behind the imports. M/s. AVH International (HK) Ltd., operated by Shri Shyamlal Bachani, was engaged in the imitation-stone business, while the cleared goods were delivered to the Mumbai office associated with Shri Deepak Bachani and received by Shri Jatin Bachani, also known as Jay Bachani. The courier delivery records and Shri Jatin Bachani’s statement corroborated the identity of the recipient. There was no evidence to show that the Appellant had financed the imports or acquired the goods for himself.

D. It was Shri Rajesh Jhaver who had independently arranged import documents, used IECs of persons whose genuineness he had not verified, signed authorisations in the importers’ names, arranged Customs clearance and facilitated onward transportation. The Appellant contended that his introduction of Shri Rajesh Jhaver to Shri

Jatin Bachani did not establish that he knowingly participated in the alleged conspiracy or acted as a middleman for Shri Shyamlal Bachani.

E. Accordingly, the allegation that the Appellant had knowingly facilitated the undervaluation and clearance of the goods belonging to Shri Shyamlal Bachani and contended that the penalty imposed under Sections 112(a) and 114AA of the Customs Act, 1962, was not sustainable in the absence of evidence establishing the requisite knowledge, involvement or culpable conduct.

F. He prayed that the impugned order may be set aside.

Submissions made by the Respondent-Revenue

3.2 Shri P. Sree Ramamurthy the Authorized Representative, took me through the impugned order and submitted on behalf of Revenue that:

A. Shri Rajesh Jhaver of M/s. Sky Speed Freight Forwarders, Chennai, has acted as the middleman for Shri Shyamlal Bachani for Customs clearance at Chennai, at the behest of the Appellant.

B. The Appellant was a party to the conspiratorial arrangements for facilitating the import of the impugned goods through an IEC on rent, by which undervaluing the goods was facilitated, leading to attempted duty evasion.

C. He prayed that for the said reasons the penalty was correctly imposed, and the appeal may be rejected.

4. Heard the parties and perused the appeals. I find that there is no allegation against the appellant that shows that he has committed a blame-worthy act. Discussions on securing an IEC on loan basis by

the Appellant with any person is itself not a violation of any provision of the Customs Act or Rules framed there under.

5. The Appellant has drawn attention to the judgment of the Hon'ble Kerala High Court, decided on 21 July 2011, in the case of **Proprietor, Carmel Exports & Imports v. Commissioner of Customs, Cochin** [2012 (276) E.L.T. 505 (Ker.)], wherein the importer was only a 'name lender', but the actual beneficiary of the import is one Anwar. The Hon'ble Court held that Section 7 of the FTDR Act does not require the IEC holder to be the ultimate consumer or buyer of imported goods. Acting as a 'name lender' or importing goods for another person is not, by itself, prohibited, provided the import is otherwise lawful. I find that the judgment has been disagreed with by the Hon'ble Patna High Court in Bhaskar Logistics Services Pvt. Ltd. Vs UOI [2016 (34) ELT 17(Pat.)]. It held that section 7 and 19 of the FTDR Act read with the Rules, requires an importer to declare and use their own IEC only.

5.1 I also find that the question of importers/ exporters effecting imports/ exports by using IECs issued to others, was examined by the the Directorate General of Foreign Trade (DGFT) vide Policy Circular No. 6 (RE-2013)/2009-2014, dated the 16.09.2013. The relevant is reproduced below:

> **"Subject: Use of Importer-exporter Code Number allotted to them by the importers/exporters**
>
> It has been brought to the notice of this Directorate that some importers/exporters are effecting imports/exports by using IECs issued to others which is a complete violation of provisions of Foreign Trade Policy.
>
> 2. **As per the Section 7 of The Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010 read along with Rule 12 of Foreign Trade (Regulation) Rules, 1993 every person should**

make import or export only with Importer-exporter Code Number allotted to him. This has been further amplified by Para 2.9.2 of Handbook of Procedures, Vol.1, 2009-14 which states that an IEC number allotted to an applicant is valid for all its branches / divisions / units / factories. Therefore, the IEC Number cannot be used by anyone other the IEC holder himself/herself.

3. **In view of the above, use of IEC by the person other than IEC holder himself is a violation of the above provisions and would attract action under Section 8 and 11 of The Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010, except in case importers or exporters are exempted from obtaining IEC and who use permanent (common) IEC Numbers under Para 2.8 of Handbook of Procedure, Vol.1, 2009-14.**

4. Therefore, importers/exporters as well as all other stake holders are cautioned to comply with the provisions of FT(DR) Act and Rules made thereunder while using their IEC Number. Non-compliance/ violation of these provisions would attract action in the form of suspension/cancellation of IEC or imposition of penalty, as appropriate, under the relevant provisions of FT(DR) Act and Rules."

(emphasis added)

6. However, the issue is not of relevance in this case as the order against the Appellant does not find that the Appellant himself imported goods using a different IEC, but only that as a part of a conspiracy, he informed an importer about some person who was a Freight Forwarder and could allegedly procure a licence on rent. Introducing Freight Forwarders to an importer is not a violation of the Customs Act. The role of the Appellant in actually procuring the license is also not brought out with any evidence.

6.1 The term 'conspiracy' is not defined under the Customs Act, 1962. Its closest statutory definition is under Section 120-A of the erstwhile Indian Penal Code (IPC), now Section 61(1) of the Bharatiya Nyaya Sanhita, 2023 (BNS), which defines criminal conspiracy as an

agreement between two or more persons to commit an illegal act or a lawful act by illegal means. This definition though not directly applicable would help us understand the allegation made.

7. There is nothing in the allegations to show that the Appellant was involved in an illegal act or that he had knowledge of any illegal activity. Hence the charge must fail and the impugned order merits to be set aside.

8. The impugned order is hence set aside. The Appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Pronounced in open court on 15.10.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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