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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75522 of 2014

(Arising out of Order-in-Original No. KOL/CUS/PORT/05/2014 dated 16.01.2014 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. The India Mercantile Agency **: Appellant**
CHA Agent's Hall,
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

VERSUS

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

AND

Customs Appeal No. 75521 of 2014

(Arising out of Order-in-Original No. KOL/CUS/PORT/05/2014 dated 16.01.2014 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Dipankar Sen, Partner, **: Appellant**
M/s. The India Mercantile Agency
6, Motilal Nehru Road, 2nd Floor, Manorama Building
Kolkata – 700 029 (West Bengal)

VERSUS

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

APPEARANCE:

Shri R.N. Bandyopadhyay, and Smt. Rupsha Chatterjee, both Advocates,
For the Appellant(s)

Shri S. Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76572-76573 / 2026

DATE OF HEARING: 28.09.2026

DATE OF DECISION: 30.10.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeals have been filed against the Order-in-Original No. KOL/CUS/PORT/05/2014 dated 16.01.2014, passed by the Ld. Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata, insofar as the same imposes penalties of Rs.10,00,000/- upon M/s. The Indian Mercantile Agency, a Customs House Agent (CHA) firm (hereinafter referred to as the "appellant No. 1"), and Rs.5,00,000/- upon Shri Dipankar Sen, partner of the said firm (hereinafter referred to as the "appellant No. 2"), under Section 114 of the Customs Act, 1962 on the ground of aiding / abetting the alleged attempted export of old, used and rejected leather garments and footwear, purportedly mis-declared in respect of their description, quality and value with a view to enable availment of undue duty drawback thereon.

2. The facts of the case are that the proceedings originated from specific intelligence received by the officers of the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit, concerning the attempted export of old, used and rejected leather garments and shoes under mis-declared descriptions and values, allegedly with the object of claiming an undue duty drawback benefit. Acting upon such intelligence, officers of the DRI visited the Haldia Dock Complex, Kolkata on 27.04.2012 and intercepted four containers bearing Nos. PALU 5010309, CRXU 3196050, PALU 5011115 and PALU 5007455, which were found loaded on four carrier trucks. Upon verification, the said containers were found to contain goods pertaining to export consignments covered by 12 (twelve) Bills of Entry, of which six were in the name of the exporter, M/s. Tara India and the

remaining six were in the name of the exporter, M/s. Krish Exports, with the descriptions therein being given as leather jackets, leather waistcoats, leather shoes, leather skirts and leather pants.

3. The DRI officers thereafter examined the export consignments in the presence of representatives of the CHA firm, namely, M/s. The Indian Mercantile Agency (appellant no. 1 herein). Upon examination, it appeared to the officers of the DRI that the various leather items were old, used and rejected goods of very cheap quality, possessing negligible or no commercial value. It was thus alleged that the goods had been mis-declared in respect of their quality, description and value. The goods were seized on 28.04.2012, pursuant to container-wise inventories prepared on the same date.

4. Thereafter, the investigation was extended to the freight forwarder, M/s. Trexim Shipping Corporation, and its proprietor, Shri Sanjay Singh Mourya. In the course of such investigation, it was gathered that M/s. Trexim Shipping Corporation did not possess a CHA licence of its own and had used the CHA licence of M/s. The Indian Mercantile Agency / appellant no. 1 for handling the customs clearance of the export consignments in question. The investigation was subsequently extended to, inter alia, M/s. Tara India and M/s. Krish Exports, the exporting firms. Summons were issued to various persons alleged to have been connected with the transactions, and their statements were recorded during the course of the investigation. Among those summoned was Shri Dipankar Sen, partner of the CHA firm / appellant No. 2 herein.

4.1. In his statement dated 08.05.2012, recorded under Section 108 of the Customs Act, 1962, the appellant No. 2 stated, inter alia, that the export consignments stuffed in the four containers intercepted at Haldia had been handled by the freight-forwarding firm, namely, M/s. Trexim Shipping Corporation, which was owned by Shri Sanjay Singh Mourya. He stated that an agreement existed between his CHA firm and M/s. Trexim Shipping Corporation for the promotion and development of the business of both firms. He further stated that, acting in good faith, he had not verified the signatures of the exporters appearing on the relevant documents; that he had filed Annexure-A with CMC through his authorised person, Shri Sankha Subhra Aich, and that he had not personally seen the goods before they were stuffed into the containers.

5. From the investigation conducted, it was inferred that one Shri Manish Singh was the principal person behind the attempted fraudulent and illegal export of old, used and rejected factory-reject leather garments, purportedly undertaken with the object of availing an undue duty drawback benefit. It was alleged that Shri Manish Singh had procured the goods in question, which were sought to be exported under the names of M/s. Tara India and M/s. Krish Exports; the proprietrix of M/s. Tara India was stated to be Smt. Shakuntala Singh, mother of Shri Manish Singh, and that Shri Manish Singh himself looked after the affairs of the said firm; that Shri Manish Singh had obtained the Importer Exporter Code (IEC) particulars of M/s. Krish Exports, the other exporting firm, for facilitating the fraudulent export of a portion of the goods in the name of that firm, allegedly in exchange for monetary or other consideration. Accordingly, on

the basis of the investigation, it was alleged that Shri Manish Singh had procured cheap and low-value goods for export under the names of the two firms, stored the goods in his godown at Kolkata, arranged for their stuffing into the four containers, and organised the associated logistics, including the hiring of containers, transportation of the goods to Haldia Dock Complex and appointment of a CHA through the freight forwarder, M/s. Trexim Shipping Corporation.

5.1. In this connection, the Revenue alleged that the appellant no. 1 (CHA) had wilfully and knowingly permitted M/s. Trexim Shipping Corporation to use its CHA licence for handling the customs clearance of the export consignments, thereby facilitating the attempted exports and abetting the alleged wrongful availment of duty drawback. The allegation against the appellants was thus founded principally upon the asserted use of the CHA firm's licence by the freight forwarder as well as the alleged lapses on the part of appellant No. 2 in verifying the credentials of the exporters and the relevant export documents.

5.2. The statement of Shri Dipankar Sen / appellant No. 2 was also relied upon in support of the allegation that the CHA firm had failed to exercise due care in handling the consignments. In particular, the investigation referred to his alleged admission that he had neither met the exporters nor spoken to them, had not verified the signatures appearing on the export documents, and had permitted Dock Sircar licences to be given to persons who were employees of the freight-forwarding firm rather than employees of the CHA firm.

5.3. On the basis of these circumstances, the Revenue alleged that the appellants had, through their respective acts of omission and commission, facilitated the attempted export of mis-declared goods and were consequently liable to penal action under Section 114 of the Customs Act, 1962, for their alleged role in rendering the goods liable to confiscation under Section 113 of the Act.

6. Accordingly, a Show Cause Notice dated 19.10.2012 was issued to M/s. Tara India, M/s. Krish Exports, Shri Manish Singh and various other co-noticees, including the present appellants. The Notice, inter alia, proposed the imposition of penalties upon the appellants under Section 114 of the Customs Act, 1962, on account of the alleged acts of omission and commission attributed to them in connection with the export consignments seized by the DRI.

6.1. Upon adjudication, the ld. adjudicating authority, vide the impugned order, apart from ordered confiscation of the goods under Section 113(i) of the Customs Act, 1962 allowing their redemption thereof under Section 125 ibid. and ordering denial of the respective duty drawback claims made by the exporting firms, also imposed penalties upon various co-noticees, having regard to the respective roles attributed to them in the alleged attempted fraudulent exports. Insofar as the present appellants are concerned, a penalty of Rs.10,00,000/- was imposed upon M/s. The Indian Mercantile Agency / the CHA firm, and a further penalty of Rs.5,00,000/- was imposed upon Shri Dipankar Sen, its partner, under Section 114 of the Customs Act, 1962.

6.2. Aggrieved by the imposition of the aforesaid penalties, the appellants have filed the instant appeals.

7. At the outset, the Ld. Counsel appearing on behalf of the appellants drew our attention to the fact that in respect of the very same goods and the same investigation which forms the substratum of the present proceedings, separate proceedings had been initiated against appellant No. 1, the Customs House Agent, under Regulation 22(7) of the Customs House Agents Licensing Regulations, 2004. It has been submitted that the said proceedings culminated in Order-in-Original No. KOL/CUS/AIRPORT/ ADMN/12/2014 dated 11.08.2014, whereby the Customs House Agent's Licence of appellant No. 1 was revoked and forfeiture of its security deposit was also ordered, in terms of Regulation 20(1) of the said Regulations.

7.1. Without prejudice to the above, the Ld. Counsel for the appellants has also advanced various submissions on the merits of the penalties impugned in the present appeals, which are reproduced hereinbelow: -

A. No direct involvement or conscious abetment in the attempted fraudulent export

(i) The impugned export consignments were allegedly mis-declared and overvalued by the exporters for the purpose of claiming undue duty drawback. The investigation itself attributed the principal fraudulent activity to other persons, including Shri Manish Singh and the exporters.

(ii) The appellants were merely the CHA firm and its partner who processed the documents. There is no positive evidence on record to establish that the Appellants:

- Had knowledge that the goods were old, used or otherwise not as declared.
- Participated in the preparation of false invoices or shipping documents.
- Had knowledge of the alleged overvaluation or fraudulent drawback claim.
- Arranged the goods, transport or stuffing of the containers.
- Received any part of the alleged undue drawback.
- Conspired with the exporters or other persons to commit the attempted fraudulent export.

(iii) The learned Commissioner has principally relied upon the alleged failure to verify the exporters' credentials, signatures and authorisation letters. However, such omissions, even if established, are distinct from proving that the CHA knowingly abetted the attempted fraudulent export.

(iv) The absence of knowledge and active participation is a material circumstance which goes to the root of the penalty proceedings under Section 114.

B. Scope of Section 114 of the Customs Act, 1962

(i) Section 114 provides for penalty in relation to goods which are liable to confiscation under Section 113. However, the provision must be applied to the particular act or omission of the person sought to be penalised. The Appellants submit that: 1) The goods were alleged to be liable to confiscation due to misdeclaration and overvaluation; 2) The alleged misdeclaration was attributable to the exporters and other persons; 3) There is no finding supported by evidence that the Appellants knowingly caused or abetted the particular acts rendering the goods liable to confiscation; 4) The mere filing of shipping bills cannot, without more, establish the Appellants' participation in the fraud.

(ii) The Appellants accordingly submit that the ingredients of Section 114 are not satisfied against them.

C. Regulatory lapse under CHALR, 2004 cannot automatically lead to penalty under Section 114

(i) The impugned order relies upon alleged violations of Regulation 13(a), 13(b) and 13(o) of the Customs House Agents Licensing Regulations, 2004.

(ii) Regulation 13 prescribed obligations concerning authorisation, dealings with Customs and verification of the client. The Appellants submit that any alleged failure in compliance with those regulatory obligations is required to be dealt with under the licensing regulations.

(iii) The Customs Act and the CHALR operate in different fields. A licensing violation does not, without proof of the necessary ingredients,

automatically establish abetment of a fraudulent export under Section 114.

(iv) The distinction is important in the present case because the Appellants' alleged lapse is essentially that they relied upon documents and authorisation letters supplied through the freight forwarder and did not independently verify the signatures or exporters. The Appellants deny any knowledge of the fraudulent scheme.

(v) The Tribunal has repeatedly distinguished between a regulatory breach and penal liability under the Customs Act. The authorities cited below support the Appellants' contention that the evidence must establish the requisite connection between the CHA's conduct and the confiscable export goods. Reliance is placed on the following decisions: -

- *2023 (385) E.L.T. 270 (Tri. - Chennai)/(2023) 4 Centax 391 (Tri. - Chennai) - CHAKIAT AGENCIES Versus COMMISSIONER OF CUSTOMS (EXPORTS), CHENNAI*
- *2021 (375) E.L.T. 683 (Tri. - Del.) - RAJESH GABA Versus COMMISSIONER OF CUS. (IMPORT), ICD TUGHLAKABAD*
- *2020 (372) E.L.T. 332 (Del.) - COMMISSIONER OF CUSTOMS (IMPORT) Versus TRINETRA IMPEX PVT. LTD.*

7.2. In view of the above facts and submissions, the Ld. Counsel for the appellants have prayed that the penalties imposed upon the appellants herein under Section 114 of the Customs Act, 1962 be set aside.

8. On the other hand, the Ld. Authorized Representative of the Revenue justified the imposition of penalties on both the appellants under Section 114 of the Act, which, according to him, requires to be upheld in the facts and circumstances of the case. Accordingly, it is his contention that the appeals are devoid of any merit.

9. Heard both sides and perused the documents placed before us.

10. We observe that the challenge in the present appeals is confined to the sustainability, in law, of the penalties imposed upon M/s. The Indian Mercantile Agency, the Customs House Agent (CHA) firm (the appellant No. 1), and Shri Dipankar Sen, its partner (the appellant No. 2), under Section 114 of the Customs Act, 1962. The legality of the confiscation ordered in respect of the goods, the denial of the duty drawback claims of the exporters, and the substantive findings recorded against the other noticees are not the subject matter of the present dispute.

10.1. At the very threshold, we find it necessary to advert to a significant circumstance which has a bearing upon the question of imposition of penalty on the appellants. It is observed that separate proceedings, on the same factual substratum of the present proceedings, concerning the very same goods and arising from the same investigative matrix, had been initiated against the appellant No. 1 / CHA under Regulation 22(7) of the Customs House Agents Licensing Regulations (CHALR), 2004, which culminated in Order-in-Original No. KOL/CUS/AIRPORT/ADMN/12/2014 dated 11.08.2014, whereby the competent licensing authority ordered revocation of the CHA licence of

Appellant No. 1 and forfeiture of its security deposit in terms of Regulation 20(1) of the said Regulations. Therefore, by way of the above proceedings, the competent authority has already inflicted the highest standard of administrative penalty on the appellant-CHA. Considering the fact that separate proceedings had been initiated against appellant No. 1 under the CHALR, 2004 in respect of the very same goods and investigation, we agree with the submission made by the appellants that the penalties imposed under the Customs Act, 1962 for the same allegations and offence, are not sustainable in the eyes of law.

11. Even otherwise, upon an independent examination of the allegations levelled against the appellants and the evidence brought on record, we find that the ld. adjudicating authority has principally rested its conclusions upon the alleged failure of the appellants to verify the credentials of the exporters, the genuineness of the signatures appearing on the export documents and the authenticity of the authorisation letters. While such omissions may undoubtedly constitute a breach of the obligations incumbent upon a Customs House Agent (CHA) under the Customs House Agents Licensing Regulations (CHALR), 2004, the same cannot, without more, be equated to a circumstance inviting penalty under Section 114 of the Customs Act, 1962. The material relied upon against the appellants substantially concerns the manner in which the export documentation was processed and the alleged failure to exercise due diligence in verifying the particulars and authorisations furnished in connection therewith. However, a scrutiny of the record, as placed before us, does not disclose any cogent evidence establishing that the appellants had knowledge that the goods in

question comprised old, used or rejected garments and footwear, contrary to the descriptions declared for export; or that they had participated in the preparation of false invoices or other fabricated export documents; or that they had prior knowledge about such alleged overvaluation of the goods or the contemplated fraudulent availment of duty drawback.

11.1. Equally, there is no material demonstrating that the appellants had procured or arranged the goods, organised their transportation or stuffing into the containers, or otherwise participated in the operational arrangements allegedly undertaken by the persons identified as being behind the attempted export. Nor has any evidence been brought to our notice to establish that either appellant received any part of the alleged undue drawback, entered into a conspiracy with the exporters or other persons concerned, or knowingly facilitated the attempted export of the goods by resorting to any act or omission intended to further the alleged fraud. The absence of such evidence is material, for the liability contemplated under Section 114 cannot be founded merely upon the association with the consignments as a CHA or upon the fact that their CHA licence was utilised in processing the export documentation. The statutory requirement is not satisfied by association or procedural involvement alone; the act or omission attributable to the person proceeded against must be examined in the context of the statutory ingredients governing the imposition of penalty.

11.2. We are, therefore, of the considered view that the alleged lapses and omissions in verifying the antecedents of the exporters, their signatures and the supporting export documents, even if accepted as

established, must be distinguished from the more serious allegation that the appellants knowingly abetted an attempted fraudulent export.

12. This distinction between a breach of licensing obligations and the establishment of penal liability under the Customs Act has also been considered by this Tribunal in various decisions. The same issue came up for consideration in the case of *Chakiat Agencies v. Commissioner of Customs (Export), Chennai [2023 (385) E.L.T. 270 (Tri. - Chennai)]*, wherein, under similar facts and circumstances, it was observed as under: -

> *"9. Be that as it may, the appellant as a CHA cannot be expected to examine and ensure the nature of the goods in the consignment. In Para-65 of the impugned order, the adjudicating authority has observed that when the test report mentioned that the samples are naturally occurring Potassium Chloride, the CHA ought to have classified the goods under ITC HS 3104 20 00; and they ought to have not assisted the exporter in misdeclaring the goods as ITC HS as 2827 39 90. The classification is not mentioned in the test reports. The main reason for imposing penalty on the appellants is that they did not ensure correct classification of the goods so as to see whether the goods are restricted items. The original authority has held that the appellant has abetted in the attempt to export restricted goods as they did not exercise due diligence to ascertain the correctness of the information imparted by their client. There is no allegation or evidence to establish that the appellant had indulged in any overt act or played any role in any manner so to assist the exporter in his attempt to export the goods. The issue of classification is of complex nature.*
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> *10. The Tribunal in the case of HIM Logistics Pvt. Ltd. (supra) has held as under :*
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> *"2. From the impugned order, it appears that the original authority has levied the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of*

the goods being imported by his client. The appellant is mainly a CHA and the issue of classification is of complex nature. It cannot be said that the CHA should have information that the goods were 'Food Supplements' and not 'Medicaments'. It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order. The appeal stands disposed of accordingly."

11. After appreciating the evidence and following the decision of the Tribunal in the above case, we are of the view that the penalty imposed on the appellants under Section 114 of the Customs Act is not warranted and are therefore required to be set aside which we hereby do. The impugned order is modified to the extent of setting aside the penalties imposed on these appellants."

12.1. Similarly, in *Rajesh Gaba v. Commissioner of Cus. (Import), ICD, Tughlakabad [2021 (375) E.L.T. 683 (Tri. – Del.)],* it has been observed that: -

"15. Having considered the rival contentions, we find that no case of aiding and abetting is made out against this appellant. This appellant as an employee of the CHA company was working as per the instructions given to him by his senior. There is no case made out of any abnormal gain by the appellant to indicate any collusion or abetment on his part with the importer of the consignment under dispute Shri Goyal and/or Shri Brijesh Mishra. Penalty has been imposed mechanically without application of mind.."

13. In the light of the foregoing discussion, we take the view that the material on record does not adequately establish the requisite connection between the alleged procedural lapses of the appellants and the attempted fraudulent export in question so as to warrant the imposition of penalties upon them under Section 114 of the Customs Act, 1962.

14. Accordingly, the penalties of Rs.10,00,000/- imposed upon M/s. The Indian Mercantile Agency and Rs.5,00,000/- imposed upon Shri Dipankar Sen, under Section 114 of the Customs Act, 1962, are not sustainable and are hereby set aside.

15. In these terms, the appeals filed by both appellants are allowed.

(Order pronounced in the open court on **30.10.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd