

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10436 of 2024

(Arising out of Order in Appeal No. AHD-CUSTOM-000-APP-438-439-23-24, dated 13.02.2024 passed by the Commissioner (Appeals)-Customs, Ahmedabad)

M/s Aeromar Logistics (I) Pvt Ltd

...Appellant

Shiromani Complex, Opp Ocean Park,
Nehru Nagar Cross Road, Ambawadi,
Ahmedabad, Gujarat-380006

VERSUS

Commissioner of Customs –Ahmedabad

...Respondent

Office of the Pr. Commissioner of Customs, 1st Floor,
Customs House, Opposite Old High Court, Navrangpura

APPEARANCE:

Shri Dhaval K. Shah, Advocate appeared for the Appellant

Shri A.R. Kanani, Superintendent (AR) appeared for the Respondent

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)**

FINAL ORDER NO. 10240/2025

DATE OF HEARING: 12.03.2025
DATE OF DECISION: 11.04.2025

SATENDRA VIKRAM SINGH:

The present appeal has been filed by M/s Aeromar Logistics (I) Pvt Ltd. against the order-in-appeal No. AHD-CUSTOM-000-APP-438-439-23-24 dated 13.02.2024 passed by the Commissioner (Appeals), Customs Ahmedabad in the appeals filed by M/s Dhanlabh Logistics (CHA) and M/s Aeromar Logistics against the order dated 29.12.2021 passed by the adjudicating authority. The case was made by the department against the exporter M/s Fusion Overseas [IEC No. AAGFF8041A] Shop No.-17, LSC Market, Block LU, Pitampura, Delhi wherein the present appellant was one of the co-noticee in the show cause notice dated 11.01.2021.

2.1 The facts of the case are that on the basis of inputs received, Preventive officers of Ahmedabad Customs intercepted export consignments of M/s Fusion Overseas at ICD Khodiyar. They examined 126 boxes of export cargo under 6 shipping bills said to contain "Super Ceramic Coating (Pro Polish)". On examination, they found difference not only in quantitative terms but also the goods were highly over valued to the extent of 22 times. Shri Rajiv Arya and Shri Satyavir Singh are the partners of the export firm. The Customs officials conducted inquiry against the exporter by searching his declared premises. They recorded the statements of Shri Rajiv Arya (partner) under Section 108 of the

Customs Act, 1962 wherein he claimed that one Shri Prince having Mobile No. 9818498910 and 9966745754 is the real beneficiary of the firm. The inquiry conducted at the end of M/s Dhanlabh Logisitcs, Ahmedabad, (CHA in the case) revealed that he had received the invoices, packing list, KYC etc., of the exporter through M/s Aeromar Logistics (I) Pvt. Ltd., Ambawadi, Ahmedabad. Upon inquiry, M/s Aeromar Logisitcs (the appellant in this case) informed that they had received all export documents through M/s Mass Shipping Agencies, Naraina, New Delhi, whose proprietor was Smt. Manju Kumar Jha. The summons issued to Smt Manju Kumar Jha were received back from the postal authorities with remark "The office is locked since long". Subsequent summons issued to partners of M/s Fusion Overseas were also received back undelivered

2.2 The officers conducted inquiry at the end of the manufacturer of the said goods as per lables pasted on the plastic bottles of the export consignment. They sent E-mail dated 01.01.2021 to M/s Shine 'n' Care (India) Faridabad, who vide e-mail dated 02.01.2021 intimated that:

"they are not Mfg. this product. May be someone have use our company name & market this product. We wish to inform you that we sold around 10 Tons of one of our regular product Dash Board Polish in 50 Kg. packing to M/s. Greek Retail Pvt. Ltd. Plot No. 158, Industrial Area, Phase 1, Panchkula, Haryana 134113..... The duration of our deal/ supply from 18.05.2018 to 07.07.2018..."

2.3 After completing investigation, show cause notice dated 11.01.2021 was issued to the exporter proposing rejection of FOB value, confiscation of export goods along with penalty upon the exporter, it's partner Shri Rajiv Arya, the CHA of M/s Dhanlabh Logisitcs, M/s Aeromar Logistics and M/s Mass Shipping Agency under Section 114(iii) and Section 114AA respectively of the Customs Act, 1962. It is alleged against the appellant that they did not verify the genuineness of the documents received from M/s Mass Shipping Agency through E-mail and passed on the said documents to the CHA. The adjudicating authority rejected the declared FOB value of Rs.3,82,54,946/- and redetermined the FOB value as Rs. 16,81,598/-, confiscated the impugned goods with option to redeem the same on payment of redemption fine of Rs. One crore. He imposed penalty of Rs. One crore each on the exporter under both the Sections i.e. Section 114(iii) and 114AA of the Customs Act, 1962. He also imposed penalty of Rs. 50 Lakh each on M/s Mass Shipping Agency, Shri Rajiv Arya, partner of the exporting firm, M/s Aeromar Logisitcs & M/s Dhanlabh

Logistics LLP under both the section i.e. section 114(iii) and 114AA respectively.

2.4 The appellant filed appeal before the Commissioner (Appeals) who vide order-in-appeal No. AHD-CUSTOM-000-APP-438-439-23-24 dated 13.02.2024 upheld the order and rejected the appeal filed by the appellant. Hence, the present appeal.

2.5 On behalf of the appellant, Learned Advocate argued that the party has not acted against the interest of Revenue. They have no obligation under the Customs law to fulfill any conditions as prescribed for the CHA under CBLR, 2018. They have acted as intermediary who received documents from third party and forwarded to the CHA who was obliged to comply with all the obligations under Customs Broker Licensing Regulations, 2018 read with the Customs Act. The obligations under the Customs Act are on the exporter and the CHA but not on the intermediary. The impugned order is violating principles of natural justice as none of the referred case laws have been considered and discussed by the learned Appellate Authority. No case has been made out against the appellant for imposition of penalty under Section 114(iii) and 114AA of the Customs Act, 1962 as the appellant has neither signed nor used any declaration, statement or document intentionally or unintentionally. There is no finding as to how goods have become liable to confiscation under Section 113 of the Customs Act only because the documents have been received from a third party and forwarded to the CHA. He cited the decision of the Tribunal in the case of PD Prasad & Sons Pvt Ltd. vs CC (Export-Delhi) 2017 (358) ELT 1004 (Tri. Del.) and the case of M/s Cochin Air Cargo Clearing House vs. CC (Preventive), Tiruchirapalli 2023 (9) TMI 1198-CESTAT Chennai. He pleaded for setting aside the penalty on the appellant.

3. Learned AR, on the other hand, reiterated the findings of the lower authorities and tried to justify penalties imposed on the appellant. He highlighted the decision of the Tribunal in the case of Harsons Overseas vs CC&CE-Delhi-IV 2019 (369) ELT 1582 and M/s SRJ International vs CC-Amritsar 2011 (269) ELT 497 (Tri. Del.).

4. Heard the rival submissions. From the records and the submissions of the learned Advocate, it is clear that the department has not recorded any statement of the appellant during investigation. The department sent a simple letter to the appellant to inquire about receipt of export documents to which he replied as having been received from M/s Mass

Shipping Agencies, New Delhi through E-mail. No further investigation seem to have been done at his end to bring out his role in alleged export of goods. The appellant has acted as intermediary in the case who only transmitted the export documents received from M/s Mass Shipping Agency to the CHA for filing the shipping bills with the Customs Authorities. The department has not substantiated charges of abetment or submission of false documents or material to justify penalty upon him under Section 114(iii) and 114AA of the Customs Act respectively.

5. We find that a similar issue was decided by this Tribunal in the case of Bansal Fine Foods Pvt. Ltd. Vs. Commissioner of Customs, Mundra at 2023 5 Centax 109 (Tri.-Ahmd.) wherein it was held that “CHA who filed shipping bills as per documents provided by Indian exporter is not liable to penalty under section 114 and 114AA of Customs Act, 1962 when export consignment was rerouted to another country but ultimately delivered to original consignee.” The relevant para 5.7 of this order is reproduced below: -

“5.7 In respect of the Appeal filed by M/s. V. Arjoon, CHA, we find that the CHA had filed shipping bills as per the documents provided to him by exporter. Therefore, the bonafide act of the Appellant cannot be doubted. The act of filing the export documents for customs clearances shows that the appellant has no mens rea and filed the documents being a bona fide facilitator. Further, in any event of the matter, since we have already held that the goods were ultimately delivered to the buyers at Iran, there is no justification for imposing penalty upon the appellant, therefore, the penalty imposed on the appellant is set aside”.

6. In the case of Rajeev Khatri Vs. Commissioner of Customs (Export) at (2023) 9 Centax 412 (Del.), Hon’ble High Court of Delhi has given following findings: -

“30. Thus, indisputably, persons who have committed the acts of omission or commission in relation to goods that rendered them liable for confiscation, are liable to pay the penalty as stipulated under section 112(a) of the Customs Act, without any requirement to establish their mal intent. However, the same principle would not apply to persons who are alleged to have abetted such acts of omission or commission. This is because, abetment, necessarily requires, at the minimum, knowledge of the offending Act.

31. The use of the expression 'abet' in Section 112(a) of the Customs Act, makes it implicit that the person charged, who is alleged to have abetted the acts of omission or commission, has knowledge and is aware of the said acts. A plain meaning of the word 'abet' means instigation, aid, encouragement of an offence. It necessarily involves the knowledge that the act being abetted is wrong.

32. *The Black's Law Dictionary defines the expression 'abet' as under:*

"1. To aid, encourage, or assist (someone), esp. in the commission of a crime <abet a known felon>. 2. To support (a crime) by active assistance <abet a burglary>."

33. *In Queen v. Coney & Ors. (1882) 8 Q.B.D. 534: the Court for Crowned Cases Reserved held as under:*

"To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals. Encouragement does not, or necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwittingly encourage another in fact by his presence, by misinterpreted gestures, or by his silence or non-interference - or he may encourage intentionally by expressions, gestures, or actions, intended to signify approval. In the latter case, he aids and abets; in the former he does not. It is no criminal offence to stand by a mere passive spectator of a crime, even of a murder. Non interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to present it, and had the power so to do or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he willfully encouraged, and so aided and abetted. But it would be purely a question for the jury whether he did so or not."

34. *Section 3(1) of the General Clauses Act, 1897 expressly provides that the expression 'abet'⁴ would have the same meaning as in the Indian Penal Code, 1860 (hereafter 'the IPC').*

35. *Section 107 of the IPC explains the meaning of the expression 'abetment of a thing'. The said Section of the IPC reads as under:*

"107. Abetment of a thing. —A person abets the doing of a thing, who—

First. — Instigates any person to do that thing; or

Secondly. — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. — A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2. — Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

36. *Thus, in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation.*

37. *It is apparent from the above that the knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under section 111 of the Customs Act, is a necessary element for the offence of abetting the doing of such an act.*

38. *In Shree Ram v. State of U.P.: 1975 3 SCC 495, the Supreme Court held as under:*

"6.Section 107 of the Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who "Intentionally aids, by any act or illegal omission, the doing of that thing". Explanation 2 to the section says that "whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act". Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third para of Section 107."

39. *In Amritlakshmi Machine Works v. The Commissioner of Customs (Import), Mumbai: [2016 \(335\) E.L.T. 225](#) (Bom.) (FB)/[216] 66 taxmann.com 49 (Bom.)(FB), a Full Bench of the Bombay High Court had considered the aforesaid issue and held that the word 'abetment' is required to be assigned the same meaning as under section 3(1) of the General Clauses Act, 1897. The court further opined as under:*

"31.Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof

"Any person - (a) who in relation to any goods does or omits to do any act" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty."

40. *We respectfully concur with the aforesaid view. This view has also been consistently followed by the Tribunal.*

41. *In Commissioner of Customs (Import) v. Trinetra Impex Pvt. Ltd.: [\(2020\) 372 E.L.T. 332](#) (Del.), a Co-ordinate Bench of this Court had rejected the Revenue's appeal against an order of the Tribunal setting aside the levy of penalty on a CHA under section 112(a) of the Customs Act. This Court had referred to the decision of the Bombay High Court in Amritlakshmi Machine Works v. The Commissioner of Customs (Import), Mumbai (supra) and held as under:*

"11. In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under section 111 of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under section 112(a) of the Act, mens rea may not be required to be provided as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present."

7. In above case laws, it has been held show that penalty under Customs Act can be imposed on a person only if some positive Act of his involvement in fraudulent import/export is found with credible evidence. If a CHA fails to fulfill the obligation cast upon him under CBLR, 2018, appropriate action needs to be taken under those regulations. In this case, the appellant is not even a CHA. He just acted as an intermediary to forward the export documents/ KYC etc. received from M/s Mass Shipping Agency to the CHA. As discussed, the department has not adduced any evidence against the appellant establishing abetment in alleged fraudulent activity of the exporter. Also, no evidence has been brought forward to show that the appellant used false and incorrect material in the case

which led to confiscation of export goods. What has come out, is that the appellant received KYC documents, export invoices, packing lists, etc. of the exporter from some other Agency on his mail which he forwarded to CHA for filing papers with Customs. Therefore, the appellant cannot be penalised under Section 114(iii) and 114AA of the Customs Act, 1962.

8. In view of above, we find that the department has not brought out any evidence in this case to sustain allegation against the appellant. Therefore penalty has been imposed on him without credible evidence which is held unsustainable. Accordingly, appeal is allowed and order-in-appeal dated 13.02.2024 is set aside to the extent of upholding penalty upon the Appellant under Section 114(iii) and 114AA of the Customs Act, 1962.

9. The appeal is allowed with consequential benefit, if any, as per law.

(Order Pronounced in the open court on 11.04.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Neha