

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**CUSTOMS APPEAL No. 51120 of 2022**

(Arising out of Order-in-Original No. 04/2021/L.Y./COMMR/ICD/EXPORT/TKD dated 15.09.2021 passed by the Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi)

**M/s Safewater Lines (I) Pvt Ltd.**

**...Appellant**

AAF- 16, 1<sup>st</sup> Floor, Plot No. GH-07  
Shipra Krishna Azure,  
Kaushambi  
Ghaziabad, U.P.- 201010

VERSUS

**Commissioner of Customs (Export)**

**...Respondent**

Inland Container Depot  
Tughlakabad, New Delhi- 110020

**APPEARANCE:**

Shri G.K. Sarkar and Shri Prashant Shrivastava, advocates for the appellant  
Shri Rakesh Kumar, authorised representative of the department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing : 23.12.2024**

**Date of Decision : 04.06.2025**

**FINAL ORDER NO. 50834/2025**

**JUSTICE DILIP GUPTA :**

M/s Safewater Lines (I) Private Limited<sup>1</sup>, a freight forwarder, is aggrieved by the order dated 15.09.2021 passed by the Commissioner of Customs, Inland Container Depot, Tughlakabad<sup>2</sup> to the extent it imposes penalty of Rs. 10 lakhs upon the appellant under section 114 (iii) of the Customs Act, 1962<sup>3</sup>.

2. M/s Colour Cottex Pvt Ltd.<sup>4</sup> is engaged in the manufacture and export of Ready Made Garments. It entered into contracts for

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**1 the appellant  
2 the Commissioner  
3 the Customs Act  
4 Colour Cottex**

supplying Ready Made Garments<sup>5</sup> with Lagoon Trading LLC, Lagcy Trading LLC, and Royal Readymade Garments based in U.A.E. To encourage exports to remote markets, the Government introduced the Focus Market Scheme<sup>6</sup>, designed to offset higher freight costs borne by buyers. Under the FMS, exporters often offer reduced prices to customers in designated countries like Panama. This approach ensures competitiveness by partially absorbing the elevated freight costs, aligning with the objectives of the FMS. As per the contracts, Color Cottex was required to supply the goods on the prices stated in the agreement on FOB terms and to a place notified by the buyer. In terms of the contract, freight forwarders were solely responsible for undertaking shipping as per the instructions of the buyer. According to Colour Cottex, the buyer used to instruct the appellant telephonically to export the goods to a particular country, which was 'Panama' in this case, and accordingly Colour Cottex would send the goods along with the export documents, such as commercial invoice and packing list to the Customs House Agent for customs clearance for making exports to Panama who would send the exporter copy of Shipping Bills to Colour Cottex.

3. Out of the 211 shipping bills, the appellant carried the goods pertaining to only five shipping bills dated 13.03.2014. The appellant claims that there were no amendments carried out in TR-1/TR-2. According to the department, the freight forwarder had filed the Export General Manifest for transportation of the container stuffed with the export goods covered under the five shipping bills to

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5. the Goods

6. FMS

Panama, as the "Port of Discharge" but the said container was actually discharged at Jebel Ali, a port in United Arab Emirates. The Freight Forwarders involved were M/s Concorde Shipping & Logistics India and M/s Safewater Lines India Private Limited. Imran Mirza, proprietor of M/s Concorde Shipping in his statement dated 11.08.2017 made under section 108 of the Customs Act admitted that Rajesh Dhandha, Director of Colour Cottex had instructed him to divert the container to Jebel Ali and, accordingly, he had instructed Safewater Lines (the appellant), an intermediate freight forwarding agency, to divert the container to Jebel Ali. The Deputy Manager (Finance) of Safewater Lines in his statement dated 17.04.2017 recorded under section 108 of the Customs Act stated that Safewater Lines had further directed the Evergreen Shipping Agency to change the destination of the said container from Panama to Jebel Ali. The Assistant Manager (Finance and Supervising) of Evergreen Shipping Agency in his statement dated 23.03.2017 recorded under section 108 of the Customs Act stated that as per the instructions received from Safewater Lines, Evergreen Shipping Agency had brought back the said container from Panama and discharged the same as Jebel Ali. The Director of Color Cottex, in his statement dated 06.07.2017 recorded under section 108 of the Customs Act, admitted that as per instructions received from the buyer, he had instructed Imran Mirza for discharging the container at Jebel Ali.

4. The case of the department is that though the freight forwarder in the Export General Manifest had mentioned the same "Place of Delivery" which was printed in the shipping bills against the "Port of Discharge", but it discharged the said container at a different

place and so M/s Concorde Shipping (Freight Forwarding Agency), M/s Safewater Lines (Intermediate Freight Forwarding Agency), Evergreen Shipping Agency (Shipping line) and M/s Colour Cottex (Exporter) had assisted and connived with each other in diverting the export consignment covered under the five shipping bills to Jebel Ali to assist the exporter to fraudulently avail the benefit of the Focus Market Scheme without exporting the goods to the notified country.

5. A finding has been recorded in the impugned order that the "Port of Discharge" and "Country of Destination" in the five shipping bills were not amended, but the goods were diverted to Jebel Ali, a country which was not notified under the Focus Market Scheme.

6. The issue that arises for consideration in this appeal is whether penalty under section 114(iii) could have been imposed upon the appellant.

7. Before examining this issue, it would be pertinent to state that the Commissioner has found as a fact that the goods exported through the 211 shipping bills were liable for confiscation under section 113(d), (g) and (i) of the Customs Act. This finding has been recorded for the reason that the goods were diverted to Jebel Ali, though they were to be delivered at Panama and this was done wilfully by Colour Cottex with the help of Imran Mirza, Safewater Lines and the appellant. It needs to be noted that the impugned order has been passed in respect of Color Cottex, Imran Mirza, Evergreen Shipping Agency and Safewater Lines (the appellant). Color Cottex had filed Customs Appeal No. 55760 2023 and by an

order of date, the confiscation of the goods under section 113 of the Customs Act has been set aside.

8. The impugned order has imposed penalty upon the appellant under section 114 (iii) of the Finance Act for the following reasons:

“Similarly, M/s. Safewater Lines India Pvt. Ltd. (Intermediate Freight Forwarding Agency) cannot absolve itself of responsibility on the plea that they had not raised or issued any document. In their reply dated 23.1.2019, they have mentioned that they had instructed M/s. Evergreen Shipping Agency India Pvt. Ltd. to discharge the Container stuffed with the export goods covered under above said 5 Shipping Bills, at Jebel Ali, United Arab Emirates despite being cognisant of the fact that those Shipping Bills were filed for export of the goods to Colon Free Zone, Panama. I therefore find that the above Noticees had assisted, facilitated and connived with Shri Imran Mirza, Proprietor of M/s. Concorde Shipping & Logistics India (Freight Forwarding Agency) and M/s. Colour Cottex Pvt. Ltd. (Exporter) in diverting the above said Container stuffed with the export goods covered under said 5 Shipping Bills to Jebel Ali, United Arab Emirates, instead of Colon Free Zone, Panama, as declared before the Customs in those 5 Shipping Bills and hence I hold that they are liable to penal action under Section 114(iii) of the Customs Act, 1962.”

9. The case of Evergreen Shipping Agency is that it had delivered the container at Jebel Ali on the directions of Safewater Lines. Safewater Lines, in its defense stated that it had instructed Evergreen Shipping Agency to divert and deliver the container at Jebel Ali on the instructions of M/s Concorde Shipping, a Freight Forwarding Agency.

10. Penalty has been imposed on the appellant holding that the appellant assisted and connived with Imran Mirza, Proprietor of Concorde Shipping Agency and the exporter in diverting the container containing the export goods covered under subject five shipping bills.

11. Section 114 (iii) of the Customs Act provides that any person who, in relation to any goods, does or omits to do any act which act

or omission would render such goods liable to confiscation under section 113 of the Customs Act shall be liable to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Customs Act, which ever is greater. The Commissioner confiscated the goods under section 113 of the Customs Act. As noticed above, the confiscation of goods has been set aside by order of date in Customs Appeal No. 55760 of 2023 filed by Color Cottex. Consequently, penalty under section 114(iii) of the Customs Act cannot be levied upon the appellant.

12. Thus, the imposition of penalty under section 114(iii) of the Customs upon the appellant is set aside.

13. The impugned order dated 15.09.2021 passed by the Commissioner in so far as it imposes penalty upon the appellant is set aside and appeal is allowed.

(Order pronounced on **04.06.2025**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**