

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

Customs Appeal No. 42080 of 2014

(Both arising out of Order in Original No. 24505/2014 dated 01.04.2014 passed by the Commissioner of Customs (Seaport – Export), Chennai)

M/s. Meticulous Forwarders

New No. 166, Old No. 180
1st Floor, Angappa Naicken Street
Chennai – 600 001.

Appellant

Vs.

Commissioner of customs

Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

And

Customs Appeal No. 41142 of 2014

M/s. Masterstroke Freight Forwarders Pvt. Ltd. Appellant

S.M.Plaza, Room No. 10, Old No. 45, New No. 93,
Armenian Street, Chennai – 600 001.

Vs.

Commissioner of customs

Chennai II Commissionerate
Custom House, 60, Rajaji Salai, Chennai – 600 001.

Respondent

APPEARANCE:

Shri S. Murugappan, Advocate for Appeal No. C/42080/2014
Shri Mohamed Uvasullah Muhsin, Advocate for Appeal No. C/41142/2014
Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40725 & 40726/2025

Date of Hearing : 16.06.2025

Date of Decision: 14.07.2025

Per M. Ajit Kumar,

These appeals are filed against Order in Original No. 24505/2014 dated 01.04.2014 passed by the Commissioner of Customs (Seaport – Export), Chennai. (impugned order).

2. Brief facts in both the cases are that the appellants are CHAs who were involved in the clearance of raw silk yarn valued at Rs.3,36,10,6140/- imported by M/s. Kalp Impex allegedly by misusing the Advance Authorisation Scheme, in February 2009. The appellants were alleged to have aided and abetted in the clearance of the imported goods which were cleared duty-free, into the local market. Further they had without obtaining the requisite authorisations from the importer and without verifying the signatures of the authorized persons of both the High Sea Seller and buyer firm, presented the HSS agreement before the authorities for clearance of the goods and after clearance from the customs, the consignments have been booked to Bangalore instead of Surat at the instance of the High Seas Seller. Therefore it appeared that the appellants' act of omission / commission have rendered the goods liable for confiscation under sec. 111(o) of the Customs Act, 1962 and the appellants were liable to penalty under sec. 112(a) of the Act for abetment. After due process of law, the Ld. Commissioner held that the appellants are liable for penalty and imposed penalty of Rs.7,00,000/- each under sec. 112(a). Hence the present appeals.

3. The Ld. Advocate Shri S. Murugappan and Shri Mohamed Uvasullah Muhsin, appeared for the appellants and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

3.1 The Ld. Counsel for the appellants submitted that without prejudice and without admitting but assuming the allegations in the show cause notice to be correct for argument sake, not meeting an importer or not having a written authorization, not transporting the goods to Surat and sending it to Bangalore etc does not amount to rendering the goods liable to confiscation or to abetment thereof. In

this case, the confiscation is stated to arise in terms of section 111(d), (m) and (o) *ibid*. The allegations do not fall within the mischief of these provisions to be read with section 112(a) which is invoked against the appellants. The allegations of "active collusion with the so-called 'High Sea Sellers'" are unsupported by any evidence. Neither the show cause notice nor the impugned order cites any evidence in this regard. In view of the above, they prayed that the Tribunal may be pleased to set aside the impugned order dated 28.3.2014 passed by the Commissioner of Customs (Seaport – Export) with consequential relief and thus render justice.

3.2 Ld. Authorized Representative Shri Sanjay Kakkar appearing for revenue has reiterated the findings from the impugned order. He stated that *mens rea* was not an essential condition for the imposition of penalty under Section 112(a) of the Customs Act, 1962 and hence the omissions and commissions of the appellants which are in violation of the Custom House Agents Licencing Regulation 2004 and the Customs Act, had correctly been penalized under the Act. He hence prayed that the appeals may be rejected.

4. We have carefully gone through the appeal memorandum and have heard the parties to the appeals. We find that the dispute pertains to the alleged omission / commissions of the appellants-CHA's whereby duty-free goods imported under the Advance Authorisation Scheme, were diverted into the local market. The appellants have resisted the imposition of penalty under section 112(a) of the Customs Act, 1962.

5. Blameworthy conduct by a CB can be subject to penal action both under the Customs Act 1962 and the Custom House Agents Licensing Regulations, 2004 (**Regulations**) as was in vogue at the relevant time. Any contravention by the CB of the obligations under the Regulations,

even without intent would be sufficient to invite a penalty upon the CHA as stated in the Regulations, which could also extend to the more stringent provision of revocation of the Customs Brokers Licence. Hence the Regulations carves out a special treatment for acts of delinquency by the CB. Such actions are in essence disciplinary proceedings to ensure compliance with the regulatory provisions. [See: **SMS Logistics Vs Commissioner of Customs (General), New Customs House, New Delhi** - 2024 (387) E.L.T. 157 (Del.); **M/s. Raj Brothers Shipping Pvt. Ltd. Vs Commissioner of Customs (Import)** – CESTAT, Chennai, FINAL ORDER NO. 40631/2025, Dated: 20.06.2025]. However, any person including a CHA may be involved in blame worthy acts with the intention of helping the importer/ exporter evade payment of duty, by entering into a conspiracy/ collusion with an importer/ exporter or abetting them to defraud the exchequer etc. In such cases the cause of action is different from the role of a CHA under the Regulations and penal action can be taken under the Customs Act 1962. Moreover, if violations of both the laws are evident then action taken under the Customs Act shall be without prejudice to the action taken under the Regulations and the proceedings can, if the situation warrants, go on simultaneously.

6. When the legislature makes a special law, the presumption is that a general enactment is not intended to interfere with the special provision unless that intention of the legislature is stated very clearly. The specific prevails over the general. Each enactment must be construed in that respect according to its own subject matter and its own terms. The Hon'ble Supreme Court in **COMMERCIAL TAX OFFICER, RAJASTHAN v. M/S BINANI CEMENT LTD. & ANR.** [(2014) 3 S.C.R. 1] while examining this issue sated as under;

29. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the Latin maxim of *generalia specialibus non derogant*, i.e., general law yields to special law should they operate in the same field on same subject. (Vepa P. Sarathi, Interpretation of Statutes, 5th Ed., Eastern Book Company; N. S. Bindra's Interpretation of Statutes, 8th Ed., The Law Book Company; Craies on Statute Law, S.G.G.Edkar, 7th Ed., Sweet & Maxwell; Justice G.P. Singh, Principles of Statutory Interpretation, 13th Ed., LexisNexis; Craies on Legislation, Daniel Greenberg, 9th Ed., Thomson Sweet & Maxwell, Maxwell on Interpretation of Statutes, 12th Ed., Lexis Nexis)

(emphasis added)

Based on this understanding we can examine the facts of this case.

7. Para 40 of the impugned order brings out the role of the persons involved in the clearance of the impugned goods imported under the Advance Authorisation Licences and diverted to the local market, which is reproduced below for ease of reference.

40. Thus, the investigations carried out by DRI have allegedly revealed that Shri Kalpesh B. Patel, Proprietor of M/s. Kalp Impex in connivance with Shri Ramanand Surekha, High Sea Seller has diverted the duty free Mulberry Silk yarn, imported under Advance Authorization of M/s. Kalp Impex, in as such condition to the High Sea Seller of Bangalore i.e. M/s Goyal Enterprise without utilizing the same in the manufacturing of any resultant goods in violation to the provisions of the Foreign Trade Policy 2004-09 and the Notification No. 93/2004 Cus dated 10.09.2004 issued under the Customs Act, 1962. Further, M/s. Kalp Impex had also allegedly violated the main conditions of Bond given for import of goods under Advance Authorisation Licences at the port of importation in as much as the goods imported under Advance Authorisation were sold in as it condition in market i.e. the High Sea Sellers without consuming the same in the manufacturing of any resultant goods and without fulfillment of export obligation and evaded duty by way of willful mis-statement and suppression of the facts. (emphasis added)

The role of the appellants do not find a mention in the said para. The actions of the appellant are reflected at para 61 which is also reproduced below;

“The Role of Custom House Agents -CHAs:

61. The representatives of the Customs House Agents namely M/s. Meticulous Forwarders, Chennai and M/s. Masterstroke Freight Forwarders Pvt. Ltd., Chennai admitted in their respective statements that without knowing the proprietor of the importing firm i.e. M/s Kalp Impex, without obtaining the Authorisations from the

importer and without verifying the signatures of the authorised person of both the High Seas Seller and buyer firm they had presented the HSS agreement before the designated authority of Customs for Customs Clearance at the port of import. After Customs clearance they had booked the consignments to Bangalore instead of sending the subject goods to Surat at the instance of the High Seas Seller. They have therefore knowingly concerned themselves in dealing with the goods which they knew or had reasons to believe that the same were liable to confiscation under Section 111 (0) of the Customs Act, 1962 and thereby, rendered themselves liable to penal action under Section 112(a) of the Customs Act, 1962.

(ii) In the reply dated 18.10.2012 filed on behalf of M/s. Master Stroke Freight Forwarders P Shri. D. Sukumaran, Managing Director of M/s. Master Stroke Freight Forwarders P Ltd stated that they filed the bills of entry in the name of the High Sea buyer as per instructions vide communication dated 17.2.2009 of the High Sea buyer, that M/s. Kalp Impex approved them as per their CHA for clearance of cargo and that the statement of Shri. Natarajan was not voluntary one. I do not find any enclosures to the said letter even though Shri.D. Sukumaran claimed in the reply that he had enclosed a copy. Even otherwise I do not find any merit in this claim, in the absence of any retraction by Shri R. Natarajan, Senior Manager and Authorised Signatory of M/s. Masterstroke Freight Forwarders Pvt. Ltd., Chennai of his statement recorded on 13.07.2010.

(iii) By collecting documents from the High Sea Sellers without obtaining authorization from M/s. Kalp Impex and by engaging the transportation of the imported goods without authorization from M/s. Kalp Impex and thereby acting solely on the directions of the Shri. Ramanandh Surekha, the CHAs have committed a grave offence of actively engaging themselves with Shri Ramanandh Surekha in clearing and diverting the imported goods showing no concern for the obligations cast under the Advance Authorisation Scheme. But for their active role and connivance of Shri. Kalpesh Patel and Shri. Vishal J Agarwal, the High Sea Seller, namely, Shri Ramanandh Surekha could not have succeeded in clearing and diverting the material imported in e name of M/s. Kalp Impex in violation of the Notification 93/2004-Cus dated 10.09.2004. **The conduct of the CHAs was in violation of the Customs House Agents licensing Regulations, 2004 and the provisions of Customs Act, 1962. They have therefore knowingly concerned themselves in dealing with the goods which they knew or had reasons to believe that the same were liable to confiscation under Section 111(d) and (o) of the Customs Act, 1962. They have thereby, rendered themselves liable for penal action under Section 112(a) of the Customs Act.**

(emphasis added)

8. The penal provision of section112(a) of the Customs Act, 1962 which has been invoked in the impugned order, is reproduced below for ease of reference;

112. Penalty for improper importation of goods, etc.

Any person,-

(a) 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 111, or abets the doing or omission of such an act, or

(b)

(emphasis added)

9. An agreement between two or more persons to do an illegal act or legal acts by illegal means is a criminal conspiracy. The impugned order speaks of "active collusion" with the High Sea Sellers. Collusion involves a 'conspiracy' or an act of 'abetment'.

10. It is seen that words like 'omission' and 'abets' appearing in section 112(a) are not defined under the Customs Act, 1962. When a word is not defined under a Central Act, its meaning can be ascertained from the definition given under clause 3 of the **General Clauses Act, 1897**, unless there is anything repugnant in the subject or context. The said Act defines 'abet' to have the same meaning as in the Indian Penal Code, 1860 (IPC). The provisions of the Indian Penal Code, as they then stood, are not strictly applicable in quasi-judicial proceedings, as it was the main criminal code for the country while the Customs Act is a special statute dealing with tax matters. However, since the Customs Act does not define acts done by persons acting jointly to commit an offence or an actionable wrong, as is being made out in the above case, it may be relevant to look at certain sections of the Indian Penal Code as it then stood, to understand the legal issues involved;

S. 34. Acts done by several persons in furtherance of common intention. – When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

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S.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.

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.”

***** . ***** . *****

S. 120-A. Definition of criminal conspiracy. - When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

(emphasis added)

The above provisions apart from showing the requirement of mens rea also involve a 'common intention'. Hence to show 'active collusion' it has to also be shown that there was a common intention amongst the alleged collaborators involved in the evasion of duty. Further abetment involves a process of instigating or aiding another person to do a particular thing.

11. It is true that the provisions of the IPC are not directly applicable to the Customs Act, 1962. The two Acts operate in their own fields. One deal with criminal matter and the other with issue of taxation, where mens rea may not always require to be shown for the imposition of penalty. Further, it is seen that sec. 112 of the Customs Act, 1962

speaks of 'omission' only whereas section 107 of the IPC refer to 'illegal omission'. Hence there is a difference in subject or context between the two Acts. Even if that be so, the sections of the IPC mentioned above gives a sense of the basic ingredients of the terms 'abet' and 'omission' which would approximate to the use of term 'active collusion' mentioned in the impugned order.

12. The presumption of innocence is a background assumption of our legal system. From the allegations against the appellant it is seen that there is nothing to prove that there was a common intention between the appellant or any of the others involved, or that they worked in concert to ensure that the goods imported in the name of M/s Kalp Impex under the Advance Authorisation scheme was to be diverted for home consumption. The statements of the appellants show a feeble acknowledgement of the illegality allegedly being indulged in by the importers etc, it is not backed by evidence. As a rule of prudence while examining the evidentiary value of a statement, it is desirable to seek corroboration of such evidence from other reliable evidence placed on record, more so when the impugned order disputes a claim of retraction of the statements made by the appellants.

13. While examining the statements from officials of M/s Kalp Enterprises the importer or the High Sea Sellers it is seen that they do not implicate the appellants in any grand design to evade duty or misuse the Advance Authorisation scheme. The finding in the impugned order also did not mention that the appellants along with the importer and High Seas Seller were a part of the plan to evade duty, or had a stake in the illegal gain. It states that the conduct of the CHA's were in violation of the Customs House Agents licensing Regulations, 2004 and the provisions of Customs Act, 1962.

14. It may be gainfully shown that some of the omissions and commissions of the appellant, as alleged above, ultimately facilitated or aided the clandestine clearance of the imported goods. However when the legislature makes a special law in the form of a Regulation, it is not enough that the CB did not do what is lawfully expected of him under the Regulations and which others have made an unlawful use of, to rope the CB under the penal provision of the Customs Act. It has to be shown that the act was done in reference to their common intention to do an illegal act or that the CB had a stake in the outcome of the illegality. In other words, the act or stake was not just a violation of his obligation as a CB but was done with knowledge of the illegality. The evidence in this regard can be both / either, direct or circumstantial so long as common intent is discernable. However, the evidence does not show that the appellants had a common intention along with the importer and High Seas Seller to do or omit to do any act which act, or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. This being so the charge of "active collusion" with the High Sea Sellers is not proved and hence the penalty imposed against the appellants under section 112(a) of the Customs Act 1962, merits to be dropped.

15. For the reasons discussed the penalty imposed on the appellants are set aside. The appellants are eligible for consequential relief, if any, as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 14.07.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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