



Aadrikaa Law Offices (ALO)- IDT Tax / Arbitration / Litigation

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CESTAT Kolkata Overturns Penalty on Customs Broker



This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant judgment, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Kolkata, has delivered justice to M/s. Daga Shipping Agents Pvt. Ltd., a Customs Broker, by setting aside the penalty of Rs. 3,00,000/- imposed under Sections 114 and 114AA of the Customs Act, 1962. This decision marks a crucial moment for Customs Brokers across the country, emphasizing the importance of due diligence and bona fide actions in their professional duties.

Background of the Case

The case revolved around the export of 37,500 capacitors by M/s Poonam Export, facilitated by M/s. Daga Shipping Agents Pvt. Ltd. The consignment was detained by the Special Investigation Branch (SIB) on allegations of overvaluation. Subsequently, summons issued to the exporter revealed discrepancies in the address provided, leading to a Show Cause Notice against the Customs Broker for allegedly failing to verify the exporter's credentials adequately.

Despite the appellant providing all necessary documents, including KYC, Aadhaar, PAN, IT returns, GST certificates, and bank letters, the Revenue alleged non-compliance with Regulation 10 of the Customs Brokers Licensing Regulations, 2018. This resulted in the imposition of a penalty of Rs. 3,00,000/- under Sections 114 and 114AA of the Customs Act, 1962.

CESTAT's Observations

1. **Due Diligence by the Appellant:** The Tribunal acknowledged that the appellant had verified all requisite documents, including KYC, Aadhaar, PAN, IT returns, GST certificates, and bank letters, before facilitating the export. These efforts demonstrated the appellant's bona fide belief and adherence to professional standards.
2. **No Knowledge of Consignment Contents:** The Tribunal noted that the Customs Broker was not privy to the contents of the consignment, as their role was limited to facilitating the export process.
3. **Unfounded Allegations:** The Revenue's claim that the exporter was introduced by a third party was deemed insufficient grounds for imposing a penalty. The Tribunal emphasized that mere allegations without substantive evidence cannot justify penal action.

Final Verdict

In its final order, the Tribunal set aside the penalty imposed on M/s. Daga Shipping Agents Pvt. Ltd., stating that the appellant had acted in good faith and complied with all necessary regulations. The appeal was allowed, providing consequential relief to the Customs Broker.

Implications of the Judgment

This landmark decision reinforces the importance of due diligence and professional integrity for Customs Brokers. It also serves as a reminder to authorities that penalties should not be imposed without concrete evidence of wrongdoing. The judgment is expected to bolster the confidence of Customs Brokers in performing their duties without fear of unwarranted penal action.

Conclusion

The victory of M/s. Daga Shipping Agents Pvt. Ltd. is a testament to the principles of justice and fairness upheld by the CESTAT. It highlights the critical role of Customs Brokers in facilitating international trade and underscores the need for balanced enforcement of regulations. This case will undoubtedly serve as a precedent for similar disputes in the future, ensuring that bona fide actions are protected under the law.

Source: CESTAT Kolkata

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**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA
REGIONAL BENCH – COURT NO. 1**

Customs Appeal No. 75543 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/281/2023 dated 21.04.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Daga Shipping Agents Private Limited : **Appellant**
34, Lu-Shun Sarani (Formerly 'P2, New CIT Road),
Kolkata – 700 073

VERSUS

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

APPEARANCE:

Shri Bimal Daga, Accountant / Representative of the Appellant

Shri Faiz Ahmed, Authorized Representative of the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 77340 / 2025

DATE OF HEARING / DECISION: 27.08.2025

ORDER: [PER SHRI ASHOK JINDAL]

The instant appeal has been filed by M/s. Daga Shipping Agents Pvt. Ltd., 34, Lu-Shun Sarani, Kolkata - 700 073, (hereinafter referred to as the "appellant") against Order-in-Appeal No. KOL/CUS(PORT)/KS/281/2023 dated 21.04.2023 whereby the Ld. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road Kolkata, affirmed the penalty of Rs. 3,00,000/- imposed upon the appellant under Sections 114 and 114AA of Customs Act, 1962 combinedly vide the Order-In-Original No. KOL/CUS/JC/13/SIB/2021 dated 21.04.2021 for their alleged failure to contact, verify and establish the

identity and correctness of the address of the exporter.

2. The brief facts of the case is that the appellant, being a Customs Broker, obtained all the necessary documents like KYC, authorization letter, exporter's Aadhar Card (front and back) with address, exporter's PAN Card, exporter's IT Return, exporter's bank letter, GST Certificate, etc., from the exporter viz. M/s Poonam Export (IEC CJGPK8459N) having address at 3309, Ground Floor, Left Side, Gall No. -26-27, Beadon Pura, Karolbagh, New Delhi - 110 005 and filed the Shipping Bill 6502323 dated 26.08.2019 for export of 37500 pcs. of "Capacitors". Soon after filing the Shipping Bill, the goods were detained by SIB on the ground that the goods were overvalued.

2.1. Summons were issued to the exporter and the supplier viz. JIV Traders, who had supplied the goods to the exporter. The summons which were issued to the exporter had returned by the postal authority with remarks "insufficient address" and with remarks "no such firm exists" but representative of the respondent, in response to the summons duly appeared before the appellant and provided all the information as asked for by the department.

3. Thereafter, Show Cause Notice bearing F. No. S121-163/2019 SIB (Port)/2089 dated 19.06.2020 was issued by the Additional Commissioner of Customs (Port) requiring the respondent to show cause as to why (a) the declared value of the export goods (37500 pcs of "Capacitors" under RITC 85323000) in respect of S/B No. 6502323 dated 28.08.2019 of Rs. 45,45,369/ should not be rejected and the total value of 375000 pcs of capacitors (as per

market survey) of Rs. 1,31,250/- should not be considered and re-determined, (b) the export goods (37500 pcs of "Capacitors" under RITC 85323000) in respect of S/B No. 6502323 dated 26.08.2019 having declared value of Rs.45,45,369/- should not be confiscated under Section 113 (i) & 113 (ii) of the Customs Act, 1962 and, (c) Penal action should not be initiated against the appellant/Customs Broker M/s. Daga Shipping Agents Pvt Ltd., under Section 114 read with Section 114AA of The Customs Act, 1962 and Section 74 of the CGST Act, 2017. The appellant duly filed a reply to the Show Cause Notice and also participated in the personal hearing and submitted a written submission dated 07.12.2020 contending that the said Notice is not maintainable as the appellant, being a CB, had duly acted in accordance with law and is in no way related with the goods in question.

4. The matter was adjudicated by way of the Order-in-Original dated 21.04.2021, wherein a penalty of Rs. 3,00,000/- upon the appellant under Sections 114 and 114AA of Customs Act, 1962.

5. Being aggrieved and dissatisfied with the order of the respondent, the appellant filed an appeal before the Ld. Commissioner (Appeals), who, vide the impugned order, has confirmed the order of imposition of penalty on the appellant under Sections 114 and 114AA of the Customs Act, 1962.

5.1. Against the said order, the appellant is before us.

6. We find that the issue is in a narrow compass and therefore, the appeal is taken up for disposal.

7. In this case, penalty has been imposed on the appellant on the allegation that the appellant have failed to comply with Regulation 10 of the Customs Brokers Licensing Regulations, 2018 and also failed to verify the correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent and authentic documents, data or information, which has allegedly resulted in the Revenue incurring a loss to the tune of Rs.8.19 lakhs.

7.1. We find that, in fact, the appellant has duly verified all the requisite documents such as KYC, authorization letter, exporter's Aadhaar Card (front and back with address), exporter's PAN card, exporter's IT Return, exporters bank letter, GST Certificate, etc., and the fact that these documents were obtained by the appellant, for verification of the exporter, has not been disputed by the Revenue. The contents of the consignment was not known to the appellant as the appellant was only facilitating the exporter to export the goods. The mere allegation that the exporter has been introduced by a third person to the appellant cannot be a ground for imposition of penalty under Sections 114 and 114AA of the Customs Act, 1962.

8. Admittedly, the appellant has verified all the credentials of the exporter before taking up the job as Customs Broker for the said consignment. In these circumstances, we are of the view that the appellant has acted under a bona fide belief and for that, no penalty can be imposed on them. Accordingly, the penalty imposed on the appellant under Section 114 and 114AA of the Customs Act, 1962 is set aside.

9. Consequently, the appeal is allowed, with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sdd