

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

REGIONAL BENCH – COURT No. III

**i. Customs Appeal No. 40533 of 2014**

(Arising out of Order-in-Original No. 2/2013-Commissioner dated 31.12.2013 passed by Commissioner of Customs, Central Excise and Service Tax, No. 6/7, ATD Street, Race Course, Coimbatore – 641 018)

**M/s. Trans Asian Shipping Services (P) Ltd. ...Appellant**

2<sup>nd</sup> Floor, Manickam Tower,  
146D, Palayamkottai Road,  
Tuticorin – 628 008

***Versus***

**Commissioner of Customs (Preventive) ...Respondent**

Trichy Commissionerate,  
No. 1, Williams Road,  
Cantonment,  
Trichy – 620 001.

With

- ii.** Customs Appeal No. C/40534 of 2014 (Mr. V. Lakshmanan)
- iii.** Customs Appeal No. C/40604 of 2014 (M/s. Trans Asian Shipping Services (P) Ltd.)
- iv.** Customs Appeal No. C/40605 of 2014 (Mr. V. Lakshmanan)
- v.** Customs Appeal No. C/40936 of 2014 (M/s. Trans Asian Shipping Services (P) Ltd.)
- vi.** Customs Appeal No. C/40937 of 2014 (Mr. V. Lakshmanan)

**APPEARANCE:**

For the Appellants : Ms. Anita Thomas, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorized Representative

**CORAM:**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 24.07.2025**

**DATE OF DECISION : 25.11.2025**

**FINAL ORDER Nos. 41359-41364 / 2025**

**Order: -**

The present Appeals arise out of adjudications by the Commissioner of Customs & Central Excise, Coimbatore (Orders-in-Original Nos. 02/2013 & 03/2013 both dated 31.12.2013) and Order-in-Original No. 1/2014 C&CE dated

14.02.2014 by Commissioner of Customs and Central Excise, Salem whereby imposition of penalties was ordered against the Liner and its Employee in relation to exports effected through ICD Salem / ICD Irugur / ICD Rakkiapalayam during various periods.

2.1 The impugned Orders originated from the investigation by the Directorate of Revenue Intelligence (DRI), Chennai, which inter alia unearthed a network of exports allegedly effected in fictitious names, inflated export values, non-realisation of export proceeds and encashment of drawback proceeds through newly opened bank accounts. Further the purported exporters could not be traced and export proceeds were not realised.

2.2 There are three Exporters i.e. Pathi Fashions, Tirupur, Starwin Exports, S & H Inc involved and various persons and entities involved on whom penalties were imposed. Verification by the Department disclosed no existence of the declared Exporter/supporting manufacturer at the stated address; and the Proprietors /Partners named in the IEC could not be traced. The bankers reported no overseas remittances in the cited accounts.

2.3 Diplomatic enquiries with overseas importers disclosed that declared import values were materially lower than the values declared to the Department in the shipments made by the above Exporters. As a result, three Separate SCN's were issued and adjudicated as mentioned in Table below and penalties were imposed.

2.4 Aggrieved, the Appellants have filed 6 Appeals before this Forum as detailed below: -

Sl. No.	Appeal No. & Date	Impugned Order No./date	Appellant	Penalty Amount (in Rs.)
1	C/40936/2014- SM	01/2014, 14-02-2014, C&CCE Salem	TRANS ASIAN SHIPPING SERVICES	2,50,000 u/s 114(iii) of CA
2	C/40937/2014- SM	-Do-	V.LAKSHMANAN	2,50,000
3	C/40533/ 2014-SM	02/2013,31-12-2013, CCE &C Coimbatore	TRANS ASIAN SHIPPING SERVICES	70,000 u/s 114(i) of CA
4	C/40534/ 2014-SM	02/2013,31-12-2013, CCE &C Coimbatore	V.LAKSHMANAN	70,000 as above
5	C/40604/ 2014-SM	03/2013,31-12-2013, CCE & C Coimbatore	TRANS ASIA SHIPPING SERVICES	55,000 u/s 114(i) of CA
6	C/40605/ 2014-SM	03/2013,31-12-2013, CCE & C Coimbatore	V.LAKSHMANAN	55,000 as above

2.5 As the issues involved are identical, and on the request of the Appellants, all the said Appeals are clubbed together for a common decision.

3. The Ld. Counsel Ms. Anitha Thomas, for the Appellant, and the Ld. Authorized Departmental Representative Ms. Anandalakshmi Ganeshram for the Revenue, appeared before me and advanced their submissions.

4. The Ld. Counsel for the Appellant made the following submissions: -

4.1 The container was entrusted by the Appellants to the Shipper and was stuffed and sealed in the presence of the Customs officials. The Appellants have no knowledge regarding the stuffed cargo and has not participated in any leg of the stuffing. The BL also carries the endorsements FCL/FCL CY/CY and "said to Contain" as the Carrier/Liner only supplies the containers and has no knowledge of the quality, quantity etc. of the consignment.

4.2 That the custom officials who were present at the time of stuffing of the cargo, who can very well ascertain the

real value of the goods stuffed but had remained silent and acted negligently were not made party in the Show Cause Notice.

4.3 There is no provision or space provided in Bill of Lading. for specifying final destination mentioned in the Shipping Bill other than the destination mentioned in the Bill of Lading and the destination specified in the Export General Manifest.

4.4 The Exporters were never apprehended and Shri A. Satishkumar, P.K. Arumugam & S. Sainathan while admitting that they used to get commission out of the drawback money have not named the Appellants in any of their statements.

4.5 The Appellants reiterate that it did not issue 2 sets of Bills of Lading/ Additional Bill of Lading with different Ports of Discharge but that it issued only one Master Bill of Lading with Jebel Ali, UAE as the Port of Discharge which is not submitted to avail the fraudulent Duty Drawback. The document used to avail Duty Drawback are the Shipping bill

and House bill of Lading which are documents submitted by the Shipper and Freight Forwarding Agents to Customs.

4.6 For the reasons stated above it was humbly prayed that this Tribunal may be pleased to set aside the Penalties imposed in all the Six Appeals.

5. In response, the Ld. Authorized Departmental Representative Ms. Anandalakshmi Ganeshram supported the findings in the Impugned Orders and controverted these arguments and submitted as under: -

5.1 The Appellants had falsified the Export documents to facilitate undervaluation and higher Drawback benefits.

5.2 The Appellants, acting as the liner and their employee, have issued two distinct sets of Bills of Lading for the same physical consignments — one set indicating Jebel Ali (Dubai) and the other indicating Southampton (U.K.) with no carrier declarations on file to explain lawful transshipment. Certain ports/ports of discharge attract lower physical-examination norms by Customs and the deliberate creation of alternative paper-routes by issuance of duplicate B/L s to present a shipment as destined to a lower-scrutiny jurisdiction

has the effect of defeating intended/prescribed scale of customs examination.

5.3 The issue of duplicate BLs is accompanied by non-production of Bank Realisation Certificates, non-traceability of exporters and suspicious encashment trails, the cumulative documentary picture furnishes a strong prima facie inference of a contrived paper-trail fabricated to evade detection which is central to the whole issue.

5.4 The Adjudicating Authorities have meticulously considered all the submissions and evidence placed on record and have arrived at a correct and reasoned conclusion regarding the imposition of penalty on the liner and its employee (both the Appellants). It is urged that the material on record clearly demonstrates that the Appellants were responsible for issuance of two sets of Bills of Lading, an act which amounts to falsification of a principal document of carriage and which materially facilitated the fraudulent drawback claim. Such deliberate manipulation of vital shipping documents cannot be treated as a mere procedural lapse; it strikes at the very root of the statutory export-control mechanism and squarely attracts penal liability.

5.5 It was finally contended that the findings of the Adjudicating Authority do not call for interference, and that the Appeal is devoid of merits and deserves to be rejected *prima facie*.

6. Having weighed the submissions on either side and upon a careful scrutiny of the records, I find that the following Question arises for determination.

7. The issue before me lies in a narrow compass as to whether the issuance of two different Bills of Lading for the very same shipments, one indicating Jebel Ali and the other indicating Southampton.U.K. as the port of discharge, without any satisfactory explanation as alleged in the Impugned Orders, amounts to manipulation/falsification of statutory shipping documents to facilitate drawback fraud, and attracts imposition of Penalty on the Liner and its employee under the Customs Act.

8. I find that there are three Exporters involved and three separate impugned orders have been issued.

8.1 M/s. Trans Asian Shipping Services & Shri Lakshmanan, Manager, of its Tuticorin Branch (Appellants) figure in all the three cases and Six Appeals have been filed between them. Various penalties have been imposed on them as detailed in the above Table.

8.2 I note that the Impugned Orders held that Shri Lakshmanan of M/s. Trans Asian Shipping Services Pvt Ltd., Tuticorin, as also the entity which he represented were responsible for the issuance of two sets of B/LS with two different ports of destination so as to enable the fraud and help to get the fraudulent drawback, that they have abetted the fraudsters and so, are liable for penalty under Section 114(i)/114(iii) of the Customs Act, 1962.

8.3 I observe that a Master Bill of Lading (MBL) is issued by the main carrier or shipping line, while a House Bill of Lading (HBL) is issued by a freight forwarder. The MBL covers the entire consolidated shipment and is given by the shipping line to the freight forwarder, whereas the HBL is a receipt for the individual shipper from the freight forwarder.

8.4 It is also observed that a shipping line or its employee cannot have direct knowledge of the contents of the goods covered in the Shipping Bills as they are in the final leg of the Shipment and the B/L also makes a mention that it is said to contain, Further, it is the Triplicate copy of the shipping bill, and not the master bill of lading, that is used to process a duty drawback claim.

8.5 The Appellants had submitted that: -

- i. The container was entrusted by the Appellants was stuffed and sealed in the presence of the Customs officials. The Appellants have no knowledge regarding the stuffed cargo and has not participated in any leg of the stuffing. The BL carries the endorsements FCL/FCL CY/CY and "said to Contain" as the Carrier/Liner only supplies the containers and has no knowledge of the quality, quantity etc. of the consignment.
- ii. The custom officials who were present at the time of stuffing of the cargo, who can and shall very well ascertain the real value of the goods stuffed but not were made a party in the Show Cause Notice must be made accountable and not the freight forwarder or liner.
- iii. There is no space provided in Bill of Lading. for specifying final destination mentioned in the Shipping Bill other than

the destination mentioned in the Bill of Lading and the destination specified in the Export General Manifest. The Appellant's B/L were issued based on the House B/Ls issued by M/s. Swift Express Line and M/s. Shrine Freight System who were the Freight Forwarders. The Booking Order specifically mentions Dubai and the Appellants had no relationship with the actual shipper but only dealt with the Freight Forwarders.

- iv. The duty drawback is directly released to the shipper /exporter in their Account and the Carrier has not benefited anything from the same.
- v. The Exporters were never apprehended and Shri. A. Satishkumar, P.K. Arumugam & S. Sainathan while admitting that they used to get commission out of the drawback money have not named the Appellant in any of their statements.
- vi. They did not issue 2 sets of Bills of Lading/ Additional Bill of Lading with different Ports of Discharge but that it issued only one Master Bill of Lading with Jebel Ali, UAE as the Port of Discharge which is not submitted to avail the fraudulent Duty Drawback. The document used to avail Duty Drawback are the Duty Drawback Declaration forms which include the Shipping bill and House bill of Lading which are documents submitted by the Shipper and Freight Forwarding Agents to Customs.

8.6 I have weighed the submissions of both the sides, went through the Statements recorded, Shipping Bills, Bills of lading, Impugned Orders and find that the Appellants have issued Master Bill of Lading with destination as Dubai and the house Bill of lading was issued by the Freight forwarders, who have booked the cargo\* (who are not part this present Appeal). There is no two Master Bills of lading for the same consignment to establish that they have falsified the documents for financial gain. They have not been named as Abettors or co-conspirators in any the statements recorded by the Investigation.

8.7 I find from the Appeal records that the Shipping Bills were assessed and LEO orders are accorded by the Customs Officers. There is no endorsement on the SBs of opening and Examination of the Export Cargo. The Examination norms as per CBIC Circular 6/2002 -Cus. is minimum of 10% for other destinations and 50% for sensitive destinations like Dubai for a drawback Shipping Bill. I have not found even a single instance of even 2% examination being done or recorded for the S.B. The same Circular in Para 2.2 makes a mention that "In all cases referred to above, in respect of consignments selected for examination, a minimum

of two packages with a maximum of 5% of packages (subject to a maximum of 20 packages from a consignment) shall be opened up for examination". Only the supervision of stuffing and sealing with Customs Seal is recorded. Thus, there is a serious breach on the part of the Customs Examination Staff, irrespective of the Port of discharge/ Transshipment. Though statements were recorded from the Customs officers, they have not been made a party to the proceedings. The Appellant has levelled a serious allegation on Customs that the custom officials who were present at the time of stuffing of the cargo, who can very well ascertain the real value of the goods stuffed but had remained inactive owing to the illegal gratification given by the shipper were not made party in the show cause notice. From my discussion Supra, I find that there is no evidence of Customs Supervision and this has contributed to the fraud not being detected *ab initio*.

8.8 I also find that a Liner (the carrier) only issues the Master Bill of Lading, which contains generalized information about the cargo. They do not have access to the detailed, confidential contents of a shipping bill, which is handled directly between the exporter and/or CHA. It is also noted that examination and stuffing of the cargo has taken place at the ICDs at Coimbatore, Tirupur and Salem and the

Liner is located at Tuticorin. The Appellants have submitted that they have no knowledge regarding the stuffed cargo and have not participated in any leg of the stuffing or destuffing. The BL also carries the endorsements FCL/FCL CY/CY and "said to Contain" as the Carrier/Liner only supplies the containers and has no knowledge of the quality, quantity *etc.* of the consignment.

8.9 Appeal records further evidence that there is only one Master BL and the destination is clearly shown as Dubai. The Appellants role ends there. The freight forwarders who book the cargo have issued the House BL's wherein the destination is shown as U.K. It is this House BL which was one of the prescribed documents for claiming drawback prior to 7/2006. The Appellant also submitted that they have collected the freight upto Dubai as they do not have any service beyond that. The Department has not brought out any case against the appellant for falsifying the records and issuing two sets of BL to facilitate the Drawback fraud.

8.10 I also find that the Department has done overseas enquiry through diplomatic channels and the only charge is that the goods are highly undervalued. Once the Appellant has given a statement that the goods have reached Dubai and

the goods were auctioned there. The proof of Export is clearly established in this case but the allegation of under valuation should have been detected by the Customs officers at the time of Examination, which was not done so. There is total systemic failure on the part of Examination Staff. The Department has not brought out any evidence of the participation of the Appellants in the controversy except for issuing two sets of BLs in conjunction with Freight Forwarders. Moreover, the statements recorded from the involved persons have not implicated/Named the Appellants. The BL issued by the Appellants is a consolidated/Master BL and it can be never used for processing the drawback claim.

8.11 I also find from the records before me that there is no direct link/interface between the Appellants and the Exporters nor recovery of any e-mails or any internal correspondence discussing routing to avoid detailed Customs scrutiny; or proof that the liner delivered documents to the introducer who encashed the proceeds; or evidence that the liner re-issued BLs at the request of exporters.

8.12 From my findings, I conclude that the Appellants are not beneficiaries of the fraudulent drawback. Further the Exporters named in the IEC have not been apprehended and

their statements recorded and later investigation to trace out the supporting manufacture also led the Department to nowhere and such addresses were found to be fake. Further the Appeal records reveal that the banks have confirmed that there is no realisation from overseas in the Exporter's Account. I also note that the impugned Orders suffer from lack of clarity on the findings against each individual and the firm which they represent in these 3 cases. Based on the above findings the penalties imposed in all the three impugned Orders fail to sustain and deserve to be set aside.

8.13 I also find that in the 2 impugned orders (Appeal Nos. 3 to 6 of the Table in Para 2.4), penalties against the liner and its employee were imposed under Section 114(i) of Customs Act 1962. Section 114(i) of the Customs Act, 1962 deals with Prohibited goods under Customs Act or any other Law in force. The Section reads as follows: -

*"(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act], whichever is the greater;"*

8.14 It can be seen that the goods in all the three impugned orders in the present Appeals are Textile garments. In the third impugned order, the penalty was imposed under

Section 114(iii) of Customs Act. Here I find that the goods are not prohibited or restricted for Export. The goods are freely exportable as per FTP. The penal provisions have been incorrectly invoked in respect of the Appeals mentioned above.

8.15 As regards the third impugned Order, I find that the SCN has invoked Section 114(i) of Customs Act for imposition of Penalty, whereas the impugned Authority has imposed penalty under Section 114(iii) of Customs Act. Thus, he has traversed beyond the scope of SCN without issuing a corrigendum or putting the Appellants to notice. This impugned Order has justified this mis quote of Section as follows: -

*"In this connection, it is to be stated that mere mis-quoting of Section "Section 114(i)" instead of "Section 114(ii)"] does not vitiate the demand. Misquoting of wrong rule or notification is of no consequence as held by Hon'ble CESTAT, East Regional Bench, Calcutta, in the case of Mohan B. Samtani vs. Collector of Customs reported in 1990 (50) ELT 592 (Tri.) and in the case of revision petition of M/s Rajasthan Spinning and Weaving Mills Ltd., reported in 1982(10)ELT 741 (GOI)."*

8.16 I have perused that decision of CESTAT, East Regional Bench, Calcutta, in the case of *Mohan B. Samtani vs. Collector of Customs* reported in 1990 (50) ELT 592 (Tri.) wherein in Para 25 it is held as follows: -

"25. It thus is seen that both under the 1947 Act as well as 1972 Act the export of antiquity is not lawful. If the same is made by any person under the 1947 Act a person can export it only under the authority of a licence. But under the 1972 Act it shall not be lawful for any person to export antiquity, and it is only the Central Government or any authority or agency authorised by the Central Government who can export the same, that too, in accordance with the terms and conditions of a permit issued for the purpose by the prescribed authority. Therefore, the Act of 1972 is stricter as it totally prohibits the export of antiquity by any person. In such circumstances, merely because the wrong Act was quoted in the show cause notice there is no prejudice caused to the appellant, for the simple reason that under both the Acts the export of antiquity is prohibited. It is not the case of the appellant that he has any licence in this behalf as prescribed under Sec. 3 of the 1947 Act. In such circumstances, the decision reported in 1978 (2) E.L.T. (J 355p.) (in the case of J.K. Steel Ltd. v. Union of India) becomes relevant it is held in the above decision, by the Supreme Court as follows :

*"If the exercise of a power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of power in question. This is a well-settled proposition of law.....The incorrect statement in the written demand could not have prejudiced the assessee. From his reply to the demand it is clear that he knew as to the nature of the demand."*

*Applying the above principles to the facts of this case it is clear that the appellant knew about the real allegation made in show cause notice to the effect that it is with respect to his attempt to export antiquities out of India which is an offence under the 1947 Act as well as 1972 Act and no prejudice is caused to him in any way. A mere mis-quoting the Act as Antiquities (Export Control) Act, 1947, instead of quoting as Antiquities and Treasure Act, 1972, does not vitiate the order in question."*

8.17 I also find that the Hon'ble Supreme Court in a plethora of decisions has held that Order-in-Original cannot travel beyond the Show-Cause Notice.

and any adjudication order based on a new or different charge is void.

For this, the decision in the case of *Commissioner of C. EX., Nagpur versus Ballarpur Industries Ltd. 2007 (215) E.L.T. 489 (S.C.)* wherein in Para 21 it was held that: -

*"21. Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first show cause notice dated 21-5-1999 is set aside as time-barred. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule."*

Respectfully following the ratio of the aforesaid judgement, I have no hesitation in holding that the Adjudicating authority has traversed beyond the SCN by altering the penal clause by invoking a different sub-section in the impugned order, without issuing a corrigendum or fresh notice. Such alteration amounts to changing the very foundation of the proceedings and violates the principles of natural justice. The Appellant/noticee is entitled to know the exact clause under which penalty is proposed, so as to defend himself. Therefore, incorrect citation of penal provisions in the SCN, or imposition of penalty under a different provision in the adjudication order without amendment of the SCN, vitiates the impugned order in toto.

8.18 I have no hesitation in holding that all the three impugned orders have to be vitiated for the additional reason that the Adjudicating Authority has invoked incorrect penal provisions, imposing penalty under Section 114(i) without correlating the statutory ingredients of those clauses with the acts allegedly committed by the Appellants or changing the penalty clause in the impugned Order without putting the Appellant to notice. It is well-settled Law that penalty can be imposed only under the precise statutory provision applicable to the established role, and incorrect citation of a penal section, or application of a provision that does not cover the alleged act, renders the order unsustainable. Accordingly, on this ground also, the impugned orders cannot be sustained in respect of all the 6 Appeals.

8.19 Further in the case of *Lohia Travels & Cargo Versus Commissioner of Cus., New Delhi (Prev.)* [2015 (330) E.L.T. 689 (Tri. - Del.)], the Principal Bench of Tribunal held that when there is no evidence to establish any wrongful intent on the part of the appellant then there is no reason to impose penalty. Judicial discipline requires that ratio of the above judgment should be followed by this Bench.

Accordingly, neither the penalty imposed on the Appellant under Section 114 (iii) of Customs Act, 1962 nor the penalty imposed on the Appellant under 114(i) *ibid* is sustainable.

8.20 For the reasons recorded above and in the light of the ratio of the aforesaid decision of the Principal Bench of the Tribunal, I am of the view that the record before us does not establish the requisite knowledge, intent or active facilitation by the liner or its employee to justify imposition of penalty. Further, in respect of 6 Appeals as mentioned above, the penalty is not sustainable ON MERITS.

9. Thus, the impugned Orders-in-Original No. 2/2013-Commissioner dated 31.12.2013, No. 3/2013-Commissioner dated 31.12.2013 and No. 1/2014(Cus.) Commissioner dated 14.02.2014 are to be set aside. Ordered accordingly. Finally, the penalties imposed on all the Appellants are hereby set aside.

10. Thus, the 6 Appeals as detailed in the Para 2.4 *supra* are allowed with consequential benefits, as per the Law.

(Order pronounced in open court on 25.11.2025)

Sd/-

**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)