

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40675 of 2025

(Arising out of Order-in-Appeal C. Cus II No.383/2025 dated 25/27-03-2025 passed by the Commissioner of Customs (Appeals – II), Chennai)

Shri. C. Sreepathi,

Partner of M/s. Active Global Logistics,
Sea View Tower, Phase – II,
4-D, 12/9, Krishna Koil Street,
Chennai – 600 001.

Appellant

VERSUS

Commissioner of Customs

Chennai II Commissionerate,
Custom House, No. 60 Rajaji Salai,
Chennai 600 001.

Respondent

APPEARANCE:

Ms. V. Pramila, Advocate for the Appellant

Ms. O.M. Reena, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41540/2025

DATE OF HEARING: 18.12.2025

DATE OF DECISION:23.12.2025

Per Ajayan T.V.

C. Sreepathi, the Appellant herein, is aggrieved by the Order in Appeal Seaport. C. Cus II No.383/2025 dated 25/27-03-2025 (impugned order), rejecting his appeal and upholding the Order in Original No.104127/2023 dated 24-12-2023 imposing a penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on him under Section 112(a) of the Customs Act, 1962 (Act).

2. The relevant facts are that the Officers of the Directorate of Revenue Intelligence, on specific intelligence, examined goods imported in the name of M/s. V.K.R.Impex, Chennai vide B.E. No.3054047 dated 30.04.2019 lying at M/s. APM Travels India Pvt Ltd, CFS. It was found that Gudang Garam Cigarettes of foreign origin were attempted to be

smuggled under the cover of the imported goods declared as pampers, thereby rendering them liable to confiscation. The goods were seized and handed over to the CFS Authority for safe custody. In the course of investigation, statements were recorded from various persons, including the Appellant herein. The investigation culminated in issuance of show cause notices to various persons including the Appellant, to jointly and severally show cause as to why the said foreign origin/brand cigarettes attempted to be smuggled into India from Dubai, as well as the pampers used as cover goods for smuggling cigarettes, should not be confiscated and penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962. The Notice, in so far as the Appellant was concerned, among other things, alleged that the Appellant, partner of M/s. Active Global Logistics, Chennai, the Customs Broker, has admitted that he had not followed the Customs Brokers Regulations like verification of KYC, and that he received import/export documents from unscrupulous and unauthorised agents other than IEC holder, that is, S/Shri B. Balachander and P Karthik Venkatraman who had provided KYC documents and Customs Clearance documents, although for all purposes S. Venkatesan IEC holder was the contact person for M/s. VKR Impex IEC No.AHOPV3106D.

3. After due process of law, the Adjudicating Authority vide the Order in Original No.104127/2023 dated 24-12-2023 ordered absolute confiscation of the foreign origin cigarettes, ordered confiscation of the pampers giving an option to the importer to redeem the same on payment of redemption fine, and imposed various penalties on the noticees. A penalty of Rupees twenty five lakhs was imposed on the Appellant herein. Aggrieved, the Appellant had preferred an appeal before the Commissioner of Customs (Appeals-II), Chennai who dismissed the Appeal. Hence this Appeal.
4. Ms. V. Pramila, Ld. Advocate appearing for the Appellant submitted that the Appellate Authority has upheld the order of the original authority holding that the Appellant's involvement in clearing the goods for non-existent firms, without due diligence and in violation of regulatory requirements which is cast upon the Appellant by the Government under the CBLR Rules, lead to the confiscation of the goods and the Appellant

being liable to penalty. Ld. Counsel submits that it is settled that imposition of penalty under Customs Act for charges relating to alleged violation of CBLR is not sustainable and the issue is no more res integra as there are catena of decisions on this point. Reliance was placed on the decision in ***Maruvar Arasi Logistics Private Ltd v CC, Chennai, 2022 (5) TMI 996-Cestat Chennai, CC, Tuticorin v Suvindh Overseas, 2025 (12) TMI 690- Cestat Chennai, M/s. Meticulous Forwarders v CC, Chennai-II, 2025 (7) TMI 858-Cestat Chennai, HIM Logistics Private Limited v CC Export, New Delhi, 2025 (5) TMI 665-Cestat New Delhi, Shri Hari Babu v CC, Chennai, 2023 (1) TMI 1149-Cestat Chennai*** as well as ***Rajeev Khatri v CC (Export), 2023 (7) TMI 218-Delhi High Court***. She prayed that the appeal be allowed.

5. Ms. O.M. Reena, Ld. Authorised Representative, appearing for the Respondent reiterated the findings of the Ld. Appellate Authority as given in the impugned Order in Appeal.
6. Heard the rival submissions, perused the appeal records as well as the citations submitted.
7. The solitary issue that arises for determination is whether the penalty imposed on the Appellant under Section 112 (a) is legally sustainable
8. It is seen that Section 112, as it prevailed during the relevant period, is as under:

“ **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) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner

dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

- (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 the value of the goods or five thousand rupees, whichever is greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:
- (iii) xxxx
- (iv) xxxx
- (v) xxxx "

9. At this juncture, it is apposite to refer to the decision of the Hon'ble High Court of Delhi relied on by the Appellant, rendered while deciding CUSAA No. 3 of 2021 and C.M. Appl. No. 5517 of 2021, decided on 4-7-2023, and reported as ***Rajeev Khatri v CC (Export), 2023 (7) TMI 218-DELHI HIGH COURT : (2023) 9 CENTAX 412 (Del)***. Therein, it was held by the Hon'ble Delhi High Court as under:

"27. There is no cavil that mens rea is not a necessary element for imposing penalty under section 112(a) of the Customs Act. The penalty imposed for failure to perform a civil obligation is required to be distinguished from a penalty imposed as a punishment for committing a crime. Whereas in the latter case, it would be necessary to establish that a person committing the crime had the intent or the knowledge of committing such a crime; there is no such requirement in case of penalty for default in compliance of a statute imposing a civil obligation, unless the words of that statute indicate otherwise. The aforesaid proposition has been stated in Corpus Juris Secundum ¹ in the following words:

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

"Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income-tax Officer under

section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67."

28. In *Gujarat Travancore Agency, Cochin v. Commissioner of Income Tax, Kerala, Ernakulam*: (1989) 3 SCC 52/1989 (42) E.L.T. 350 (S.C.)/[1989] 44 Taxman 218 (S.C.), the Supreme Court had noted the aforesaid obligations and held that it is not necessary to establish an element of mens rea for imposing a penalty under section 271(1)(a) of the Income-tax Act, 1961; that is, penalty leviable if the assessee without reasonable cause, fails to furnish the return of total income within the stipulated time.

29. In *Indo-China Steam Navigation Co. Ltd v. Jasjit Singh, Additional Collector of Customs Calcutta & Ors.*: AIR 1964 SC 1140/1983 (13) E.L.T. 1392 (S.C.)/1964 taxmann.com 2 (S.C.), the Constitution Bench of the Supreme Court had rejected the contention that it was essential to establish mens rea in respect of levy of penalty under the Sea Customs Act, 1878 for violating the provision of Section 52A of the Sea Customs Act, 1878.

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 offence². It necessarily involves the knowledge that the act being abetted is wrong.

32. The Black's Law Dictionary³ 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. Noninterference 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."⁵

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

1. Volume 85, Page 580, Paragraph 1023
2. Simpson, J. A., & C., W. E. S. (1989). *The oxford english dictionary* (2nd ed., Vol. 1). Clarendon Press.
3. "Abet." *Black's Law Dictionary*, 10th Edition, Edited by Bryan A. Garner, 10th ed., West, 2014, pp. 4-4.

4. 3. Definitions -In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

(1) "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860);

5. Majority opinion delivered by M.S. Sanklecha, J." **(Emphasis supplied)**

10. Further, the findings of the Appellate Authority in so far as the Appellant is concerned, given in the impugned order, is as below:

" 6. I find that upon careful consideration of the facts and circumstances of the instant case, it is evident that Shri. C. Sreepathi, in his capacity as a Customs Broker, has acted in contravention of the provisions of CBLR, 2018 particularly with reference to his failure to verify the antecedents of the importer M/s. VKR Impex. His admission that he did not fulfil the Know Your Customer (KYC) obligations as per the Customs Broker Licensing Regulations (CBLR) and facilitated customs clearance without proper verification establishes his involvement in the improper import transaction.

Further the point submitted by the Appellant that because of the Appellant was mere a Customs Broker in this whole scheme of smuggling thus penalty should not be imposed upon him, does not hold any water, first because it is already well defined under his duties as CB that in any circumstances, should verify the veracity of KYC documents submitted by the importer, any dereliction of the duty on the part of the CB anyways calls for penal action under Customs Act, 1962 in case where such dereliction leads to a crime/smuggling, whereas in case of outright smuggling of cigarettes, the offence seen as blatant infringement of the law, thus in my view, cannot be ignored at any cost.

Therefore, I find that the appeal of the Appellant that "penalty on customs broker cannot be imposed under customs act, 1962" holds no water as the expression "any person" used in the text of section 112 is amply clear to cover the customs' broker in case of "*carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111*" in the text of section 112 of customs act, 1962 envisaged for imposition of penalty under circumstances mentioned therein, also I do not find any other hindrance in applicability aspect while invoking the above said sections where upon perusal of the

statement of the Appellant finding him non-cooperative in the investigation which clearly reflects the mens-rea in the instant case.

7. I find that the investigation clearly reveals that Shri. C. Sreepathi knowingly processed customs clearances for a non-existent entity, M/s. VKR Impex, despite being aware of the firm's non-existence at the given address. Additionally, he accepted documents from unauthorized individuals, namely Shri Vicky, Karthik, and B. Balachander, who were neither the IEC holders nor authorized representatives of M/s. VKR Impex. Such acts amount to abetting the fraudulent import and export transactions thereby rendering himself liable for penal action under the Customs Act, 1962 as well.

Further the fact that Shri. C. Sreepathi facilitated the clearance of another consignment for the same non-existent firm despite the previous non-payment of service charges indicates a pattern of deliberate negligence and connivance. His failure to provide a satisfactory explanation regarding his decision to entertain the importer again, despite knowing the firm's dubious credentials, further corroborates his complicity in the fraudulent transactions.

8. I therefore of the view that in light of the above findings, the Appellant's actions fall within the ambit of section 111 of the Customs Act, 1962, which pertains to the improper importation of goods. By knowingly participating in fraudulent import/export transactions and facilitating clearance for non-existent entities, he has made himself liable under the definition of "any person" as provided in the said section. His conduct constitutes an offense punishable under the provisions of the Act, warranting appropriate action."

11. Bearing the observations in the above Judgement of the Hon'ble Delhi High Court in mind, when the aforesaid findings of the Appellate Authority are examined in the light of the Appeal records, what emerges is that in the instant case, neither the SCN nor the impugned order evidences how the Appellant has abetted the importer in smuggling. The impugned Order does not indicate that the statement of the Appellant has been proven to be relevant in terms of Section 138B, and that only thereafter the Adjudicating Authority has placed reliance on the statement; which itself renders such reliance placed on the statement of the Appellant untenable. The statements of the other deponents, dehors

the fact that they too have not been tested for relevancy on the anvil of provisions of Section 138B, even for arguments sake, if the statements are to be taken to be relevant and admissible, still, they do not evidence that the Appellant was complicit and knew about the factum of the said cigarettes being smuggled under the cover of the goods in the consignment that was imported. In fact, there is no discussion, much less any evidence, or any finding rendered of the purportedly hefty monetary consideration that the Appellant has gained for his purported involvement, as alleged in the SCN. Furthermore, the alleged main person Ibrahim has concededly not been traced nor any link of the Appellant to the said person been established. Thus, apart from the reliance on the said unproven statements, which remain untested in cross-examination, which though sought was not granted, there is no evidence let in by the Department of any intentional act on the part of the Appellant that would constitute abetment of any act or omission in relation to the goods that have been held liable to confiscation, thereby attracting penalty under Section 112(a).

12. However, this is not to say that the conduct of the Appellant is beyond reproach. But such conduct merits to be dealt with under the provisions of the Customs Broker Regulations prevailing for the relevant period that are applicable to a Customs Broker, i.e. the provisions of CBLR, 2018. It cannot be that the Appellants are liable to be visited with penalties under the Customs Act, and yet are not being proceeded against under the applicable CBL Regulations. Pertinently, there is nothing on record indicating that the customs authorities were intending to proceed against the Appellant under the CBLR 2018 at that relevant point in time. Nothing has also been brought on record which would indicate that the Appellant had been proceeded against under the CBLR, 2018 since then. The finding of failure on the part of the Appellant to verify the antecedents of the importer as per the obligations cast under the CBLR regulations which has been rendered by the Ld. Appellate Authority, even if taken at face value, at best may amount to negligence in the observance of the responsibilities cast upon the Appellant under the said Regulations. However, that in itself does not translate into evidence or proof of the Appellant's involvement in the attempted smuggling. Therefore, the finding of the Ld. Appellate Authority that such failure

establishes the Appellant's involvement "in the improper import transaction," to borrow the Ld. Appellate Authority's phrase, i.e. the attempted smuggling, is legally unsustainable. Therefore, considering the above facts, this Tribunal is of the firm opinion that the penalty imposed on the Appellant under Section 112(a) is liable to be set aside.

13. This Tribunal also finds it quite surprising that the Ld. Appellate Authority has gone on to extract the ingredients/acts stated in Section 112(b) extensively and to find the Appellant to be covered under the expressions thereunder, when, not only is there any such allegation that the Appellant has indulged in such acts stated in Section 112(b) in the show cause notice issued, with the proposal therein being only to impose penalty under Section 112(a); but also, the Ld. Adjudicating Authority has evidently imposed the penalty only under Section 112(a) in the Order in Original! This Tribunal is constrained to hold the said finding of the Ld. Appellate Authority egregiously appalling, to say the least. The findings in the impugned Order in Appeal, in so far as it relates to the Appellant's involvement in the alleged attempt of smuggling, is based on surmises and conjectures, assumptions and presumptions, than any actual evidence. It is thus squarely opposed to the Judgement of the Honourable High Court of Delhi reproduced above as to what constitutes abetment so as to attract the penalty under Section 112(a). Therefore, considering the above facts and circumstances, and respectfully following the decision of the Hon'ble High Court as aforementioned, this Tribunal is of the considered view that the impugned Order in Appeal is unsustainable and is liable to be set aside. Ordered accordingly.

The appeal is allowed in the aforesaid terms, with consequential relief(s) to the Appellant in law, if any.

(Order pronounced in open court on .23.12.2025)

**(AJAYAN T.V.)
MEMBER (JUDICIAL)**