

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

REGIONAL BENCH – COURT No. III

**Customs Appeal Nos. 41376 and 41377 of 2014
with
Customs Miscellaneous Application No. 40118 of 2025
and
Customs Miscellaneous Application Nos. 40635 and 40636 of 2014**

(Arising out of Order-in-Original No. 24497/2014 dated 27.03.2014 passed by Commissioner of Customs,
No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

And

(Arising out of Order-in-Original No. 24494/2014 dated 26.03.2014 passed by Commissioner of Customs,
No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

Mr. Dipal J. Shah

No. A-47, Maher Park,
Opp. Vanita Vishram Ground,
Athwagate, Surat,
Gujarat – 395 001.

...Appellant

Versus

Commissioner of Customs

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

...Respondent

APPEARANCE:

For the Assessee : Mr. S. Suriyanarayanan Iyer, Advocate
For the Revenue : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

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

FINAL ORDER Nos. 40258-40259 / 2026

DATE OF HEARING : 09.10.2025

DATE OF DECISION : 19.02.2026

Per Mr. VASA SESHAGIRI RAO

These are two Customs Appeals No. 41376 of 2014 and 41377 of 2014 filed by Dipal J Shah (hereinafter referred to as the Appellant) to assail the Orders-in-Original No. 24497/2014 dated 27.03.2014 and 24494/2014 dated

26.03.2014 (impugned orders) passed by Commissioner of Customs (Seaport-Export) (hereinafter referred as the AA)

2. The Appellant Dipal J Shah is a Partner of M/s. Rana & Shah Associates, Chartered Accountants, Surat. Appellant had issued certificates certifying consumption of raw material, production in respect of installed machinery which were submitted to DGFT for obtaining Advance Authorisations by M/s. Minerva Tex Fab, Surat and M/s. N.S.Textiles, Surat. The goods imported by both of whom against the Advance Authorisations under actual user condition were found to be liable to confiscation under Section 111(d) and 111(o) of Customs Act, 1962 on account of diverting the goods imported to the local market of Bangalore and consequently, penalties of Rs. 3,00,000/- and Rs. 2,00,000/- were imposed on the Appellant under Section 112(a) of the Customs Act, 1962 *vide* Orders in Original No. 24494/2014 dated 26.03.2014 and 24497/2014 dated 27.03.2014 respectively.

3. The appellant Dipal J Shah has preferred the present appeals assailing the impugned orders.

4.1 The Ld. Advocate Mr. S. Suriyanarayanan Iyer appeared and argued for the Appellant Dipal J Shah and submitted that in the instant case, the Appellant had issued

one certificate to M/s. Minerva Tex Fab situated at 79, Jay Narayan Industrial Estate, Anjana Farm, Surat on 14.05.2009 and one certificate to M/s. N.S. Textiles situated at 78, Jay Estate, Pipodra, Surat on 14.05.2009 for bank loan purpose. The certificates were issued after verifying documents such as PAN No., SSI registration [Part II] showing factory premises situated at the said address (which is equally known as government proof in banking and various government departments) and books of accounts of machineries installed in factory premises along with other ledger documents. The above mentioned certificates containing all required details were prepared and typed in the office of Appellant's friend Shri Hiral K. Patwa, who is an advocate and tax consultant of Shri Vishal Agarwal. The Appellant had compared the details of installed capacity and production capacity recorded in typed out certificates given to Appellant along with above mentioned documentary proof and then after simple arithmetical calculation, the Appellant found the details noted in certificates to be normal and correct and did not find any over production capacity in the said typed certificates. Shri Hiral K. Patwa, Advocate who was a close friend of Appellant since his college days recommended to sign the said certificates as the said certificates were required for bank loan purpose as per the version of Shri Vishal Agarwal.

4.2 He submitted further that at the time of issuance of said certificates dated 14.05.2009, nobody from M/s. Minerva Tex Fab and M/s. N.S. Textiles had met the Appellant or anybody else of his C.A. firm and nobody had paid any fees or amount towards such certificates. In fact, Appellant did not know anyone in M/s. Minerva Tex Fab and M/s. N.S. Textiles. The certificates were issued free of charge only on the basis of recommendation of Shri Hiral K.Patwa, Advocate who was Appellant's friend and they were handed over to Shri Hiral K.Patwa. The Appellant was totally unaware as to whom the said certificates were delivered thereafter.

4.3 He averred that generally Chartered Accountants are not required to physically verify the premises and machinery of any of the clients for issuance of production capacity certificate or other certificate. Since the Appellant was working and staying in Surat, he was aware that there were so many factories manufacturing grey fabrics in the industrial estate situated at Anjana Farm and therefore, based on verification of documentary proofs such as PAN No., Small Scale Industries Registration Part-II, duly attested rental agreement of factory premises shown in SSI Registration and books of accounts, Appellant had signed on certificates which were prepared and typed out in the office of Shri Hiral K. Patwa, Advocate.

4.4 The Ld. Advocate contended that the Appellant was not aware that the certificates issued by the Appellant were to be utilized for procuring duty free raw material, as generally such certificates are used by the parties for production to bank for getting loan and advances and in fact, the Appellant was informed by Shri Hiral K. Patwa, Advocate that the certificates were necessary and required for bank loan purpose. Moreover, Appellant was not having any knowledge that the rent deeds were also fraudulently prepared for the said plots and he could not smell the modus operandi adopted by the parties concerned to obtain such certificates through Shri Hiral K. Patwa, Advocate.

4.5 The Ld. Advocate submitted that the Appellant never knew that the certificates issued by him were misused for obtaining Advance Authorisation. His friend Mr. Hiral Patwa, Advocate had informed him that certificates were required for bank loan purpose and the above mentioned certificates containing all required details were prepared and typed in the office of Appellant's friend Shri Hiral K. Patwa, who is an advocate and tax consultant of Shri Vishal Agarawal. Shri Hiral K. Patwa said that Shri Vishal Agarwal was in urgent need as his loan disbursement was pending as branch manager required the certificates and therefore, the said certificates were prepared in the office of Shri Hiral K.

Patwa. This could be verified from the fact that the certificates were starting with the word "To whom so ever it may concern". The Appellant never had any idea that the certificates would be misused in DGFT for obtaining advance authorization licences.

4.6 He reiterated that the Appellant had not charged any fees for issuing such certificates. Further, he submitted that the investigating agency had not brought out any documentary evidence such as a recorded statement of the proprietor, employee or any other related person like Shri Vishal Agarwal that the Appellant had taken any fees or had taken undue advantage directly or indirectly for issuing such certificates. The very fact that investigation is totally silent on this fact proves the *bonafide* of the Appellant and establishes that the Appellant had not aided or abetted or facilitated M/s. Minerva Tex Fab and M/s. N.S. Textiles in their illegal activities of Customs duty evasion.

4.7 He pointed out that it is very important to note that the certificates were issued by Appellant on 14.05.2009 while the advance authorizations were issued by DGFT on 17/18.02.2009, i.e. more than 3 months before the certificates were issued by Appellant and therefore, the certificates issued by Appellant had no connection in obtaining duty free / exemption licenses from DGFT.

4.8 The Ld. Advocate argued that there is no requirement of a certificate from the Chartered Accountant as per the statute for issuing Advance Authorisation and it was the duty of issuing officer to verify the genuineness and existence of the factory of the firm. Further, the Appellant had not written on the certificates that he had visited the factories under dispute. Thus, there was no fault on his part in issuing the certificates on the basis of proper evidences produced before him and it is not mandatory on his part to visit the unit for physical verification.

4.9 He further pointed out that M/s. Minerva Tex Fab and M/s. N.S. Textiles had given declarations at the time of application for import export codes on 22.12.2008 and 21.12.2008 respectively that they did not have any separate office and they proposed to operate export business from their residence on Small Scale basis as a manufacturer exporter. Later on, M/s. Minerva Tex Fab and M/s. N.S. Textiles submitted copies of SSI Certificates Part-II showing the factory addresses to DGFT and the said SSI Certificates were issued on 18.12.2008 which was before the dates of declaration to DGFT, which declarations were already available with DGFT when these units submitted copies of SSI Certificates. This modus operandi reveals the intention of the proprietor of M/s. Minerva Tex Fab and N.S. Textiles

right from the initial steps to do the scam. Further, Vishal Agarwal has given statement before DRI on 22.02.2011 that addresses of factory premises were fabricated by him to obtain Advance Authorization licenses. Thus, it clearly appears that the Appellant was made the instrument by Vishal Agarwal for his illegal deeds and personal gain. All these facts came to the knowledge of Appellant only on referring to relied upon documents of the SCNs dated 30.08.2012 and 05.03.2013 whereas the Appellant had issued C.A. Certificates on 14.05.2009 which clearly indicates that the certificates were given in good faith and that too for the purpose of bank loan and the Appellant was totally in dark regarding misuse of certificates issued by him for other purpose.

4.10 The Ld. Advocate submitted that after receipt of show cause notices dated 30.08.2012 and 05.03.2013, Appellant came to know that DGFT had issued advance authorization licences to M/s. Minerva Tex Fab and M/s. N.S. Textiles on 17/18/19.02.2009 whereas the Appellant had issued certificates on 14.05.2009. Thus, it is crystal clear that the advance authorization licenses were issued three months before the Appellant issued the C.A. Certificates. Therefore, it could not be alleged by any stretch of imagination that the said licenses were issued on the basis of the certificates dated 14.05.2009 issued by Appellant which

were typed in the office of Hiral K. Patwa, Advocate who had sent the said certificates by stating that they were required to be produced for bank loan purpose as stated by Shri Vishal Agarwal to Shri Hiral K. Patwa. Thus, it is established that Appellant had no role in obtaining advance licenses in question and in improper importation of goods and accordingly, Appellant had not abetted aided or facilitated M/s. Minerva Tex Fab and M/s. N.S. Textiles in their illegal activities and as such he was not liable to penalty under Section 112(a) of the Customs Act, 1962.

4.11 It is the contention of the Learned Advocate that in any case the provisions of Section 112(a) of Customs Act, 1962 are not attracted in Appellant's case as the act of issuing certificate of installed capacity and production capacity do not fall within the purview of Section 112(a) of Customs Act, 1962. He submitted that it is not the case that there were no such industrial plots or no machineries installed in the plots in question and further, it is also not the case that the Appellant certified excess production capacity just to facilitate the party to import more quantity of goods than admissible. He contended that for the mere act of issuing certificates on the basis of documentary evidences, responsibility could not be fixed on the Appellant for improper importation of goods by the parties, viz., M/s. Minerva Tex Fab and M/s. N.S. Textiles.

4.12 He submitted that nothing is forthcoming from the SCN(s) that there is any evidence of collusion of Appellant with main noticee(s) for evasion of duty. Further, the Appellant had not dealt with the excisable goods and had not gained any direct or indirect benefit for issuing the C.A. Certificates.

4.13 The Ld. Advocate placed reliance on the following judgments in support of all the above contentions: -

- i. *A.S.R.V. Prasad Vs. Commissioner of Central Excise and Customs, Guntur [2009 (245) ELT-0577 (Tri-Bang.)]* – where DEPB benefits had been availed fraudulently and it was held that mere issue of certificate itself cannot be ground to hold that applicant abetted export of goods which are liable for confiscation under section 113.
- ii. *Shyam Agarwal Vs. CC (Import) Mumbai Order No. A/839/WZB/2006/C-II/CSTB dated 18.07.2006.*
- iii. *Ravindra Maruti Mansukh Vs. CC [2013 (291) ELT 263]* – where it was held that a person who merely handed over import documents of a car to CHA and did not know the importer and acted as intermediary between CHA and broker cannot be made liable to penalty under Section 112(a) of Customs Act, 1962.

iv. *Shri T.S. Makkar Vs. CCE [Order No. A/1471-1492/WZB/AHD/2012 (L.B.) dated 10.10.2012]* where it was held that neither the Assessee dealt with the goods nor had agreed to deal with the goods in any manner whatsoever so as to attract penalty under section 112(b) of the Customs Act, 1962.

5.1 *Per contra*, the Ld. Authorized Representative Mr. Sanjay Kakkar, for the Revenue supported the findings in the impugned order against the Appellant Dipal J Shah and submitted that the Appellant has issued certificates certifying consumption of raw material, production in respect of installed machineries in M/s. Minerva Tex Fab, Surat and M/s. N.S.Textiles, Surat without knowing the person/firm and without verification of the units and machineries, and the said certificates along with other documents were submitted to DGFT, Surat by M/s. Minerva Tex Fab, Surat and M/s. N.S.Textiles, Surat for obtaining Advance Authorizations which were used for importing Mulberry Raw Silk on actual user condition which were then diverted to the local market of Bangalore, thereby rendering the goods liable to confiscation under Section 111(d) and (o) of Customs Act, 1962, and therefore, the Appellant is liable for penalty under Section 112(a) of the Customs Act, 1962 for abetting and facilitating M/s. Minerva Tex Fab, Surat and M/s. N.S.Textiles, Surat in getting the Advance Licenses

fraudulently and knowingly dealing with the goods which he knew or had reason to believe were liable to confiscation under Section 111(d) and (o) *ibid*.

5.2 Referring to Appellant's contention that his implication in the cases is erroneous since the licences dated 17.02.2009 were issued prior to the Certificates dated 14.05.2009 issued by the Appellant and hence it could not be concluded that the licences were based on the Certificates issued by him, the Learned AR submitted that a report was called in this regard from the investigating agency, *viz.*, DRI, Surat and it appears that though the licences are dated 17.02.2009, the same were continued to be held in abeyance pending verification from the jurisdictional Central Excise Authorities, as the credibility of the documents submitted by the Appellant along with the application for licence appeared suspect, as also for the reason that the value of the licences were unusually high, and the Certificate from the C.A., *viz.*, Appellant, was submitted as part of this verification process and the Appellant certified factual and numbered details like no. of looms, Bobbin machines, Worping Machines, TFO, Consumption of Raw material and Production of Grey cloth/month, which details are too precise to be certified without any cursory physical check, but the Appellant failed to do any due diligence and has stated to have merely relied upon the "information and documents" produced before him,

without attempting to verify the veracity of any such documents. Learned AR submitted further that besides the production and machinery details, the Appellant has also certified the existence of factory of M/s. Minerva Tex Fab, Surat at 73, Jaynarayan Indl. Estate, Anjana Farm, Surat when the fact is that no such manufacturing facility existed and even in his defence, the Appellant has stated that he had issued the Certificate without knowing the firm, M/s. Minerva Tex Fab, for whom it was issued and on a belief that the same was being issued for bank-loan purpose, which justification, even if true, does not appear to be acceptable.

6. Heard both sides and perused the appeal records.

7. The issue for consideration in these appeals is whether the Chartered Accountant Dipal J Shah is liable for penalty under Section 112(a) of Customs Act, 1962 for issuing certificates certifying consumption of raw material, production in respect of installed machineries without verification of the machineries and the units to whom the certificates are issued or not.

8. In order to decide the issue of whether a Chartered Accountant can be penalized under Section 112(a) of Customs Act, 1962 for issuing bogus certificates, the

decision rendered by the Hon'ble Bombay High Court in *Mahesh P. Patel Versus The Commissioner of Customs (EP)* [2018 (12) TMI 883 - BOMBAY HIGH COURT] provides the guidance wherein it was held as under:

"8. *The sum total of the material on record would be that at the very outset, the department's allegations against the assessee in the show cause notice were that he had issued certificates such as Solvency Certificate and Export Performance Certificate without full verification of the records. The show cause notice further clarifies that on the strength of such certificates, the importer could obtain advance licence from DGFT. On the strength of such advance licence, duty free imports were made. In breach of the conditions of advance licence, the goods were diverted to the local market. Even according to the show cause notice and the ultimate conclusions confirmed by the Commissioner in his penalty order, the role of the assessee ends with issuing the certificates. There is no allegation that the assessee was either part of or aware of impending fraud which the importer intended to perpetrate. Whatever be the fault of assessee in exercising the due diligence in issuing the relevant certificates, even according to the department as emerges from the show cause notice and the order of the Commissioner, no role was played by him in so far as the imports and illegal diversion of the imported goods to local market are concerned. The Commissioner has confirmed penalty under Section 112(a) of the Act which envisages imposition of penalty on 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 111 or abates the doing or omission of such act. While ordering confiscation of the goods by the said order imposing penalty on the appellant, the Commissioner has relied on clause (o) of Section 111 of the Act. This clause makes goods brought from a place outside India liable to confiscation if the goods are exempted, subject to any condition from duty or any prohibition in respect of the imports and in respect of which the condition is not observed which non-observance is without sanction of the proper officer.*

9. *Even accepting the allegations contained in the show cause notice against the assessee and the final findings of the Commissioner in the penalty order, it cannot be stated that the assessee either had done or committed to do any act which would render the goods liable to confiscation under Section 111 of the Act. With equal force even the abatement clause contained in clause (a) of Section 112 of the Act would not apply since it is not the allegation of the department against the appellant that he had in any*

manner either directly or indirectly aided or facilitated the importer to commit the fraud.

10. *The Tribunal in the impugned judgment erroneously expanded the findings of the Commissioner by observing that the role prescribed by the adjudicating authority to the assessee was of knowingly being involved in facilitating the importer to commit the fraud. This was neither the allegations contained in the show cause notice nor was the findings of the Commissioner. In fact the allegations and the findings clearly were that the assessee had acted without due care and issued the certificates without full verification.*

11. *In these circumstances, impugned order of the Tribunal against the appellant is set aside Question answered in favour of the appellant. The appeal is disposed of."*

9. Further, it is observed that the Appellant has issued the certificates in question at the behest of his friend Hiral K. Patwa, Advocate in whose case the proposal to import penalty under Section 112(a) of Customs Act, 1962 has been dropped by the AA in the impugned orders. The Appellant has neither dealt with the goods nor dealt with anyone other than Shri Hiral K. Patwa for issuing the certificates. Hence neither the allegation of abetment nor that of knowingly dealing with offending goods is borne out by any evidence. Therefore, the requirements of Section 112(a) of Customs Act, 1962 are not met in Appellant's case.

10. Having regard to the facts and evidences available on record, we are of the view that the appellant has acted negligently in discharge of his professional duties. It is hoped that adequate caution is exercised in issuing any

certificate in future. Taking a lenient view and in pursuance of the judgement of the Hon'ble Bombay High Court in the case of Mahesh P. Patel Versus The Commissioner of Customs (EP) (*supra*), both the appeals filed by the Appellant Dipal J Shah are allowed. Consequently, the penalties imposed on the Appellant Dipal J Shah in the impugned orders are set aside.

11. Thus, the appeals are allowed with consequential relief, if any. Miscellaneous applications filed are also disposed of.

(Order pronounced in open court on 19.02.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)
MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)