

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**CUSTOMS APPEAL No. 58485 of 2013**

(Arising out of Order-in-Original No. 09/2013 dated 31.03.2013 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi)

**Cargo Placement & Shipping Agencies Pvt. Ltd. ....Appellant**  
Plot No. 104, Basement Arya Bhawan Road No.4,  
Mahipalpur Extn.  
New Delhi

Versus

**Commissioner of Customs, ....Respondent**  
ICD Tughalkabad  
New Delhi

**APPEARANCE:**

Shri Ashwani Bhatia and Ms. Anjali Gupta, advocates for the appellant  
Shri Mukesh Kumar Shukla, authorised representative of the department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing : 06.01. 2026

Date of Decision : 12.02.2026

**FINAL ORDER NO's. 50266/2026**

**JUSTICE DILIP GUPTA :**

This appeal has been filed by M/s Cargo Placement and Shipping Agencies Private Limited<sup>1</sup> to assail that portion of the order dated 31.03.2013 passed by the Commissioner ICD, TKD, New Delhi<sup>2</sup> that imposes penalty upon the appellant under section 112(a)(i) of the Customs Act, 1962<sup>3</sup> for acts of omission and commission as it failed to discharge statutory obligation and became a party to the misdeclaration and illegal import.

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**1 the appellant  
2. the Commissioner  
3. the Customs Act**

2. The appellant is a customs broker and was issued a licence under the Customs House Agents Licensing Regulations, 2004<sup>4</sup>. Shri Krishan Kumar is a G-Card holder of the appellant. Shri Sanjay Kumar is the General Manager of the appellant. The allegation against the appellant is that it failed to perform duty and exercise supervision to ensure proper conduct of employees in terms of regulation 19 of the 2004 Regulations and thus was liable to action in terms of regulation 20 of 2004 Regulations.

3. The relevant portion of the show cause notice dated 03.02.2011 is reproduced below :

**"76. Investigation reveals that Shri Krishan Kumar was a G card holder with M/s Cargo Placement & Shipping Agency and he, on the instance of pursuing by Shri Lokesh Garg, Shri Manish Jalhotra and Shri Kamal Sehgal has filed Bill of Entry in respect of five containers on the directors of Shri Sanjay Kumar, is Company's General Manager and all the documents were handed over to him by Shri Sanjay Kumar. Shri Krishan Kumar is a valid 'G' Card holder issued by Customs. It was the responsibility of the person holding the G card to take proper documents and apply due diligence to ascertain the genuineness of the persons and the correctness of the documents on the basis of which he was filing the documents in Customs in terms of Customs House Agents Licencing Regulations, 2004. However, from the investigation it appears that Shri Krishan Kumar has failed to take proper documents and did not even verify the antecedents of the person for whom he has filed the check list for Bill of Entry. Thus it appears that Shri Krishan Kumar has helped out Shri Lokesh Garg, Shri Manish Jalhotra and Shri Kamal Sehgal in smuggling of goods of foreign origin in the manner as discussed above. Thus he appears to be liable to penal action under**

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4 the 2004 Regulations

**with Section 112 of Customs Act, 1962. From the above, it appears that Shri Krishan Kumar has failed to maintain proper conduct in transaction of business as an agent of CHA and M/s Cargo Placement & Shipping Agency, the CHA appears to have failed to perform duty to exercise such supervision as may be necessary to ensure the proper conduct of his employees in terms of Regulation 19 of Customs House Agents License Regulations, 2004 and thus liable to action in terms of Regulation 20 of Customs House Agents Licensing Regulations, 2004.**

**80. Shri Sanjay Kumar, GM of M/s Cargo Placement & Shipping Agency in his statement dated 13.03.2010 recorded under Section 108 of Customs Act, 1962 admitted that he has given documents received from Sh. Lokesh Garg and Sh. Manish Jalhotra through Shri Kamal Sehgal to Shri Krishan Kumar G Card holder to file Bill of Entry without taken sufficient documents and without verifying the genuineness of the persons and also the genuineness of the IEC on the basis of which he asked his G Card holder person i.e. Shri Krishan Kumar to file the Bill of Entry and thus became instrumental in abetment of smuggling of goods of foreign origin by Shri Lokesh Garg and others as discussed above.** Further his malafide appears to be corroborated with the fact that in spite of being CHA company having EDI facility to file the Bill of Entry from his office through the EDI login provided to him, he asked Shri. Krishan Kumar to file the Bill of Entry from CMC to avoid detection by the Customs as well as from his company's own management system. Thus he knowingly with the help of Shri Krishan Kumar appears to be abetted in the smuggling of goods of foreign origin rendering himself of penal action under Section 112 of Customs Act, 1962. Shri Sanjay Kumar also failed to exercise due diligence to ascertain the correctness of any information which he imparted to the importer as above. **Thus it appears that the act of Shri Sanjay Kumar as discussed above render M/s Cargo Placement and Shipping Agency liable for suspension of his CHA License in terms of Regulation 20 of Customs House Agents Licensing Regulations, 2004."**

**[emphasis supplied]**

4. It is for the aforesaid reason that the appellant has been called upon to show cause as to why the penalty should not be imposed upon the appellant in terms of regulation 20 of the 2004 Regulations and the relevant portion is reproduced below :

“**88.** Now, therefore –

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) xxxxx

(e) **M/s Cargo Placement & Shipping Agency who has appointed Shri Krishan Kumar 'G' Card holder and M/s Continental Cargo Services who has appointed Shri N.K. Singh are called upon to Show Cause to the Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi -110020 within 30 days of receipt of this show cause notice as to why action against them should not be taken in terms of Regulation 20 of Customs House Agents Licensing Regulations, 2004.”**

5. It, however, needs to be noted that in paragraph 87(VI) only a statement has been made that the appellant is liable to penalty under section 112 of the Customs Act.

6. The Commissioner has dealt with the imposition of penalty upon the appellant in the following manner :

“(116)h. The noticee in reply to the show cause notice dated 23.02.2011 also admitted that Mr. Sanjay Singh and Mr. Krishan Kumar had admitted filing 14 Bills of Entry claiming to be without his consent which is against the written company procedures and policies. **In the instant show cause notice, the noticee has been charged for filing one Bill of Entry number 872912 dated 04.02.2010 in the name of a fictitious firm M/s Jai Sales Organisation.** In addition to the above, the noticee has also filed 14 Bills of Entry in the names of bogus/fictitious firms i.e. M/s D.P.Enterprises and M/s Jai Sales Organisation. **Further, the imputation against them in Para 19 refers to alleged failure to perform duty to exercise such supervision as may be necessary**

to ensure the proper conduct of the employees in terms of Regulation 19 of CHALR, 2004. However, in contra, in Para 87(vi) name of M/s. Cargo Placement & Shipping Agencies is also included with the accused persons in this case as being liable to penalty under Section 112 of the Customs Act, 1962 for their acts of commission and/or omission in dealing with goods liable to confiscation under Section III of the Act *ibid*. On going through the show cause notice, I see that there are enough evidences on records to establish that the noticee has filed 14 Bills of Entry of bogus/ non-existent firms which has resulted in illegal imports of goods. The credentials of these firms were not verified and KYC norms were not followed before filing the documents with the Customs which is one of foremost mandatory conditions/obligations imposed on the noticee. **Even though in para 88(e) no imputation has been made under the Customs Act against the noticee. However, there are sufficient evidences on records which clearly establishes the acts of commission and omission of the part of the notice which renders them liable for penal action under section 112 of the Customs Act, 1962 as alleged in para 87 (vi) of the show cause notice.** Thus the noticee failed to discharge their statutory obligation and became a party to the mis-declaration and illegal import.

**i. I find from the show cause notice that M/s Cargo Placement & Shipping Agencies who had appointed Shri Krishan Kumar, G Card holder (Noticee No. 12) were called upon to show cause as to why action against them should not be taken in terms of Regulation 20 of the Customs House Agents Licensing Regulations, 2004. I also find that in para 87(vi) of the Show Cause notice it has been alleged against the noticee that they are liable to penalty under section 112 of the Customs Act, 1962 for their acts of commission and/or omission in dealing with goods liable to confiscation under section 111 of the Act *ibid*. In view of my discussion and findings, therefore, I hold that the noticee is liable to penalty under section 112 of the Customs Act, 1962 for their acts of commission and/or omission in dealing with the**

**goods liable to confiscation under section 111 of the Act, *ibid*.** As regards, the action under Regulation 20 of the CHALR, 2004, the Additional Commissioner (SIIB), ICD, TKD, New Delhi is directed to take up the matter with the Commissioner of Customs, Import & General, New Customs House, New Delhi.”

**[emphasis supplied]**

7. Shri Ashwani Bhatia, learned counsel for the appellant submitted that the allegation against the appellant is violation of regulation 19 of the 2004 Regulations but this cannot be made a ground to impose penalty upon the appellant under section 112(a)(i) of the Customs Act. Learned counsel also submitted that mere mention of section 112(a)(i) of the Customs Act in paragraph 87(VI) of the show cause notice without indicating why penalty should be imposed upon the appellant under section 112(a)(i) of the Customs Act cannot be made a ground to impose penalty upon the appellant under section 112(a)(i) of the Customs Act. In support of this contention, learned counsel placed reliance upon the decision of Delhi High Court in **Commissioner of Customs (Import & General), New Delhi vs Buhariwal Logistics<sup>5</sup>**.

8. Shri Mukesh Kumar Shukla, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

9. A perusal of the show cause notice and the impugned order shows that the main allegations that have been levelled against the appellant are violation of regulation 19 of the 2004 Regulations. It is only in paragraph 87(VI) that the show cause notice alleges that penalty under section 112 of the Customs Act is liable to be levied

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**5** 2016 (332) ELT 278 (Del.)

upon the appellant. The impugned order notices that no imputation has been made under the Customs Act against the appellant. The order, however, proceeds to hold that since there is sufficient evidence which establish acts of omission and commission of the appellant it would render the appellant liable for penal action under section 112 of the Customs Act.

10. This conclusion drawn by the Commissioner cannot be sustained. The show cause notice, as noticed above, merely alleges violation of regulation 19 of the 2004 Regulations. It does not make any mention as to why penalty under section 112(a)(i) of the Customs Act should be imposed upon the appellant. Only in paragraph 87(VI) of the show cause notice it has merely been stated that penalty can be imposed upon the appellant under section 112(a)(i) of the Customs Act. The impugned order notices that there is no allegation against the appellant for imposition of penalty under section 112(a)(i) of the Customs Act, but still it proceeds to impose penalty upon the appellant for the reason that there was enough evidence on record to show that the acts of omission and commission on the part of the appellant would render the appellant for penalty under section 112(a)(i) of the Customs Act. Therefore, penalty under section 112(a)(i) of the Customs Act could not have been imposed upon the appellant.

11. This is what was held by the Delhi High Court in **Buhariwal Logistics**. The Delhi High Court observed that mere violation of the provisions of 2004 Regulations cannot be made a ground to impose penalty under section 112(a)(i) of the Customs Act and relevant paragraph is reproduced below :

**"18.** Mr. Kantawala then referred to the findings recorded in the order-in-original dated 18th July, 2013.

The Court finds that in the said order as far as respondent No. 1 is concerned, one reason for justifying the penalty is that respondent No. 1 had failed to verify the antecedents of the importer diligently so as to inform the Department in case of any adverse observation. The other reason is that it had failed to "supervise its employees so as to thwart the illegal import of the impugned car." There was no finding, based on the evidence on record, that respondent No. 1 was aware of the illegal import in which the G-card holder was involved. Considering that it was a question of penalty, there ought to have been some tangible material to show that respondent No. 1 was aware of the acts of its employee/agent, Mr. Prince. As rightly pointed out, if respondent No. 1 was found to have acted in breach of Regulation 19(8) of CHALR, 2004, that might call for a separate action to be initiated under those regulations. However, that by itself will not justify the imposition of penalty under Sections 112 and 114AA of the Act unless knowledge of the illegal acts of the agent/employee is able to be attributed to his employer/principal, i.e. respondent No. 1."

12. Thus, for all the reasons stated above, the impugned order dated 31.03.2013 passed by the Commissioner insofar as it imposes penalty upon the appellant under section 112(a)(i) of the Customs Act cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **12.02.2026**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**