IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-08-2026

CORAM

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 16050 of 2024

And

WMP.No. 17554 of 2024

C.Solomon Selvaraj ..Petitioner

Vs

Principal Commissioner of Customs,
Customs House, No.60 Rajaji Salai,
Chennai-600001.

..Respondent

Writ Petition is filed under Article 226 of Constitution of India praying for issuance of writ of certiorari, calling for the records of the respondent, culminating in Orer-in Original No. 105387/2024 dated 19.03.2024, quash the same insofar as demands of duty and penalty on the petitioner is concerned and pass such further or other orders.

For Petitioner: M/s.L.Maithili

For Respondent: Mr.K.Mohana Murali, SSC

ORDER

The petitioner challenges the Order-in-Original No.105387/2024 dated 19.03.2024 passed by the respondent. By the impugned order, the petitioner has been held jointly and severally liable, along with the other notices, to pay differential customs duty of Rs.4,56,00,374/- under Section 28(4) read with Section 28(8) of the Customs Act, 1962, together with applicable interest under Section 28AA of the Act. A penalty of an equivalent amount has also been imposed under Section 114A of the Act. In addition, a penalty of Rs.10,00,000/- has been imposed on the petitioner in connection with the alleged use of false documents.

2. The dispute arises out of the import covered by Bill of Entry No.4228874 dated 01.12.2017 filed in the name of M/s.R.M. Enterprises. Based on specific intelligence, the Directorate of Revenue Intelligence, Chennai Zonal Unit (DRI) intercepted the consignment, which had been declared as containing gas stoves and spare parts. Upon examination, the DRI found 2,01,13,000 pieces of sewing machine needles of the brands “Organ” and “Flying Tiger” and 70,200 pieces of steel measuring tapes concealed behind the declared goods. The said goods had not been declared in the Bill of Entry, invoice, packing list or other documents submitted for clearance.

3. The investigation revealed that the declared importer, M/s.R.M. Enterprises, was owned by one Ramesh Menon and that the address furnished

for the importer was fictitious. The investigation also revealed that the persons allegedly connected with the transaction, including one Vishal, could not be traced.

4. The petitioner is the proprietor of M/s.The Sea Shipping Forwarders. The case of the Department is that the petitioner received the import documents from one Vishal, handed them over to M/s.Asian Shipping Agencies, the Customs Broker, and instructed the Customs Broker to file the Bill of Entry in the name of M/s.R.M. Enterprises. It is further alleged that the petitioner made payment of customs duty from his firm's bank account, obtained the delivery order, and arranged for the examination and clearance of the consignment.

5. During the investigation, statements of the Customs Broker and other persons concerned were recorded. The Department relies, in particular, upon the statement of the petitioner recorded under Section 108 of the Customs Act, wherein he is stated to have admitted that he had undertaken the customs clearance and transportation of the consignment on a lump-sum basis at the instance of Vishal. The Department also relies upon the petitioner's statement that he had handled other consignments arranged through Vishal.

6. On completion of the investigation, a Show Cause Notice dated 18.06.2018 was issued to the petitioner and other persons alleging, inter alia, that the petitioner had facilitated the attempted smuggling and had effective control over the imported goods. The Department also alleged that the petitioner

was a beneficiary of the transaction and, therefore, was liable to be treated as an importer within the meaning of Section 2(26) of the Customs Act.

7. The petitioner submitted his reply dated 15.10.2018 and additional submissions dated 09.08.2019 and 10.09.2020. Thereafter, an adjudication order dated 28.09.2020 was passed fastening customs duty and penalty upon the petitioner.

8. Aggrieved by the said order, the petitioner approached this Court in W.P.No.1738 of 2021. By order dated 13.10.2023, this Court set aside the order and remitted the matter to the respondent for fresh consideration. This Court specifically held that the Department's inability to trace the actual importer could not, by itself, be a ground to treat the petitioner as the beneficial owner of the goods and fasten the duty liability upon him. The respondent was directed to reconsider the matter, particularly the question whether the petitioner was aware of the attempted smuggling, and to determine his liability, if any, in proportion to the role actually played by him.

9. Pursuant to the said order, the proceedings were taken up afresh. After affording an opportunity of hearing to the petitioner, the respondent passed the impugned order dated 19.03.2024, once again fastening the differential duty and penalty upon the petitioner jointly and severally with the other notices.

10. Mrs. L. Maithili, learned counsel for the petitioner, submitted that the petitioner is neither the owner nor the beneficial owner of the imported goods and, therefore, cannot be made liable for the differential duty under Section 28 of the Act. She further submitted that the earlier order of this Court had specifically held that the petitioner could not be treated as the beneficial owner merely because the actual importer could not be traced.

11. Learned counsel further submitted that the respondent has failed to record a specific finding, supported by independent material, that the petitioner had knowledge of the undeclared goods or had knowingly participated in the attempted smuggling. It was also submitted that the respondent relied upon an alleged previous incident involving the petitioner, but the penalty imposed in that case has subsequently been set aside by the CESTAT, Chennai, by order dated 02.06.2026 in Customs Appeal Nos.40678 of 2018 and 42293 of 2018.

12. Per contra, Mr. K. Mohana Murali, learned Standing Counsel appearing for the respondent, submitted that the materials collected during investigation clearly establish the petitioner's involvement in the transaction. According to him, the petitioner received the import documents, instructed the Customs Broker to file the Bill of Entry, made payment of customs duty from his firm's account, obtained the delivery order and arranged for examination and clearance of the goods. It was therefore contended that the petitioner had

effective control over the consignment and was liable for the differential duty and penalty.

13. Learned Standing Counsel further submitted that the impugned order was passed after considering the materials on record and in compliance with the directions issued by this Court in W.P.No.1738 of 2021. Reliance was also placed upon the petitioner's statement under Section 108 of the Act and his alleged previous involvement in a smuggling case.

14. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent and perused the materials available on record.

15. The principal question that arises for consideration is whether the material available on record is sufficient to fasten upon the petitioner the liability for the differential duty and the consequential penalty, particularly in the light of the findings recorded by this Court in W.P.No.1738 of 2021.

16. In the earlier round of litigation, this Court had categorically held that the inability of the Department to trace the actual importer or other persons involved in the transaction could not, by itself, justify treating the petitioner as the beneficial owner of the goods. The order dated 28.09.2020 was accordingly set aside. The respondent was specifically directed to examine afresh whether

the petitioner had knowledge of the attempted smuggling and to determine his liability with reference to the actual role played by him.

17. In the impugned order, the respondent has reiterated that the Bill of Entry was filed in the name of M/s.R.M. Enterprises and that the petitioner had instructed the Customs Broker to file the same. It is also recorded that the duty was paid from the bank account of the petitioner's firm and that the petitioner had taken steps for examination and clearance of the goods.

18. These circumstances may, undoubtedly, establish that the petitioner was involved in the clearance of the consignment. However, involvement in the clearance process, by itself, is not sufficient to establish that the petitioner was the owner or beneficial owner of the goods, or that he knowingly participated in the misdeclaration or attempted smuggling.

19. Section 147 of the Customs Act deals with the liability of the principal and agent. Under Section 147(3), a person expressly or impliedly authorised by the owner, importer or exporter to act as his agent may, subject to the statutory requirements, be deemed to be the owner, importer or exporter for the purposes of the Act. The provision cannot, however, be invoked merely on the basis of the fact that a person facilitated customs clearance. The necessary foundational facts establishing the agency contemplated by the provision must first be established.

20. The Supreme Court in ***Collector of Customs, Cochin v. Trivandrum Rubber Works Ltd.*, (1999) 106 E.L.T. 9 (S.C.),** has held that the liability for duty under Section 28 is ordinarily that of the person chargeable with the duty and that the liability of an agent arises only in the circumstances specifically contemplated by Section 147(3).

21. In the present case, the respondent has not recorded a clear finding, supported by cogent material, that the petitioner was expressly or impliedly authorised by the actual owner or importer to act as his agent in the manner contemplated under Section 147(3). On the contrary, the identity of the actual importer/owner, namely the persons behind M/s.R.M. Enterprises and Vishal, has remained unestablished during the investigation.

22. More importantly, the respondent has not recorded a specific and reasoned finding that the petitioner had prior knowledge that the container contained the undeclared sewing machine needles and measuring tapes or that he knowingly facilitated their concealment and attempted evasion of duty.

23. The mere fact that the petitioner undertook customs clearance and transportation on a lump-sum basis, received documents from Vishal, dealt with the Customs Broker, paid the assessed duty and arranged for examination and clearance cannot, without more, establish knowledge of the concealed goods.

Such circumstances may justify further investigation, but they cannot, in the absence of a clear finding supported by evidence, constitute the basis for fastening the entire differential duty upon the petitioner.

24. The distinction between a person who actually commits an act rendering goods liable to confiscation and a person alleged to have abetted such act is also material. The Delhi High Court in ***Rajeev Khatri v. Commissioner of Customs (Export), (2023) 9 Centax 412 (Del.),*** held that while the act or omission rendering goods liable to confiscation may attract Section 112(a), an allegation of abetment necessarily requires knowledge of the offending act. Mere facilitation, without the requisite knowledge, cannot by itself amount to abetment.

25. In the present case, the impugned order proceeds largely on the petitioner's role in arranging the clearance of the consignment and on the statements recorded during investigation. However, the crucial finding required pursuant to the earlier order of this Court namely, that the petitioner had knowledge of the concealed goods and knowingly participated in the attempted smuggling is absent.

26. The respondent has also taken into consideration the previous involvement of the petitioner in an alleged attempt to smuggle goods. In this regard, learned counsel for the petitioner has relied upon the order dated

02.06.2026 passed by the ***CESTAT, Chennai in Customs Appeal No.42293 of 2018,*** wherein it was held as follows:

> *"13. The term 'abet' means assisting, encouraging, commanding or procuring another person to commit an offence. It essentially involves actively aiding or facilitating the commission of an offence. Abetment necessarily involves at least two persons one who commits the offence and the other who abets its commission. Therefore, when the actual person who committed the offence is not found or his involvement in the improper importation is not established, a person cannot be penalised merely on the allegation of abetment.*
>
> *14. Though the statement of Suresh Kumar appears to be an afterthought and does not inspire confidence, that by itself cannot establish that he was responsible for abetting the improper importation. Therefore, there is no justification for imposing penalty under Section 112(a) of the Customs Act.*
>
> *15. Section 114AA is not invokable in the case of imports, as the provision was introduced to deal with fraudulent exports where the export is only on paper and no actual physical export takes place. Therefore, Section 114AA cannot be invoked in the present circumstances.*
>
> *16. Accordingly, the penalties imposed on the appellants are set aside and the appeals are allowed."*

27. Thus, the very earlier proceedings relied upon by the respondent against the petitioner have subsequently been set aside by the CESTAT, Chennai. Therefore, the reliance placed upon such proceedings in the impugned order cannot be sustained. More importantly, this Court, in the earlier round of litigation, had categorically held that the petitioner could not be treated as the beneficial owner of the goods. In the absence of any finding establishing that the petitioner had knowledge of, or had connived in, the alleged smuggling, the fastening of duty liability and penalty on the petitioner merely on the basis of his alleged previous involvement is unsustainable.

28. The impugned order, therefore, does not satisfactorily address the specific issue remitted for fresh consideration by this Court. The respondent was required to determine, on the basis of the evidence available, whether the petitioner had knowledge of the attempted smuggling and, if so, the precise role played by him. Instead, the respondent has substantially proceeded on the basis of the petitioner's involvement in the clearance process and his alleged control over the consignment.

29. As regards the penalty, Section 114A applies to the person liable to pay duty or interest where the non-levy or short-levy is by reason of collusion, wilful misstatement or suppression of facts. The statutory precondition of

establishing the petitioner's liability to pay the duty must therefore be satisfied before the consequential penalty can be sustained.

30. Likewise, insofar as the allegation relates to false or incorrect documents, Section 114AA requires a finding that the person knowingly or intentionally made, signed, used, or caused to be made, signed or used, a declaration, statement or document which was false or incorrect in a material particular. The existence of the false document alone is not sufficient; the requisite knowledge or intention of the person sought to be penalised must also be established.

31. In the present case, there is no specific finding establishing that the petitioner knowingly or intentionally made, signed, used or caused any particular false declaration or document. The impugned order therefore also fails to establish the necessary ingredients for sustaining the penalty imposed upon the petitioner in respect of the alleged false documents.

32. This Court is conscious that the writ jurisdiction is not ordinarily exercised to re-appreciate disputed questions of fact or the evidentiary value of statements recorded during investigation. However, in the present case, the matter had already been remitted by this Court in W.P.No.1738 of 2021 with a specific direction to determine the petitioner's knowledge and actual role. The

impugned order does not record the necessary findings in that regard and proceeds on a basis which had already been found insufficient in the earlier round of litigation.

33. In these circumstances, the finding that the petitioner is jointly and severally liable for the entire differential duty of Rs.4,56,00,374/- cannot be sustained. The consequential demand of interest and the penalties imposed upon the petitioner, being founded on the same finding, also cannot be sustained.

34. Accordingly, the impugned Order-in-Original No.105387/2024 dated 19.03.2024, insofar as it fastens the liability for differential duty, interest and penalty upon the petitioner, is set aside. The Writ Petition is allowed.

35. It is made clear that this order is confined to the liability of the petitioner and shall not affect the proceedings, if any, against the other notices in accordance with law. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

19-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The Principal Commissioner of Customs,
Customs House, No.60 Rajaji Salai,
Chennai-600001.

HEMANT CHANDANGOUDAR J.

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