CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO.IV

CUSTOM APPEAL NO. 50536 OF 2024

[Arising out of Order-in-Original No.59/2023/VCG Pr. Commr./ICD-Import/TKD dated 19.12.2023 passed by the Commissioner of Customs, (ACC Import), New Delhi)

Sushil Gautam **Appellant**

S/o Momraj Gautam
R/o 177, 178, FF-202, KH No. 306,
Pandav Nagar, Ghaziabad, UP-201002

Vs.

Principal Commissioner of Customs, ICD-Import, Tughlakabad, New Delhi **Respondent**

ICD, Tughlakabad, New Delhi-110020

Appearance:
Present for the Appellant: Shri N. K. Sharma and Shri Kapil Gautam, Advocates
Present for the Respondent: Shri N. M. Goel, Authorised Representative

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Final Order No. 51665/2026

Date of Hearing: 07.10.2026

Date of Decision:04.11.2026

HEMAMBIKA R. PRIYA

Sushil Gautam[1] is in appeal against the Order-in-Original No.59/2023/VCG Pr. Commr./ICD-Import/TKD dated 19.12.2023 passed by the Commissioner of Customs (ACC Import) New Delhi.

2. The brief facts of the case are that the appellant was a G-Card holder of M/s Ambe Freight Pvt. Ltd. and employed as a salaried

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1 **The appellant**

employee of the said Customs Broker, drawing a monthly salary of Rs. 18,000/. In the present case, Shri Mahesh Ramji Bhanushali approached the Appellant at the ICD Tughlakabad, and requested him to process the customs documentation pertaining to the subject consignments. Shri Mahesh Bhanushali provided all relevant import documents, including invoices, packing lists, bills of lading, IEC copy, and other supporting documents. A Show Cause Notice No. 128/2023-24/Commr./ICD/TKD dated 13.09.2022 was issued to the appellant under Section 124 of the Customs Act, 1962, alleging that the appellant, along with Shri Ratan Singh (F-Card holder of M/s Ambe Freight Pvt. Ltd.), had aided, abetted, and assisted Shri Mahesh Ramji Bhanushali and M/s GIGA Export Services in the alleged smuggling of goods, thereby rendering themselves liable to penalty under Sections 112(a)(i) and 114AA of the Customs Act, 1962. The noticee no. 2 was liable to penalty under section 112 (a)(i) of Custom Act 1962. It was alleged that Shri Sushil Gautam had failed to verify the documents provided by the noticee no. 2 and filed the Bills of Entry without bringing the same to the knowledge of Shri Ratan Singh, the Customs Broker. Hence, a penalty of Rs 1,00,000/- was imposed upon the appellant under Section 112(a)(i) of the Customs Act, 1962. Aggrieved by the said order, the appellant has filed the present appeal.

3. Learned counsel for the appellant submitted that the proceedings were also initiated against the Customs Broker, M/s Ambe Freight Pvt. Ltd., and its F-Card holder, Shri Ratan Singh, under the provisions of the Customs Brokers Licensing Regulations. Aggrieved by the Order-in-Original No. 01/ZR/POLICY/2023 dated 17.01.2023, the F-Card

holder/Customs Broker preferred an appeal before CESTAT. The CESTAT, after considering the facts held that the punishment of revocation of Customs Broker Licence was not sustainable, and set aside the order. He contended that the appellant stood on a stronger footing, being merely a salaried G-Card holder drawing a monthly salary. Learned counsel submitted that when the CESTAT had already set aside that the revocation of licence against the Customs Broker/F-Card holder, the imposition of penalty upon the appellant, in the absence of any evidence of conscious knowledge, mens rea, active connivance, or deliberate abetment, was unsustainable. He further added that the findings recorded in the impugned order itself acknowledged that the investigation had not adduced any evidence to establish that Shri Sushil Gautam had prior knowledge of the import of misdeclared goods or that he had knowingly and intentionally filed Bills of Entry on the basis of fake documents. The only allegation against the appellant was that he had failed to verify the documents supplied by Shri Mahesh Ramji Bhanushali before filing the Bills of Entry. Such omission, cannot by itself attract penalty under Section 112(a)(i) of the Customs Act, 1962 in the absence of proof of conscious involvement or intentional abetment. In support of his submission, the learned counsel relied upon the following decisions:-

- Triveni Cargo v. Commissioner of Customs (Airport & General), New Delhi[2].
- Friends Cargo Services v. Commissioner of Customs[3].

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2 (2024) 19 CENTAX 178 (Tri.-Del.)
3 (2025) 31 CENTAX 211 (Tri.-Del.)

4. Learned Authorized Representative for the Department submitted that the two limbs of Section 112(a) covered anyone who "does or omits to do any act" rendering goods confiscable. Mens rea was not an ingredient of this limb, as admitted by Shri Rajeev Khatri. Learned AR stated that on 09.05.2022, the appellant had stated that the correctness of documents or the importer's address, was not verified as per Regulation 10(n). Learned AR submitted that the appellant had signed the KYC copies, where the PAN signature/photograph and Aadhaar photograph did not match the originals. He further stated that there was no unit at the declared address, as revealed by the verification by the Department. Learned AR stated that the appellant had solicited the order for commercial gains, filed the documents "instantly", and had kept the F-card holder uninformed, used an independent ID and dongle, and stayed silent out of fear of the Customs alert, which showed his awareness of risk. On 29.03.2022, the appellant had submitted that the KYC was tallied with originals and then on 09.05.2022, he stated that he had not verified correctness or address. Learned AR contended that Section 114AA had already been dropped in the appellant’s favour. The Department's case was legally and factually established, and supported by admissible confessions, and corroborated by documentary evidence and case law. Hence, the appeal filed by the appellant was devoid of merit and deserve to be dismissed in full.

5. We have heard the learned counsel for the appellant, learned AR for the Department and perused the records.

6. As per impugned order, we note that the allegations & findings in respect of appellant are as follows:-

> "2.11.2 During the investigation Sh. Sushil Gautam, G-card holder vide his statement dated 29.03.2022 and 09.05.2022 stated that Sh Mahesh Ramji Bhanushali had given copy of documents related to M/s Giga Export Services. It is noticed that the documents related to M/s Giga Export Services have been created on morphed/forged documents. Further vide his statement dated 09.05.2022 Sh Sushil Gautam stated that he did not verify the documents, address physically and complete KYC of the M/s Giga Export Services which is in violation to the Customs Broker Licensing Regulations 2018 due to this negligence the above mentioned goods have been filed in customs for clearance under the above six Bills of Entry. During the investigation it is found that the firm M/s Giga Export service [IEC-ETIPK3912A] are found non-existent at the registered address and the firm has been created on the morphed/forged documents of Sh. Dhirendra Kumar. As the signature on the original Pan card of Sh. Dhirendra Kumar does not match with the signature of the copy of pan card as provided in the documents of KYC of M/s Giga Export Service by Sh Sushil Gautam (G-card). Even when Sh. Sushil Gautam (G-card), Sh Mahesh Ramji Bhanushali and Rattan Singh Bisht, F-Card holder were cross-examined with Sh. Dhirendra Kumar, all of them stated that they do not know Sh. Dhirendra Kumar and had never met him before.
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> Further in the investigation Sh. Rattan Singh Bisht, F-card holder of Custom Broker firm M/s Ambe Freight Pvt Ltd statement dated 29.03.2022 and 09.05.2022 stated that Sh. Sushil Gautam, G- card holder had filed above mentioned six Bills of Entry without his knowledge. Further he vide his statement dated 09.05.2022 stated that he did not verify the documents, address physically and completed KYC of the M/s Giga Export Services under the Customs Broker Licensing Regulation 2018, and he did not monitor the activity of his G-card holder Sh. Sushil Gautam. Due to his negligence the above impugned goods have been filed in customs for clearance under the above six Bills of Entry. Further, vide order-in- original: 44/ZR/suspension/policy/2022 dated 08.07.2022 the Customs Broker license No R-13/DEL/CUS/2021 (PAN:AAUCA1152A) valid upto 27.01.2031 of M/s Ambe Freights Pvt Ltd was suspended and the said Customs Broker firm was also directed to surrendered all F/G/H card issued by them. Further, vide order order-in-original 48/ZR/suspension-confirmation/policy/2022 dated 26.07.2022 confirmed the suspension of Customs Broker License No R-13/DEL/CUS/2021 (PAN:AAUCA1152A).
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> From the above facts, it is evident that by the way of act of omission and commission Sh. Sushil Gautam, G-Card holder of M/s Ambe Freight Pvt. Ltd. and Sh. Rattan Singh Bisht, F-card of M/s Ambe Freight Pvt. Ltd. engaged in the

activity of aiding, abetting and assisting to Sh. Mahesh Ramji Bhanushali and the firm i.e M/s GIGA Export Services in their illegal activities of smuggling of goods and thus have rendered themselves liable to penalty under Section 112 (a)(i) & 114AA of the Customs Act, 1962."

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7.2.2 I notice that the documents related to M/s Giga Export Services have been created on morphed/forged documents. There was not unit of M/s Giga Export Services at the declared address. Shri Sushil Gautam did not verify the documents, address physically and completed KYC of the M/s Giga Export Services which is in violation of regulation 10(n) of the Customs Broker Licensing Regulations 2018 due to this negligence the above mentioned goods have been filed in customs for clearance under the above six Bills of Entry.

7.2.3 I find that Shri Sushil Gautam, in his statement dated 29.03.2022 had admitted that the Bills of Entry were filed by their Custom Broker Company. He also admitted that Sh. Mahesh Ramji Bhanushali approached him, who met him at ICD, Tughlakabad customs office and requested him for filing the documents for the import of said consignments and provided him the details of the said consignments viz. invoices, packing list, Bill of Lading and copy of IEC etc. he also admitted that he did not bring it to the knowledge of Sh. Rattan Singh Bisht, F-Card of Custom Broker firm. He accepted to file the same so that he and their company gets more benefit in the throat cut competition and back ground of earlier import were neat and clean, therefore, he accepted the offer of the importer and filed the Bill of entries instantly without knowledge of their Custom Broker. I noticed that the documents related to M/s Giga Export Services have been created on morphed/forged documents. Therefore, Shri Sushil Gautam did not verify the documents, address physically and complete KYC of the M/s Giga Export Services which is in violation of regulation 10(n) of the Customs Broker Licensing Regulations 2018 due to this negligence the above mentioned goods have been filed in customs for clearance under the above six Bills of Entry."

7. Learned counsel has strongly pleaded that as the Tribunal has set-aside the revocation of the Customs Broker License, hence, the penalty on the appellant automatically extinguishes. The argument is persuasive but the same has to be seen from the facts of the case. It is on record that the appellant, a G-Card holder of the Customs Broker

had filed the documents. It is also on record that he was aware of the Customs alert, but did not inform his F-Card holder. This is corroborated by Shri Rattan Singh Bisht in his statement dated 29.03.2022. In this statement, he has further stated that the appellant had filed the Bills of Entries using his own ID & used independent dongle for digital signature. All this establishes the fact that the F-Card and Customs Broker holder was not involved in the said transaction. What comes out is that the appellant had independently carried out the filing of these documents. Further, it is also on record that the original PAN and Aadhar of M/s Giga KYC Export proprietor did not match with the KYC document submitted by the appellant while filing the Bills of Entries. In his statement dated 09.05.2022 recorded under Section 108 of the Customs Act, 1962, the appellant had submitted that he had not verified the same. As regards the address not being genuine, it is now settled law that the Customs Broker is not expected to physically verify the address. However, it is an admitted fact that the KYC documents were not verified with the original by the appellant, which is a violation of Regulation 10(n) of the CBLR, 2018. Hence, we are of the view that the appellant had violated the provisions of CBLR and is liable for penalty.

8. However, we also take note that the appellant was merely the G-card holder, earning a salary of Rs. 18,000/- per month. It has also been submitted that his wife was unwell and was on dialysis. This is corroborated by the F-card holder Shri. Ratan Singh in his statement dated 29.03.2022. We find that the order has imposed Rs. 1,00,000/-

under Section 112(a) (i) which we are of the opinion is on the higher side for a person on meager salary of Rs. 18,000/- per month.

9. In view of this financial condition, we reduce the penalty to Rs. 5,000/- only. The impugned order stands modified to that extent and the appeal stands allowed to the said extent.

(Order pronounced on 04.11.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.