

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CUSTOMS APPEAL No. 7 OF 2024

BETWEEN:

1. PRINCIPAL COMMISSIONER OF CUSTOMS,
BANGALORE,
AIRPORT AND AIR CARGO COMPLEX,
COMMISSIONERATE, MENZIES,
AVIATION BOBBA BUILDING,
DEVANAHALLI, BANGALORE URBAN,
KARNATAKA 560 300.

...APPELLANT

(BY SRI UNNIKRISHNAN M., ADVOCATE)

AND:

1. M/S PIGEON INTERNATIONAL,
ROOM No.245/F, MAZ BUSINESS CENTRE,
MAZ JUNCTION, VALIYAPARAMBA P. O.,
PILIKKAL VIA, MALAPPURAM,
KERALA 673637.
REP. BY BOARD OF DIRECTORS.

...RESPONDENT

(BY SMT. MAYA MENON, ADVOCATE)

THIS CSTA / CUSTOMS APPEAL IS FILED UNDER SECTION 130 OF THE CUSTOMS ACT 1962, PRAYING TO SET ASIDE THE ORDERS PASSED BY THE HON'BLE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, BANGALORE, DATED 30.04.2024 IN CUSTOMS APPEAL No.20048/24 VIDE



ANNEXURE A AND CONFIRM THE ORDER-IN-ORIGINAL No. 293/2023-24 AP AND ACC DATED 27.09.2023 PASSED BY THE PRINCIPAL COMMISSIONER OF CUSTOMS BANGALORE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.09.2025, THIS DAY **K. V. ARAVIND J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

Heard Sri. Unnikrishnan M., learned counsel for the appellant and Smt. Maya Menon, learned counsel for the respondent.

2. The Revenue has preferred this appeal under Section 130 of the Customs Act, 1962, impugning the order dated 30.04.2024 in Customs Appeal No. 20048/2024.

3. The appeal was admitted on 13.08.2025 to consider the following substantial questions of law, as reframed in the memo dated 24.07.2025:

"(i) Whether the respondent is liable to for penalty under Section 117 of the Customs Act 1962 and also under Regulation 14 of the Courier Imports and Exports (Electronic Declaration & Processing) Regulation, 2010?"

(ii) Whether the Tribunal could interfere and set aside a validity executed contract like Bank Guarantee which are guided by the provisions of the Indian Contract Act being an independent contract executed by a Financial Institution which stipulates that payment has to be made without any demur?

(iii) Whether the Hon'ble Tribunal could exercise discretion on the ground of equity and reduce the penalty which is not provided in law?"

4. Facts in Brief:

The respondent-assessee was granted permission to operate as an Authorized Courier at the International Courier Terminal of the Airport and Cargo Commissionerate, Devanahalli, Bengaluru. Such permission is governed by the Courier Imports and Exports (Clearance) Regulations, 1998 (hereinafter '1998 Regulations') and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 (hereinafter '2010 Regulations'). The respondent engages in the clearance of goods imported from overseas through its courier service on behalf of Indian importers/customers. The appellant conducted an investigation through its Intelligence Unit. Based on intelligence received, it was confirmed that M/s. K. T. Technologies had violated the provisions of the Customs Act in its courier imports. The consignments in

question were cleared through the respondent. During the course of the investigation, it was found that Sri M. Elias, an employee of the respondent, had created a GSTIN in the name of Ms. Kajal Thakur, whose trade name is M/s. K. T. Technologies. In her statement, Ms. Kajal Thakur stated that Sri M. Elias had created the GSTIN in her name and denied any knowledge of the two consignments in the name of M/s. K. T. Technologies.

4.1 Upon recording further statement, Sri M. Elias admitted to creating a GSTIN in the name of Ms. Kajal Thakur without her knowledge, as well as making imports in her name and filing bills of entry in the name of M/s. K. T. Technologies. He further admitted to mis-declaration of the value, description, and quantity of goods. Subsequently, summons were issued to the authorized courier, i.e., the respondent, under Section 108 of the Customs Act, 1962. During the recording of its statement, it was admitted that Sri M. Elias had joined the respondent as an Executive Clearance. The statement of Sri Mujeeb K.T. also admitted violations of the 1998 and 2010 Regulations, as well as provisions of the Customs Act, 1962. Accordingly, proceedings were initiated against Ms. Kajal Thakur and the respondent. A show-cause

notice dated 29.07.2022 was issued to the respondent for the alleged violations under the 2010 Regulations and for imposition of penalty under Section 117 of the Customs Act, 1962. In the meantime, Ms. Kajal Thakur, proprietor of M/s. K. T. Technologies vide letter dated 02.12.2021, claimed ownership of the seized goods and requested their release. The goods were released in her favour upon payment of duty and fine. Under the order dated 27.09.2023, the courier license of the respondent was revoked in terms of Regulation 13 of the 2010 Regulations, and the Bond and Bank Guarantees were enforced. Additionally, a penalty of Rs. 50,000/- was levied under Regulation 14 of the 2010 Regulations and a further penalty of Rs. 50,000/- was imposed under Section 117 of the Customs Act, 1962.

4.2 The respondent preferred an appeal against this order before the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT'). The CESTAT, while modifying the penalty of Rs.50,000/- to Rs.25,000/- levied under Regulation 14 of the 2010 Regulations, set aside the penalty imposed under Section 117 of the Customs Act, 1962 and also set aside the order of revocation of the authorized courier license and enforcement of the Bond and Bank Guarantees.

Aggrieved by this order, the Revenue has preferred the present appeal.

Submissions:

5. Sri Unnikrishnan M., learned counsel appearing for the Revenue, submits that the respondent has admitted to violations of the 2010 Regulations and the provisions of the Customs Act, 1962. The importer, though initially contended that the imports were without her knowledge, she subsequently claimed ownership of the consignments and paid the duty and penalty. It is submitted that the CESTAT recorded the involvement of the respondent in the alleged illegal imports and violations of Regulation 12 of the 2010 Regulations. Learned counsel contends that the CESTAT, having recorded such findings, misdirected itself in holding that there was no *mens rea* on the part of the respondent to violate the 2010 Regulations. It is submitted that the penalty cannot be avoided merely on the ground that the illegality was committed by the staff of the licensee, and that once the illegality is established, the consequences under the 2010 Regulations and the provisions of the Customs Act, 1962 would follow.

5.1 Learned counsel further submits that the levy of penalty under Regulation 14 of the 2010 Regulations is for contravention/failure to comply with the provisions of the Regulations. The Regulations mandate that an authorized courier must abide by the provisions of the Customs Act, 1962. The penalty levied under Section 117 of the Act is independent of the penalty under Regulation 14. It is the submission of learned counsel that the CESTAT committed an error in setting aside the penalty under Section 117 of the Customs Act, 1962, in view of the levy of penalty under Regulation 14 of the 2010 Regulations.

5.2 Learned counsel for the appellant has relied upon the judgment of the Bombay High Court in ***Container Corporation of India Ltd. v. Commissioner of Customs, Nhava Sheva*** in ***Customs Appeal (L.) No. 33496/2023***, decided on 06.12.2023. Reliance was also placed on the judgment of the Hon'ble Supreme Court in ***Commissioner of Customs v. K.M. Ganatra and Co. [(2016) 4 SCC 687]***, to contend that a license granted to a Custom House Agent, together with the list of obligations, if contravened, constitutes misconduct which must be viewed seriously. It was further submitted that the penalty under Section 117 of the Customs

Act is independent of any penalty imposed under the Regulations.

6. Smt. Maya Menon, learned counsel appearing for the respondent, submits that initially a case was made out against the import in the name of M/s. K.T. Technologies, which is a bogus entity. However, M/s. K.T. Technologies subsequently claimed ownership of the import, which was accepted, and the seized goods were released upon payment of duty and penalty. The proceedings were thus initiated in respect of imports in the name of a purportedly bogus entity. Learned counsel contends that once the Revenue accepted the ownership of M/s. K.T. Technologies and released the goods upon payment of duty and penalty, the entire basis of the proceedings against the respondent ceased to exist. It is submitted that the acts of the Executive Clearance, Sri M. Elias, cannot be imputed to the respondent. There are no antecedents indicating that the authorized courier had been involved in such activities previously, and the present situation arose solely due to the involvement of Sri M. Elias. Learned counsel further submits that the revocation of the authorized courier license is disproportionate to the alleged violation.

6.1 Learned counsel further submits that a penalty under Section 117 of the Customs Act, 1962 can be levied only when no penalty is provided under any other Act or Regulations. Since Regulation 14 specifically provides for the levy of penalty, the imposition of penalty under Section 117 of the Customs Act would amount to a double levy for the same violation, which is impermissible. Learned counsel further submits that the CESTAT has recorded findings of fact based on the material evidence on record, and, therefore, no substantial questions of law arise for consideration by this Court.

7. We have considered the submissions of the learned counsels for the parties and perused the appeal papers.

8. At the outset, we are not in agreement with the finding of the CESTAT that the presence of *mens rea* is a prerequisite for imposing penalty under Section 117 of the Customs Act, 1962. A plain reading of Section 117 of the Act makes it clear that whenever any person contravenes any provision of the Act or fails to comply therewith, a penalty is attracted. Reading a requirement of *mens rea* into the provision would amount to rewriting the statute, which is impermissible. Since Section 117, in its plain language, does not indicate the

necessity of *mens rea*. The contrary finding recorded by the CESTAT is incorrect and unsustainable. Accordingly, the said finding is set aside.

9. The Revenue alleges contravention of the 2010 Regulations, seeking imposition of penalty and revocation of the courier license. The respondent, however, has vehemently contended that there was no violation of the Regulations by the authorised courier as contemplated under Regulation 12; consequently, revocation of the registration of the authorised courier under Regulation 13 is claimed to be erroneous. The CESTAT, in paragraph 13 of its order, recorded a finding against the respondent, holding that Regulation 12 of the 2010 Regulations was indeed violated. This finding has not been challenged by the respondent. The CESTAT subsequently set aside the revocation of registration of the authorised courier on the ground that Sri M. Elias committed the violation and that the same was not within the knowledge of the respondent. Notwithstanding this, the finding of violation of Regulation 12, as recorded by the CESTAT, remains unassailed and has attained finality. Accordingly, at this stage, in the appeal filed by the Revenue, the respondent cannot contend non-violation of Regulation 12 of the 2010 Regulations. In that view, the sole

issue that remains for consideration by this Court is the correctness of the revocation of registration of the authorised courier.

10. The appellant-Revenue, based on intelligence received, initiated an investigation and established that Sri M. Elias, working for the authorised courier (respondent), had created a GSTIN in the name of Ms. Kajal Thakur, and courier bills of entry were filed in the trade name M/s K. T. Technologies. Ms. Kajal Thakur denied knowledge of such transactions and suspected that Sri M. Elias had created the GSTIN in her name by misusing her documents. The statement of Sri M. Elias was also recorded. In his statement, Sri M. Elias admitted to the registration of the GSTIN in the name of Ms. Kajal Thakur without her knowledge. A show-cause notice was issued to the respondent, to which a reply was submitted, stating that due to the COVID-19 pandemic, the respondent's business operations were halted, and Sri M. Elias was acting as Executive Clearance for the purpose of reviving the business. Any violation of the Regulations or licence conditions, it was contended, was not within the knowledge of the respondent.

11. Meanwhile, Ms. Kajal Thakur claimed ownership of the goods. Duty and penalty were determined, paid, and the seized goods were released in her favour. However, proceedings continued against the respondent for non-verification of the imports and various other violations. It is concluded that Sri M. Elias, working for the authorised courier, created a GSTIN in the name of Ms. Kajal Thakur, and bills of entry were filed in the name of M/s K. T. Technologies. Consequently, it is held that the imports in the name of M/s K. T. Technologies were mis-declared and undervalued, thereby violating Regulation 12 imposing conditions. It is further held that the respondent failed to properly advise the consignee, M/s K. T. Technologies, to comply with the provisions of the Act, Rules, and Regulations.

12. In the light of the foregoing sequential facts, the proceedings against the respondent were initiated on the ground of creating a GSTIN and submitting courier bills of entry in the name of M/s K. T. Technologies. A relevant aspect for consideration is the ownership of the goods, which was claimed by Ms. Kajal Thakur. Although initially disowned, the Revenue subsequently accepted her claim of ownership, and, upon payment of duty and penalty, the goods were released in her

favour. By such action, the very basis of the show-cause notice and the proceedings against the respondent ceases to subsist.

13. However, the aforementioned facts indicate a violation of the conditions under Regulation 12. The respondent has sought to explain the circumstances in which such violations occurred. Irrespective of the acceptance of the explanation, once the foundational basis of the proceedings no longer exists, the imposition of suspension or revocation of the registration of the authorised courier would be disproportionately harsh. It is submitted that the respondent has not engaged in any similar activities prior to or subsequent to the incident. While the contention of the respondent that the misdeeds of its employee cannot form a basis for revocation may not, in itself, be a wholly sound ground for acceptance, in the absence of any comparable antecedents. The revocation would have a serious impact on the business rights of the respondent. The violations as observed can be adequately addressed by the imposition of penalty.

14. The Revenue has placed reliance on the judgment of the Hon'ble Supreme Court in ***Commissioner of Customs v. K.M. Ganatra and Co.*** (supra), contending that once a

contravention of regulation is established, the misconduct reflects a chain of acts, and suspension of the sentence cannot be interfered with. In that case, the period of suspension imposed by the Commissioner was modified by the CESTAT, which the Hon'ble Supreme Court found to be in error. It is, however, pertinent to note that suspension and revocation are distinct concepts. In the present case, revocation of the authorised courier's registration would be arbitrary, particularly in light of the subsequent conduct of the Revenue in accepting the ownership of the alleged goods and releasing the same in favour of M/s K. T. Technologies upon payment of duty and penalty, thereby removing the very basis of the proceedings. Any violation of the Regulation can also be addressed by the imposition of penalty under Regulation 14. In the facts of the present case, after imposition of penalty under Regulation 14, we are of the view that revocation of the authorised courier licence would be harsh and disproportionate to the contravention alleged. The CESTAT, having duly appreciated the factual matrix, was justified in setting aside the order of revocation.

15. The CESTAT reduced the penalty imposed from Rs.50,000/- to Rs.25,000/- under Regulation 14 of the 2010

Regulations. While the CESTAT recorded a finding that the respondent had violated Regulation 12, it committed an error in reducing the penalty prescribed under the Regulations. For this reason, and in view of the fact that the CESTAT, having set aside the revocation of the authorised courier licence, ought to have maintained the penalty, we set aside the order of the CESTAT insofar as it relates to the penalty under Regulation 14 of the 2010 Regulations and restore the penalty of Rs.50,000/- as originally imposed by the appellant.

16. The appellant had imposed a penalty of Rs.50,000/- under Section 117 of the Customs Act, 1962. The CESTAT set aside the same, holding that Section 117 is applicable only when no express penalty is provided elsewhere for the contravention. It is accordingly held that, in view of the penalty provided under Regulation 14 of the 2010 Regulations, the imposition of penalty under Section 117 of the Customs Act is not permissible.

17. A close reading of Regulation 14 indicates that a penalty is attracted when the authorised courier contravenes any of the provisions of the Regulations, whereas penalty under Section 117 is attracted when there is contravention or failure

to comply with any provision of the Act. In that view, the penalty under Section 117 and the penalty under Regulation 14 operate in different domains. This position is further supported by the judgment of the ***Bombay High Court in Container Corporation of India Ltd.*** (*supra*). It is accordingly held as follows:

"27. On a plain reading of Section 117 of the Customs Act, it is quite clear that the provision pertains to penalties for contravention of the provisions of the Act or in the event of abetment of any such contravention and /or failure to comply with the provisions of the Act, with which the person was under a duty to comply and where no express penalty elsewhere is provided for such contravention or failure, it is only in that event, Section 117 can be invoked. Thus, Section 117 of the Customs Act is an independent provision inter alia dealing with the contravention of the provisions of the Act."

18. In the light of the facts discussed above, the CESTAT committed an error in setting aside the penalty levied under Section 117 of the Customs Act, 1962. The order of the CESTAT to that extent is set aside and the penalty of Rs. 50,000/- under Section 117 of the Customs Act, 1962, as originally imposed, is restored.

19. For the foregoing reasons, the following:

ORDER

- (i) Appeal is allowed-in-part.
- (ii) The order of the CESTAT is set aside to the extent stated above.
- (iii) Substantial questions of law Nos.1 and 3 are answered in favour of the appellant and against the respondent.
- (iv) Substantial question No.2 does not arise from the order of the CESTAT. Hence, same is not answered.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**