BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.01.2026

PRONOUNCED ON : 10.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A(MD)Nos.571, 572, 573 & 574 of 2020

1.C.M.A(MD)No.571 of 2020:

The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004. ... Appellant

Vs.

Shri Regin.P,
Proprietor of M/s.Regin Agency,
Alluvilal Karukkankuzhy, Thikkannam Code Post,
Kanyakumari – 629 864. ... Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the impugned common final order No. 42432-42435/2018 dated 17.09.2018 passed by the CESTAT, Chennai.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

2.C.M.A(MD)No.572 of 2020:

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin – 628 004. ... Appellant

Vs.

M/s.Regin Exports,
No.3/60, Pulluvilai Pookadai,
Thiruthan Code Post,
Kanyakumari – 629 174. ... Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the impugned common final order No. 42432-42435/2018 dated 17.09.2018 passed by the CESTAT, Chennai.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

3.C.M.A(MD)No.573 of 2020:

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin – 628 004. ... Appellant

Vs.

M/s.Daniel and Samuel Logistics Private Limited,
No.4B/222, CGE Colony,
5th Street, Tuticorin – 628 003. ... Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the impugned common final order No. 42432-42435/2018 dated 17.09.2018 passed by the CESTAT, Chennai.

For Appellant : Mr.N.Dilip Kumar

4.C.M.A(MD)No.574 of 2020:

The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004. ... Appellant

Vs.

M/s.Zion Logistics,
No.S-28/A, Masilamanipuram,
Tuticorin – 628 008. ... Respondent

PRAYER :- Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the impugned common final order No. 42432-42435/2018 dated 17.09.2018 passed by the CESTAT, Chennai.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.Arun Ramnath

COMMON JUDGMENT

(Judgment of the Court was delivered by R.POORNIMA , J.)

These appeals have been filed as against the common final orders passed in Nos.42432-42435/2018 dated 17.09.2018 on the file of the Customs, Excise and Service Tax Appellate Tribunal (in short hereinafter referred to as 'CESTAT'), Chennai, whereby the appeals filed by the respondents were allowed.

2.The brief facts of the case of the appellant are as follows :

(i) The respondent M/s.Regin Exports (in short hereinafter referred to as 'RE'), Kanyakumari District, holder of IEC No.3510011091 which was functioning at Pulluvila, Pookadai, Kanyakumari District, is a proprietorship concern represented by its Proprietor Smt.Anichandrakala. It is engaged in the processing of raw cashew nuts and has obtained seven Advance Authorisation licenses from the office of the Joint Director General of Foreign Trade, Madurai, during the period from 23.03.2016 to 27.05.2016, to import raw cashew shells without payment of Customs duty, and actual user condition with an obligation to export, the processed cashew kernals.

(ii) M/s.RE imported and cleared a quantity of 3073.331 Mts of Raw Cashew Nuts (in short hereinafter referred to as ‘RCN’) valued at Rs.31,85,42,558/- without payment of customs duty, vide 19 bills of entry by availing the benefit of notification No.18/2015-CUS dated 01.04.2015 for the period from 01.04.2016 to 26.07.2016.

(iii)The officer of the Directorate of Revenue Intelligence received secret information that M/s.Regin Agencies, the respondent herein indulged in the diversion of imported RCN to the units of another IEC holder, M/s.Regin Exports violating the condition of notification No.18/2015, Customs dated 01.04.2015 as amended and the license issued by DGFT in terms of para 4.16 of FTP 2015–2020.

(iv) On inspection on 22.7.2016, a search was conducted in the premises of M/s.RE, the respondent herein. During the search, it was found that there was no stock of imported RCN found in their authorised premises as mentioned in the advanced authorisation, namely, M/s.RE, Pulluvila, Pookkadai, Thikkanamcode, Kanyakumari, and M/s.RE, Ochavilai, Puthukkadai, Kunnathur Village, Kanyakumari District.

(v)As per the advance authorisation scheme, the imported RCN should be brought into the premises of M/s.RE, Pulluvilai and Ochavilai. However, M/s.RE diverted the duty-free goods to 16 units/commission agents of M/s.Regin Agency. Searches were made on 22.7.2016, 23.7.2016, 03.8.2016, and 04.8.2016. During the search, it was found that 429.2 Mts of imported RCN valued at Rs.3,74,27,160/- alone was lying in those premises and the same were seized.

(vi)The Assistant Commissioner of Central Excise vide letter, C.No.IV/16/33/2014–STU dated 18.08.2016 reported that M/s.RE had not obtained any permission to transfer the imported goods to various branches of M/s.RA for job work. As per the conditions stipulated in notification No.18/2015 dated 01.04.2015, the entire quantity of imported RCN was required to be brought to the respondent's unit Ochavilai and Pulluvilai for processing. However, only 81.5 Mts of the imported RCN was sent to the DGFT-authorised unit, 190.48 Mts was utilized for export and the remaining 2801.47 Mts was diverted.

(vii)Under the Central Excise Rules/Regulations Customs, Tuticorin vide their letters F.No.64/65 DEEC dated 11.01.2017 and C.No.VIII/48/751/2016 DEEC dated 13.01.2017, have informed the details of bonds executed by them in relation to advance authorisation licenses issued to M/s.RE for duty-free import of RCN in shell. M/s.RE was exempted from undertaking any bank guarantee in view of the Export House Certificate dated 22.12.2025.

(viii)On scrutiny of the bill books of M/s.RE seized under Mahazar dated 22.07.2016, it was found that M/s.RE sold 225 Mts RCN valued at Rs.2,16,55,716/- in the Local market.

(ix)In this connection, a show cause notice No.4/2016 was issued on 30.01.2017 to the respondent calling for explanation. The respondent also filed their written submissions.

(x)After following due process of law, Commissioner of Customs vide in his order dated 05.12.2017 held that the conditions prescribed in Notification No.18/2015-CUS dated 01.04.2015 were not fulfilled and 2372.263 Mts RCN that were already diverted to the unauthorized units are liable for confiscation and it was ordered to confiscate 429.207 Mts confirming the customs duty to the tune of

Rs.2,71,69,335/- imposing interest, imposing penalty to the tune of Rs.25 lakhs on Mr.Regin, penalty of Rs.5 lakhs, each was imposed on the customs brokers, i.e., M/s.Zion logistics, M/s.Daniel and Samuel logistics.

(xi) Aggrieved by the same the respondents filed an appeal before CESTAT. The CESTAT, vide its common and final order No.42432–42435/2018 dated 17.09.2018 allowed the appeal filed by the respondent.

(xii)Aggrieved by the common final order of the Tribunal, the Customs Department filed the present appeal on the following ground: Whether the diversion of RCN imported duty-free under advance authorisation to the unauthorized unit for processing and the sales effected to third party in local market is permissible under FTP 2015–2020 and notification No.18/2015-CUS dated 01.04.2015.

(xiii) Learned counsel appearing on behalf of the appellants contented that as per the condition sheet annexed to the advance authorisation issued for the importers that they were required to adhere to the following conditions :

a)The exempt goods imported against the authorization shall only be utilised in accordance with the provision of para 4.1 of FTP 2015/2020 and other provisions, relevant customs notification No.18/2015 dated 01.04.2015.

b) The authorisation holder shall abide by the instructions in para 4.21 of the HPB (Handbook of Procedure) 2015–2020 as the case may be, for maintenance of true and proper accounts of consumption and utilisation of inputs and furniture return to the Regional Authority as per the provisions of FTP and procedure laid down.

c) The authorisation holder is to comply with the provisions of para 4.10 and 4.35 of HPB 2015–20 as amended from time to time, with regard to the transfer of any material from the unit of the authorisation holder to any other unit of the authorisation holder included in the IEC or to the supporting manufacturer/jobber.

However, the authorisation book holder did not process RCN in the given address and violated the condition of notification No.18/2015-CUS, dated 01.04.2015.

(xiv)The appellant mentioned the relevant provisions relating to the advance authorisation license. FTP 2015–2020 notified vide Notification No.1/2015-2020, dated 01.04.2015 are as follows:

4.03 Advance Authorisation –
(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage).
In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.
(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:
(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR
(ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.

(xv)As per para 4.16 of FTP 2015-2020 exempt goods imported, should be utilised in accordance with the above provision and, other provisions and relevant custom notification No.18/2015 dated 01.04.2015.

(xvi)The authorisation holder shall abide by the instruction contained in para 4.21 of HPB 2015–2020 as the case may be for maintenance of true and proper account of consumption and utilisation of inputs and furnish a return to the concerned Regional Authority as per the provisions of FTP and procedure laid down thereunder.

(xvii)The authorisation holder should comply with the provisions of para 4.10 and 4.35 of HBP 2015–2020 and amended from time to time regarding the transfer of any material from one unit of the authorisation to another unit of the authorisation included in IEC or to a supporting manufacturer.

(xviii)The factory address where the goods are imported shall be processed only with the M/s.Regin Exports, Door No.16/101, Ochavilai, Puthukkadai Post, Munchira Block, Kunnathur Village, Kanniyakumari District and M/s.Regin Exports, Door.No.3/60B, RS. No.513/2(P) Pulluvilai, Pookkadai, Thickanamcode Post, Kanniyakumari District.

(xix)As per the advance authorisation issued by the DGFT of M/s.RE were required to bring the RCN imported duty-free into the premises M/s.RE in the above address and the authorisation shall not be transferred or sold as per notification No.18/2015 dated 01.04.2015

(xx)As per FTP 4.03 Advance Authorisation as follows :

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage).
In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR

(ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.

(xxi) 4.16 deals with Actual User Condition for Advance Authorisation (i) Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

(xxii)4.10 of advance authorisation for applicants with multiple units.

(xxiii)4.21 maintenance of account.

(xxiv)4.35 facility of supporting manufacturer/jobber/co-licensee.

(xxv)As per the voluntary statement of Proprietor of M/s.RE, Smt.Anichandrakala, in her statement dated 28.07.2016 admitted that the RCN in shell imported duty-free under their license were sent directly from Tuticorin port to the different units of M/s.RA, which is owned by her husband Mr.Regin without any document.

(xxvi)Mr.Regin, Proprietor of M/s.RA also corroborated the statement of M/s.Anichandrakala, in his statement recorded on 25.07.2016 and 18.11.2016, and further admitted that they were not maintaining registers for accounting. He further stated that RCN in Shell imported under Advance Authorisation by M/s.RE are taken directly from the port after customs clearance to the units of M/s.RA. After processing into cashew kernels, the same was dispatched to M/s.RA at No.18–69/18–45B, Aluvilai, Kanniyakumari District. From the above address, processed cashew kernels would be sold to different parties from there. In the financial year 2016–2017, they sold about 377 Mts processed cashew kernels to various buyers (around 25 units located at Kollam) they had sold 33 Mts of cashew nuts to M/s.Lekshmi Cashew Company. He further stated that M/s.RE was not maintaining registers for accounting the consumption and stocks of duty-free imported raw materials allowed under Advance Authorisation as per Appendix 4.1 of the HBP. He further stated that the quantity of the imported and cleared quantity of cashew kernels as on 31.03.2016 was 13069.73 KG only. He further submitted that the unit at Ochavilai belongs to M/s.RE and all other units are agents of M/s.RA.

(xxvii) It reveals that M/s.RE diverted the RCN imported duty-free goods to commission agents controlled by M/s.RA. However, M/s.RE had not obtained any permission from the Central Excise Authorities for the transfer of raw cashew nuts. They had not executed any bank guarantee with the customs as they were exempted from being a star house.

(xxviii)The statements of managers/authorised persons from 14 units were recorded by Directorate of Revenue Intelligence, and they had also corroborated the statements of the proprietors of M/s.RE and M/s.RA. They further stated that RCN in shell were received directly from the Tuticorin Port in a container, accompanied by documents, such as the bill of entry, weighment slip, and form JJ. They further stated that the transporter handed over the documents to them. They further confirmed that no local purchase of Raw Cashew is made by them. Whenever such a container comes from Tuticorin the route checker of M/s.RA would come to the unit and supervise the unloading, verify the bag and make entries in the daily stock account, all the import documents were handed over to the above person. Thereafter, they processed RCN on a commission basis for Rs.500/- to Rs.2000/- per bag. After processing, the graded Kernals were transported to the office of M/s.RA.

(xxix)The statements of i) M/s.Vineeth Cashew, Kollam ii) M/s.Ansika Trading Private Limited, Kanyakumari District iii) M/s.Deva Cashew to whom M/s.RE sold imported RCN on 23.07.2016, 28.08.2016, 29.08.2016, were recorded. It was stated that RCN in containers have come directly to their factory from the Port, along with imported documents and the sale invoice of M/s.RE. After processing, the cashew kernels would either be sold in the local market or to M/s.RE/RA after raising a sale invoice, which appears that M/s.RA sold processed cashew nuts from out of imported cashew nuts in shell to different firms which confirmed that they do not have a transaction with M/s.RE but from M/s.RA.

(xxx) The statement of Selvakumar, Managing Director of M/s.Daniel and Samuel Logistic Private Limited was recorded that they had received the invoice, packing list, bill of lading, certificate of origin, phytosanitary certificate and original advance authorisation license from the office of M/s.Sea Dart Logistics Tuticorin, on behalf of M/s.RE. The containers are dispatched to various units of M/s.RE as per the instructions of M/s.Sea Dart Logistics and M/s.Sea Dart Logistics collected the payment from M/s.RE.

(xxxi)The statement of Thiru.S.Mariyappan, imports-in-charge of M/s.Zion Logistics was recorded, he stated that they had been doing clearance of imported consignment of M/s.RE for the last one and half years. They received the invoice and the connected papers from

M/s.Pixel Impex on behalf of M/s.RE. They filed the bills of entry with Tuticorin Customs Authorities, after Customs examination, and the containers were dispatched to various units of M/s.RE as per the instructions, of M/s.Pixel Impex. They prepared the sales tax, KK form for transport of imported RCN and handed over the goods to the truck driver along with copies of the bills of entry and form KK. One person from M/s.RE presented to coordinate and supervise the transportation of goods and provided the details of the dispatch of imported raw cashew nuts to various units of M/s.RE. He further stated that M/s.Pixel Impex collects the payment from M/s.RE and gives them by cheque and provided the cheque numbers.

(xxxii)M/s.Pixel Imports who were acting as mediators for clearing the import consignment of M/s.RE, in their statement also corroborated the statement of M/s.Zion Logistics. M/s.Sea Dart Logistics also stated that M/s.RE gave instructions to hand over the same to M/s.Daniel and Samuel Logistics Private Limited to dispatch the goods to their various units. They used to send the names by email. Their head office collects charges from M/s.RE and pays M/s. Daniel and

Samuel Logistics Private Limited by way of cheque. M/s.RE made payments through RTGS to their account maintained at the Federal Bank.

(xxxiii)Mr.P.Regin, Proprietor of M/s.RA vide letter dated 17.11.2017 admitted that to reduce the transportation cost, the container would be delivered to the job workers' premises from the Port in a routine manner. He further admitted that the sale of three containers of inferior quality to M/s.Lekshmi Cashew, Kollam but raised an invoice in their name instead of M/s.RE.

(xxxiv)Therefore, it reveals that out of 3073 Mts of RCN imported under Advance Authorisation, only 81.05 Mts of RCN was dispatched to their unit authorised by DGFT, 190.48 Mts were used for export and the remaining quantity of 2801.47 Mts was diverted by the respondent. 225 Mts of RCN imported were sold in the local market.

(xxxv)The respondent failed to maintain a true and proper account of the consumption and utilisation of duty-free imported materials as stipulated under para 4.16 of the Foreign Trade Policy 2015–2020 which was substantiated by the statement dated 25.07.2016 of Mr.P.Regin.

(xxxvi)M/s.RA had sold 29.93 Mts of RCN imported under an Advance Authorisation license to M/s.Lexmi Cashew Company, Kollam which violates para 4.16 of the FTP. The invoice numbers were mentioned in the show cause notice and this fact appeared to be confirmed by M/s.Lekshmi Cashew Company in their statement dated 29.11.2016.

(xxxvii)At no point in time, the information was provided to the Customs Department/DGFT by M/s.RE about the receipt of inferior quality. So the plea regarding the sale is only to cover up their wrongdoing, and it is only after thought.

(xxxviii)Further, M/s.RA sold 377 Mts of cashew kernels to 3rd party under the form H and form C, processed out of cashew units in shell imported by M/s.RE. This fact was corroborated by the statement of buyers. However, third party export cannot be counted towards the export obligation of M/s.RE as the conditions have not been met by M/s.RE. The third-party exports can be counted towards the discharge of export obligation, only if there is a contractual agreement between the export holder and third party. But there is no such contract agreement between the export holder and the third-party in respect of the exported goods.

(xxxix) It appeared that the condition to treat the export by a third party towards the obligation of M/s.RE are not satisfied as processed to cashew kernals and form H were purchased from M/s.RA and not from M/s.RE and in this case, the buyers have submitted that the exports were made against the orders received by them, and the documents were all under their name only. They also stated that they made a full payment. M/s.RE has not endorsed any of the documents, and they also submitted that the payment was made in full. Therefore, the company cannot be treated either as a job workers or third party exporters of M/s.RE.

(xl)Further, the respondent has not made any intimation to the jurisdictional Central Excise Authorities for the transfer of goods from the authorised unit to other job worker units for processing. The importer has misused that Advance Authorisation for their own convenience.

(xli) From the above, it is clear that M/s.RE neither obtained permission from the jurisdictional Central Excise officers, for transfer of goods from authorised units nor incorporated the names of such units to which RCN has been diverted, contravening, the provisions contained in para 4.10 of the Handbook of Procedures.

(xlii) The respondent did not maintain a true and proper account of the consumption and utilisation of duty-free procured inputs under Advance Authorisation in violation of the condition in Sl.No.7 in the condition sheet annexed to the Authorisations and Para 4.21 of the Handbook of Procedures.

(xliii) Mr.P.Regin, Proprietor of M/s.RA, was the master mind behind the entire modus operandi. He arranged for an advance license to be obtained in the name of M/s.RE. Both Smt.Anichandrakala and Mr.P.Regin acted with malafide intention to evade the customs duty payable on the imported RCN. The entire processing of importing RCN and subsequently diverting it to other IEC holders violated the user condition, and the adjudicating authority rightly issued the order holding them are liable to pay duty on the quantity of RCN in shell imported under advance authorization licenses and for diverting it to other units. The duty liability worked out to be Rs.2,71,69,335/- as detailed in the

Show Cause Notice. Hence, prayed to allow these Civil Miscellaneous Appeals and to set aside of the order of the Tribunal.

3. The respondent in their counter has stated as follows and reiterated the same during the argument :

i) They have duly observed the conditions of the 7 licenses under which RCN were imported by them and there has been no default or diversion as alleged;

ii) Export obligations under the said licenses expired only in October 2017 and as such show cause notice itself is premature and based on erroneous information. The regime of customs duty on the import of cashew nuts came into force on 28.02.2016.

iii) They have been doing the processing of raw cashew nuts through commission agents in a rented units for the last few years and this process continued even in respect of cashews imported under the license of March-April 2016.

iv) The entire export obligations under the said 7 licenses have been fulfilled well before the stipulated dates. As such, there is no duty foregone by the Government as suspected.

v) The processing is done by unskilled labour, sometimes as job work in small units or even homes. It is incorrect to state that there was any diversion of any quantity of RCN imported under the licenses.

vi) M/s.Regin Agency and its associate firm M/s.Regin Exports are also involved in the local/domestic trade of cashew nuts as well, apart from the processing of raw cashew nuts. There is no prohibition of job work for processing as M/s.Regin Exports does not have adequate workers on its rolls to process the same.

vii) The statements recorded by customs officials, extracts of which are provided in para 4, are not admitted. Statements do not show any such diversion or violation of the conditions of the licenses.

viii) It is true that RCN imported under the said licenses were sent to other units for processing as mentioned in the notice but the same were in the process for job work and cannot be construed as a diversion of RCN in terms of the purpose for which 7 licenses have been obtained. There may have been some procedural violations in not securing endorsement of the Regional Office, but that is not a deliberate omission, but rather arose due to ignorance of procedures, as Raw Cashew came under the customs duty regime only recently (hardly 5 months before the search of their premises).

ix) As far as the RCN alleged to have been sold by M/s.Regin Exports in para 5.6 the same are not RCN imported under the aforesaid 7 licenses. It is incorrect to state that they failed to maintain true and proper accounts of the consumption and utilisation of imported materials. The sale of cashew nuts by M/s.Regin Agency and M/s.Regin Exports mentioned in para 5.6 were procured from the local market. In any case, the entire export obligations of processing of cashew nuts have been completed within the stipulated time and if there was stock remaining beyond such fulfilment, M/s.Regin Exports is entitled to dispose of the same so as not to suffer loss and such action cannot be described as diversion.

x) It is true that M/s.Regin Exports and M/s.Regin Agency have sold certain stocks of cashew nuts in the local markets but they are not part of the imported stocks. M/s.Regin Exports has been involved in local trade as well and that cannot amount to a diversion or violation of the conditions of the said licenses.

xi) It is unfortunate that the show cause notice has not taken note of the export already completed. The department has also not taken note of the export made subsequently as informed in their letters dated 10.03.2017 and 17.04.2017.

xii) The notice has been issued without jurisdiction.

xiii) There is neither any deliberate act of misrepresentation nor misstatement nor intention to evade payment of duty. There is no fraud or deliberate act of misrepresentation or misstatement in this regard as alleged. Finally, they requested for personal hearing to put forth their grounds.

4. The learned counsel for the respondent in CMA.(MD) No.574 of 2020 submitted that the appeal is not maintainable under the monetary limit as per Central Board of Indirect Taxes and Customs vide its instruction dated 22.08.2019, no appeal shall be filed before the High Court where the monetary limit is below Rs.1 Crore, which applies even to pending cases. This has been affirmed by this Hon'ble Court in

C.M.A.(MD) Nos.1189 and 1190 of 2010. Since the penalty involved in the present case is only Rs.5 lakhs, the appeal is not maintainable.

4.1. Moreover under Section 130 of the Customs Act, 1962, an appeal to the High Court is maintainable only if a substantial question of law is involved. In the present case, the question of law pertains only to M/s.Regin Exports and not to the respondent. Hence, the appeal is not maintainable against this respondent.

4.2. The learned counsel further submitted that there is no violation by the customs broker. The respondent Customs Broker acted bona fide and in accordance with Regulation 11 of the Customs Brokers Licensing Regulations, 2013. The transport pass were prepared on the instructions of M/s.Regin Exports, with the understanding that the goods would be returned to the authorised units after job work, which is a usual and permitted practice under the Advance Authorisation (Para 4.16). The broker's duty ends with customs clearance, and there is no obligation to track goods thereafter.

4.3. The Commissioner of Customs wrongly imposed penalty and the same is highly excessive against this respondent, which is improper. If a broker has not acted upon his obligations he could be punished under the Customs Brokers Licensing Regulations, 2013. In this case no further action was taken against the respondent. Even under Section 112 of the Customs Act, the maximum penalty on a Customs Broker is Rs.5,000/-. Therefore, the imposition of a penalty of Rs.5 lakhs is illegal, arbitrary, and contrary to law. Hence, the Civil Miscellaneous Appeal is liable to be dismissed.

5. Heard the learned counsel on either side and perused the material available on records.

6. It is admitted that the M/s.RE procured 7 Advance Authorisation licenses from the period 23.03.2016 to 27.05.2016, from the Joint Director General of Foreign Trade, Madurai for import of RCN in shell without payment of customs duty. They imported and cleared a quantity of 3073.331 Mts of RCN valued Rs.31,85,42,558/- without payment of customs duty under the said 7 Advanced Authorisation license vide 19 bills of entry through Tuticorin Sea port availing the

benefit of notification No.18/2015–CUS dated 01.04.2015 from the period 01.04.2016 to 22.07.2016.

7. In exercise of power conferred under Section 25(1) of the Customs Act, 1962, the Central Government being satisfied that it is necessary in the public interest, to do so, exempts materials imported into India against a valid advance authorisation issued by the Regional Authority in terms of 4.03 of the Foreign Trade Policy from the whole of the duty of customs leviable, which is specified in the first schedule of The Customs Tariff Act, 1975, with certain conditions and the authorisation viz.,

> *"(ii) that the authorization bears:-*
>
> *(a) the name and address of the importer and supporting manufacturer in case where the authorisation has been issued to a merchant exporter;*
>
> ....
>
> *(v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on material used in the manufacture of resultant product) or sub rule (2), binding himself to use the*

imported materials in his factory or in the factory office, supporting manufacturer for the manufacture of dutiable goods and to submit from the jurisdictional officer specified chartered accountant within six minutes months from the date of clearance of the materials that the imported materials have been so used condition.

....

(x) that the said authorisation shall not be transferred, and the said material shall not be transferred or sold:

provided the said materials may be transferred to a job worker for processing subject to complying with the condition specified in the (relevant goods and service tax provisions) permitting transfer of materials from job work.

....

2. Where the materials are found defective or unfit for use, the said materials may be re-exported back to the foreign supplier within six months from the date of clearance of the said material or such extended period exceeding a further period of six months as the Commissioner of Customs may allow :

> *Provided that at the time of re-export the materials are identified to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of*

Customs, as the case may be, as the materials which were imported."

8. The importer M/s.Regin Exports/the respondent was mentioned in the condition sheet attached to the advance authorisation. In column 14, the factory address of the authorisation holder and/or the supporting manufacturer where the goods imported shall be processed is mentioned as below:

1. SUPP. MANF. Regin Exports, D.No. 16/101, Ochavilai, Puthukadai Post, Munchirai Block, Kunnathur Village, Vilavancode Taluk, Kanyakumari.

2. Factory add: M/s.Regin Exports, D.No.3/60B, R.S.No. 513/2(P), Pulluvilai, Pookadai, Thickkanamcode Village, Kanyakumari.

He further mentioned in column 15, that no co-licensee in terms of para 4.35 of Handbook of Procedures 2015–2020.

9. Certain instructions were set out in the condition sheet

attached to the advance authorisation:-

"Condition no. 6 of the condition sheet; The exempt goods imported against this authorisation shall only be utilised in accordance with the provisions of paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification – [Custom Notification 18/2015 dated; 01.04.2015 (for physical exports), 21/2015 dated 01.04.2015 (for deemed exports), 22/2015 dated: 01.04.2015 (for Advance Authorisations for prohibited goods) and 20/2015 (for Annual Advance Authorisations) as the case may be], as amended from time to time.

Condition 7 : the authorisation holder shall abide by the instruction contained in paragraph 4.21 of the HBP, (2015-2020) as the case may be, for maintenance of a true and proper account of consumption and utilisation of inputs and furnish returns to the concerned Reginal Authority as per the provisions of FTP and the procedure laid thereunder.

4.16 (1) of the Foreign Trade Policy: Advance Authorisation and/or material imported under Advance Authorisation shall be subject to the 'Actual User' condition. The same shall not be transferable even after the completion of the export obligation. However, the Authorisation holder will have the option to dispose of the product manufactured out of duty-free input once the export obligation is completed.

10. The material imported under Advanced Authorisation, shall be subject to the actual user condition which means that it is something exactly for the purpose and in the manner for which it is meant or permitted.

11. Though a huge quantity of RCN had been procured, no stock of imported RCN was found during the search. It was, however, noticed that packing activities relating to certain processed goods were being carried out in the premises, for which the respondent failed to produce any document explaining the nature and purpose of such packing or supporting records.

12. Admittedly, the respondent did not process the imported goods in the factory where such processing was required to be undertaken. When the proprietor of M/s.R.A., Smt.Anichandrakala, was directed to appear before the Directorate of Revenue Intelligence on 28.07.2016 and explain the discrepancies, she admitted that the RCN imported duty-free under Advance Authorisation were not processed in

their unit but were diverted from Tuticorin Port to different units of M/s.Regin Agency which is owned by her husband, Mr.P.Regin. She further stated that she was not involved in the day-to-day affairs of the firm and was not in a position to explain the activities of the firm, as the business was managed exclusively by her husband.

13. The statement of the proprietor of M/s.Regin Exports further reveals that the original proprietor was not involved in any of the business activities and that her name was utilised only nominally by her husband for conducting the business.

14. Further, Mr.P.Regin, husband of Smt.Anichandrakala, in his statement dated 25.07.2016, admitted that the imported raw cashew nuts, after clearance from the port, were dispatched under Form JJ delivery notes to various units owned by his agency. After processing the cashew kernels, the same were sold to different buyers, predominantly at Kollam. He also admitted that no register was maintained for accounting the consumption and stock of duty-free imported raw materials as required

under Appendix 4(I) of the HBP, as stipulated in Clause 4.21 thereof. He further admitted that no permission had been obtained from the Central Excise Authorities for transferring the cashew nuts to various units or commission agents of M/s.Regin Agency on behalf of M/s. Regin Exports /respondent-exporter.

15. Subsequently, on 23.07.2016, 03.08.2016, and 04.08.2016, further search was conducted, in the premises of 16 units alleged to the units/commission agents of M/s.Regin Agency. During the search, 429.2 Mts of imported RCN valued at Rs.3,74,27,160/-, lying in the premises, were detected.

16. The above facts clearly reveal that the respondent violated the conditions prescribed under Notification No.18/2015–CUS, which mandates that the authorised holder shall dispatch the imported materials either from the port directly to its own factory or to the factory of a supporting manufacturer, only after obtaining the requisite permission.

17. The respondent failed to mention the name of any co-licensee for processing the imported goods, as required under para 4.35 of the HBP, 2015–2020. Further, the respondent had no authority to transfer the imported materials to any other unit without prior permission, as specifically stipulated in condition (x) of Notification No.18/2015–CUS dated 01.04.2015.

18. Although it was contended that the goods were transferred for job work, the same was not intimated to the Customs Authorities. Moreover, the respondent did not hand over any materials to the alleged job worker directly from its unit. On the contrary, the evidence clearly establishes that the goods were diverted to various units solely by M/s.RA, which was not authorised under the Advance Authorisation either to process or to divert the imported materials.

19. During the search conducted by the officials of the Directorate of Revenue Intelligence at the premises of M/s.Regin Agency, one Murugadas, who was in charge of the said agency, was

present. He stated that the premises of M/s.Kavitha Cashew had been taken on rent by M/s.Regin Agency for the purpose of storing the imported goods. A daily stock register consisting of 53 pages and a dispatch register of cashew kernels consisting of 72 pages were seized from M/s.Regin Agency on 23.07.2016. The officers also detained 2,714 kgs of imported cashew and handed over the same to the said Murugadas for safe custody, which was duly acknowledged by him.

20. The authorities, further while inspecting the 16 units, recorded the statement of the following unit in-charge of the processing unit (statements available vide pages 136 to 162 in the type set produced by the appellant) Smt.Vijaykumari of M/s.Sreekrishna Cashew, Mr.O.R.J Jaffer Batcha of M/s.Baduru Traders, Mr.Ponnu Pillai of M/s.Agnes Cashew Factory, Mr.Mukuntharaj of M/s.Jothi Cashew Company, Mr.Sreeviju of M/s.Mahadeva Cashew Company, Mr.Bennet Thaya of M/s.Thaya Exim, Mr.Cyril Raj of M/s.Viswam Cashew Traders, Mr.Anilkumar of M/s.PCN Cashew, Mr.Vijaykumar of M/s.NVK Cashew, Mr.Martin of M/s.Jebi Cashew, Mr.Easai of M/s.Christal

Cashew, Mr.Arun Kumar of M/s.D.R. Cashew Company. All the above the witnesses categorically stated before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Trivandrum that they had received the imported raw cashew nuts in shell directly from Tuticorin port at the instruction of M/s.Regin Agency. The containers were proceeded directly from the Tuticorin port to their units with documents viz., bills of entry, weighment slip, form JJ etc., the transporters handed over the documents to them. The route checker of M/s.Regin Agency comes to their unit and verifies the seal of the container and supervises the unloading of goods. After processing from their Agencies, the process of cashew kernels was sent to M/s.Regin Agency through trucks owned by them without any documents for transfer.

21. The witnesses further stated that M/s.Regin Agency paid the processing charges through RTGS for processing work. The above fact was not disputed by the respondent. The investigating agency seized the material from the respective agency under Mahazars vide page numbers 77–78, 80–81, 83–84, 86–87, 89–90, 92–93, 95–96, 98–99,

101–102, 104–105, 107–108, 110–111, 114–115, 117–121, in the presence of the unit head and it was acknowledged by them.

22. It further revealed that after processing the raw cashews by the above units, M/s.Regin Exports sold the imported cashew through M/s.Regin Agency to various persons in the local market. This was confirmed from the statement recorded from the following witnesses and through sale invoice issued by M/s.Regin Exports and M/s.Regin Agency. Thiru.Venkatesh a partner of M/s.Vineeth Cashew, stated that the imported raw cashews in containers came to their factory along with import documents. Thereafter, cashews were processed in their factory. After processing, they would either send it to M/s.RE/RA, or sell it in the local market. He further stated that when imported raw cashews were received, he pays the amount to their bank account by RTGS. On only three occasions, they, had sent the cashew kernels to M/s.Regin Exports/Regin Agency for export commitments. In other cases, they had directly sold the same to outside traders on behalf M/s.Regin Exports, sales effected by M/s.Regin Exports under cash credit bill to M/s.Vineet

Cashew were enclosed by the appellant and in type set pages 583 to 585, 587, 588, 595 to 599, (for the period from 09.05.2016 to 01.07.2016). The sale effected by the agency on behalf of M/s.Regin Experts by way of invoice Nos.001/2016–17 to 027/2016–17 was produced.

23. One Suresh Kumar of M/s.Ansika Trading Private Ltd., was also examined. He stated that they bought 15.43 Mts of imported raw cashew nuts valued at Rs.17.83 lakhs from the respondent vide invoice No.19 dated 19.07.2016, the imported cashew nuts were dispatched from the respondent and payments were made to them in three instalments. He also stated that the first instalment was made in the first week of July 2016 and last instalment was made on 19.07.2016. He further stated that they processed raw cashew nuts and 2890 kgs of cashew kernels were sold to M/s.Regin Exports, vide invoice No.1 dated 20.07.2016, Invoice No.2 dated 10.08.2016 on payment of sales tax. In Proof of the same, the invoice raised by M/s.Regin Exports on 19.07.2016, was annexed on page No.600.

24. One Devakumar of M/s.Deva Cashews also admitted that he bought 49.16 Mts imported RCN, totally valued at Rs.60.16 lakhs from M/s.Regin Exports vide invoice No.8, dated: 23.05.2016, invoice No.11, dated: 22.06.2016 and invoice No.12, dated 22.06.2016. He further states that the payments for the above were made through RTGS from their account and thereafter the cashew kernels were sold in the local market.

25. Mr.Shihansha of M/s.Alin Cashews was examined. He stated that they bought 6139.86 Kgs of processed cashew kernels from Regin Exports under Form H vide invoice No.18 dated 15.04.2016 and invoice No.96 dated 14.07.2016, without payment of sales tax. The cashew kernels bought were exported by them. They further bought 7034.69 Kgs of processed cashew Kernals valued at 35.15 lakhs from them under Form C vide invoice No.75 dated 20.06.2016 on payment of sales tax. The payments for the above invoices were made through RTGS from their account at UCO Bank, Kollam. The bills raised by M/s.Regin Agencies were produced in pages 620, 674, 694 of the typed set

produced by the appellant.

26. Mr.Jayalal of M/s.Nandana Cashew Traders was examined. He stated that he purchased processed cashews from M/s.Regin Agency in the financial year, they bought 15,309 kgs processed cashew kernels valued at Rs.41.31 lakhs, vide invoice No.30 dated 29.04.2016, invoice No.35 dated 05.05.2016 and invoice No.52 dated 26.05.2016 on payment of sales tax. The payments of the above invoices were made through RTGS from their account at State Bank of Travancore, Kilikolloor, Kollam. The sale invoice was raised by M/s.Regin Agency, was annexed on page Nos.632 and 635 of the typed set.

27. Mr.S.Mohammed Sadiq of M/s. Salam Al Manama Trading Private Limited was examined, he stated that they had bought 3285.81 kgs of processed cashew kernels valued at Rs.6.5 lakhs from M/s.Regin Agency vide invoice No.39 dated 07.05.2016 on payment of sales tax. The payment was made through RTGS from their account at Canara Bank, Kottiyam, Kollam. The sale invoice issued by M/s.Regin Agency

was annexed on page No.639 of the typed set.

28. Mr.Omanakuttan, Manager of M/s.Sai Lekshmi Foods, in his statement stated that they bought 4263.84 kgs with a total value of Rs.26.03 lakhs from the M/s.Regin Agency vide invoice No.38 dated 07.05.2016 and invoice No.49 dated 21.05.2016, in proof of the same, the invoice raised by respondent M/s.Regin Agency towards the above was annexed in pages Nos.612, 613, 614, 623, 638, 641, 644, 649, 650 of the typed set.

29.Smt.Sreekala Satish of M/s.Bismi Cashew Company was examined, she stated that they bought 13,000 Kgs of processed cashew kernels valued at Rs.79.49 lakhs from M/s.Regin Agency, vide invoice No.67 dated 13.06.2016, invoice No.68 dated 14.06.2016 and invoice No.79 dated 23.06.2016 without payment of sales tax. They made payment through RTGS through a Federal Bank Account. The invoice for the sale issued by M/s.Regin Agency was annexed in page Nos.666, 667, 678 of the typed set produced by the appellant.

30.Mr.Ramakrishna Pillai of M/s.Excellent Cashew Company states that they bought 4536 Kgs of processed cashew kernels, totally valued at Rs.27.60 lakhs from the M/s.Regin Agency under invoice No. 64 dated 09.06.2016 and payment was made through RTGS. The bill issued by M/s.Regin agency, annexed vide page No.663 of the typed set.

31.Mr.Gireesh of M/s.Noble Cashew Industries was examined, he stated that they bought 26339.24 Kgs of processed cashew kernels valued at Rs.163.58 lakhs from the M/s.Regin Agency under five invoices from 12.05.2016 to 01.07.2016, vide receipts 42, 43 45, 84 and 88 and payments were made through RTGS, maintained in Federal Bank, Polayathodu Branch. They further stated that the processed cashews were exported by their name. They had been produced shipping bills contract, export invoice, bill of lading and purchase bills, (statement found on page No.785 of the typed set). The bills issued by M/s.Regin Agency were annexed by appellant vide page Nos.642, 643 645 and 686 of the typed set.

32. Mr.G.G.Rajan of M/s.RCN Impex Private Ltd., another purchaser stated that they bought 9570.02 Kgs of processed cashew kernels worth of Rs.55.79 lakhs from M/s.Regin Agency vide invoice No.17 dated 15.04.2016, invoice No.24 dated 20.04.2016 and payments were made through RTGS. The bill issued by M/s.Regin Agency were annexed by the appellant vide page Nos.619, 626 of the typed set.

33. Mr.Najimudeen of M/s.Najeem Cashew Industries, also stated in his statement that they purchased 34,583.96 Kgs of processed cashew kernels valued at Rs.20.793 lakhs from the M/s.Regin Agency and paid the payment through RTGS from their South Indian Bank, Kollam, UCO Bank, Kollam account.

34. One Subhash Babu of M/s.Kumar Cashew Exports stated that they had procured cashew nuts from Kannur and imported raw cashew from foreign countries. They have sold 1701 kgs of cashew kernels to M/s.Regin Exports on 10.06.2016. They bought 33402.98 kgs of processed cashew kernels worth of Rs.210.79 lakhs from the

M/s.Regin Agency vide receipts Nos.7, 8, 31, 32, 47, 48, 54, 92, 93, 100 and 101 and made payments through RTGS. They exported the above materials. The bills issued by M/s.Regin Agency were annexed by appellant vide page Nos.610, 611, 633, 634, 647, 648, 653, 690, 691, 698 and 699 of the typed set.

35.One Rajendran of M/s.Dheepak Traders informed that they purchased 2687.58 kgs from M/s.Regin Agency from 26.05.2016 to 19.08.2016 vide receipt Nos.53, 99, 164 issued by M/s.Regin Agency and made payment through their bank account. The bills issued by M/s.Regin Agency were annexed by the appellant vide page Nos.652, 697 of the typed set. He further stated that the purchased goods were sold in the local market.

36. Mr.James Abraham of M/s.Emmanuel Cashew Industries was examined by the Authorities, informed that they purchased 14712.69 kgs worth of Rs.89.48 lakhs of processed cashew from M/s.Regin Agency, vide invoice Nos.2, 3, 19, 20, 46 and they paid the money

through RTGS. The bills issued by M/s.Regin Agency were annexed by appellant vide page Nos.606, 607, 621, 622, 646 of the typed set.

37. Mr.C.Yohannan of M/s.Carmel Cashews, he informed that they bought 15,401.51 Kgs processed cashew kernels worth of Rs.90.67 lakhs from M/s.Regin Agency, under invoice Nos.4, 6, 26, 27, 40, 55, 86 and payments were made through their Federal Bank, Kottarakara, Kollam and UCO Bank, Kollam account. The bills issued by M/s.Regin Agency were annexed by the appellant vide page Nos.608, 609, 628, 629, 640, 654, and 684 of the typed set.

38. Mr.C.K.Sam of M/s.Chemmarathil Cashew Company was examined. He informed that they purchased 11192.58 Kgs cashew kernels worth Rs.67.28 lakhs from M/s.Regin Agency under invoice Nos.61, 62, 63 and 80 for the period from 08.06.2016 to 24.06.2016, without payment of sales tax and payments were made by RTGS and they exported the said cashew. The bills issued by M/s.RA was annexed by appellant vide page Nos.660, 661, 662 and 679 in the typed set.

39. Mr.G.Benny George of M/s.Beffy Cashew Company was examined, and he informed that they bought 5730.16 Kgs processed cashew kernels worth of Rs.36.87 lakhs from M/s.Regin agency on 14.07.2016 vide invoice Nos.97, 98 and payments were made through RTGS. They further stated that they exported the cashew purchased by them. The bills issued by M/s.Regin Agency were annexed by the appellant vide page Nos.695 and 696 of the typed set.

40. Mr.D.Sreekumaran Nair of M/s.Western India Cashew Co. Pvt. Ltd., was examined. He informed that 12190.5 Kgs of processed cashew kernels worth of Rs.78.37 lakhs were purchased from M/s.Regin agency during the period 02.06.2016 and 18.07.2016 vide invoice Nos.57 and 102 and payments were made through RTGS. The bills issued by M/s.Regin Agency were annexed by appellant vide page Nos. 656 and 700 of the typed set. They further stated that they exported the purchased goods.

41. Mr.G.Raveendran Pillai of M/s.Prashanti Cashew Company

was examined, he informed that they had bought 12190.66 Kgs of processed cashew kernels worth of Rs.76.54 lakhs from M/s.Regin Agency from 20.06.2016 and 21.06.2016 vide invoice Nos. 72, 73, 76. The payments were made through RTGS. He further stated that during the financial year, they bought for another company M/s.Global Foods totally 10743.08 KG of processed cashew kernels worth of Rs.68.50 lakhs from M/s.Regin Agency between 20.06.2016 and 23.06.2016 vide invoice Nos.74 and 78 and made the payment through RTGS. The bills issued by M/s.Regin Agency were annexed by the appellant vide page Nos.671, 672, 673, 675 and 677 of the typed set.

42. One K.Jayarama Kamath of M/s.Kanchana Industries was examined, he informed that they purchased 19666.24 Kgs of processed cashew kernels worth of Rs.1,12,60,139/- from M/s.Regin agency, vide invoice Nos.1, 16, 21, 25 and 81 and paid the amount through their bank account. Subsequently, they exported the goods. The bills issued by M/s.Regin Agency were annexed by appellant vide page Nos.605, 618, 623 and 627 of the typed set produced by the appellant.

43.One R.Gowthaman of M/s.Reliable Cashew Co. Pvt. Ltd., was examined, informed that they purchased 7150 kgs valued at Rs. 45,76,279/- of processed cashew kernals from M/s.Regin Agency, vide invoice No.89 and paid the amount through RTGS. The goods purchased were exported. The bills issued by Regin Agency were annexed by the appellant vide page No.687 of the typed set.

44.Thiru.T.Reghukumar of M/s.Lekshmi Cashew Company was examined they also informed that they bought 74473.17 Kgs worth of Rs.343.74 lakhs processed cashew kernels from M/s.Regin Agency vide invoice Nos.9, 22, 41, 44, 51, 56, 58, 60, 71, 77, 87, 90, 103, during the financial year upto 19.07.2016 and paid the amount through RTGS. They sold the cashew at the local market. The bills issued by M/s.Regin Agency were annexed by appellant vide page Nos.612, 624, 641, 644, 650, 655, 657, 659, 670, 676, 685, 688, and 701 of the typed set.

45.The daily stock registers seized from Regin Exports were annexed in the typed set page No.443 to 514 for the periods from

29.03.2016 to 22.07.2016, it reveals that the entries not tallied to show that imported goods were received by them on the date of receipt of the goods as per the Advance Authorisation. In fact, it was admitted by the proprietor Smt.Anichandrakala, that the imported goods were not at all received by her from the port. She further admitted that in fact the affairs of the agency were being looked after by her husband, Mr.Regin, the proprietor M/s.Regin Agency.

46.Thiru.Selvakumar, Managing Director of M/s.Daniel and Samuel Logistics Private Limited, who was doing the clearance of import consignment of the respondent, confirmed that he used to receive originals of Advance Authorisation license from the office of M/s.Sea Dart Logistics, Tuticorin on behalf of M/s.Regin Exports, and filed the bills to the customer authorities, and after custom examination, the containers are dispatched to the various units of M/s.Regin Exports, as per the instruction of M/s.Sea Dart Logistics. He produced the details of bills of entry, the details of the dispatch of imported goods to various units of M/s.RE. The details are produced on page Nos.203 to 205. The authority also examined one Mariappan, imports-in-charge of Zion logistics, who cleared the imported consignment of the respondent categorically stated that they dispatch the goods to various units of the respondent as per the instructions of M/s.Pixel Impex. The statement of the above witness found on pages 206 to 211 of the typed set.

47.Thiru.Simeon, partner of M/s.Pixel Impex was examined, who was acting as a mediator for the clearance of the import concerned of the respondent. He stated that the goods were dispatched to various units as per the mail sent by the respondent. Thiru.Velmurugan of M/s.Sea Dart Logistics was examined, he also corroborated the statement of Thiru.Simeon.

48.The respondent M/s.Regin Exports are the authorised agents under seven Advance Authorisations, imported RCN with shells with assurance to process the goods in their factory mentioned in the condition sheet attached to the advance authorisation and to export the same. A Bond was executed by them with assurance that they shall comply all the terms and condition of the said notification, and the conditions specified in the authorisation. In the event of failure to fulfil any part of export obligation specified in the notification and authorisation, undertake to pay the custom duty, but for the exemption and also interest at the rate of 18% per annum thereon forthwith and without any demur to the Government. They also undertake that they shall not change the name and style, in which the obligator are doing business or change the location of the manufacturing premises, except with the written permission of the Government.

49.The main condition stipulated in 4.10 and 4.35 of HBP 2015–2020 that the importer should not transfer the imported materials received under Advance Authorisations. However, it is admitted that M/s.Regin Exports was not involved in the manufacturing or processing of goods, instead, in connivance with M/s.Regin Agency, which was not authorised to undertake any processing activity, imported RCN and diverted it to various units for processing, strictly as per the instructions of M/s.Regin Agency, without obtaining any permission from the

Customs authorities. Thereafter, huge quantities of processed cashew kernels were sold to various agencies, and the sale proceeds were received through bank transactions.

50.Though it was claimed that the materials were diverted only for the purpose of processing cashew nuts, no permission whatsoever was obtained from the competent authorities for such processing at those places. Further, the respondent did not even send any intimation to the Customs authorities regarding the diversion. While the respondent pleaded innocence on the ground of procedural lapse and undertook that the goods would be processed only in their factory, such a plea is untenable. Even assuming that the diversion was only for processing, the same ought to have been done only at the insistence of M/s.Regin Exports, the authorised agent, and subject to the mandatory condition of informing the Customs authorities. In the present case, the diversion was carried out solely on the instructions of M/s. Regin Agency, which had neither authority nor authorisation to undertake or arrange processing work.

51.Further, the respondent failed to maintain true and proper accounts as stipulated under Paragraph 4.21 of the Handbook of Procedure. No records were produced to show the exact details of diversion, the locations where processing was carried out, or the payments made for such processing. No registers were maintained except a daily stock register, which itself did not tally with the quantity of goods imported through the port under the Advance Authorisation.

52.The respondent was expressly prohibited from transferring the goods to any other unit. Nevertheless, in connivance with M/s. Regin Agency, the goods were transferred to third parties without any authorisation or proof to establish that such parties were authorised agents. Moreover, M/s. Regin Agency alone received the processed cashew kernels, sold the imported goods to third-party purchasers, and received huge amounts in its bank account. The third-party purchasers, in turn, either sold the goods in the local market or exported them for value.

53.Although M/s.Regin Agency claimed that the goods sold by them were not the imported goods but were allegedly purchased from some other local agency, no documentary proof whatsoever was produced to substantiate such purchases. On the contrary, the wholesale purchasers to whom M/s. Regin Agency sold the cashew kernels categorically stated that they had purchased only imported goods. It was further established that such sales were effected during the very period when the respondent had imported the goods.

54. It was pleaded by the respondent that they had completed the obligation stipulated in the notification within the prescribed time. However, they cannot be absolved of their obligation, as they failed to furnish the requisite details or documents when the investigating agency inspected the premises. On the contrary, the records reveal that the respondent had purchased materials from the local market, which gives rise to the inference that, subsequent to the inspection and in order to complete the obligation cast upon them, they exported goods procured from the local market.

55.The Tribunal, without taking into consideration the aforesaid facts, erroneously concluded that when the officers entered the premises, packing of processed cashew was being carried out. However, the mahazar clearly records that no activity relating to the processing of cashew nuts was noticed at the premises at the time of inspection. The respondents were required to undertake processing of the cashew nuts themselves, but no such processing was carried out by them. They also failed to furnish details of the processed goods, including particulars regarding the date of receipt of the goods from the port. On the contrary, the documents produced reveal that none of the imported materials were delivered to the respondents, and that the imported goods were directly sent to various other units for processing.

56.Till date, the respondents have not produced any document to establish under what authority the cashew nuts were sent for processing to various agencies through M/s. Regin Agency, nor have they shown on what authority M/s. Regin Agency managed their affairs without any authorization or permission from the competent authority.

57.The Tribunal found fault with the inspecting authority for not inspecting the other units of M/s.Regin Agency where processing was allegedly carried out, but failed to observe that huge quantities of imported goods were sold by the respondents through M/s.Regin Agency. The respondents also failed to produce any document to disprove the contentions raised by the authorities.

58.Further, the respondents did not explain the non-maintenance of accounts and the large-scale sales made to third parties. The purchasers clearly stated that they purchased the goods from M/s.Regin Exports and M/s.Regin Agency and that payments were made through banking channels.

59.The order of the Tribunal is therefore improper, perverse, and liable to be set aside. Mere non-tallying of the total quantity of goods imported by the respondents with the materials seized does not vitiate the investigation, especially when the respondents, who were expected to furnish the necessary particulars, failed to do so. The order passed by the

Tribunal is liable to be set aside.

60. In view of the above, the **C.M.A.(MD)Nos.571 and 572 of 2020 are allowed**. The order dated 17.09.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, is hereby set aside. Accordingly, the order dated 05.12.2017 passed by the Commissioner of Customs, Tuticorin, imposing fine, is hereby confirmed. The appellant is entitled to recover the fine along with interest as per law. The respondent is directed to pay the fine within a period of six weeks from the date of receipt of a copy of this order, failing which the appellant is at liberty to proceed against the respondent in accordance with law. No costs.

61. However, the fine imposed on M/s.Daniel and Samuel logistics Private Limited and Zion logistics is not justifiable, as the respondent in C.M.A.(MD)Nos.573 of 2020 and 574 of 2020 are customs broker, merely transported the goods on the directions of M/s.Regin Agency, and it has not been proved that they had transported the goods in connivance with the respondent with an intention to evade Government

revenue. Therefore, these Civil Miscellaneous Appeals are liable to be dismissed.

62. In view of the above, the **C.M.A.(MD)Nos.573 and 574 of 2020 are dismissed**. The order dated 17.09.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, is hereby confirmed. No costs.

[G.K.I.J.,] & [R.P.J.,]
10.02.2026

NCC :Yes/No
Index :Yes/No

rm

Copy to

The Customs, Excise and Service Tax Appellate Tribunal,
1st & 3rd Floor, Shastri Bhavan,
26, Haddows Road, Nungambakkam,
Chennai.

To

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.

2.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.

G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

rm

C.M.A(MD)Nos.571, 572, 573 & 574 of 2020

10.02.2026