

BEFORE THE HON'BLE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE

Stay Application No. C / / 2025

In

Appeal No. C / /2025

M/s. S & J Travels & Cargo Services (P) Ltd., ..... Appellants  
T.C. No. 26/863, Panavila Junction,  
Thycaud Post, Trivandrum,  
Kerala – 695 014

Vs.

Commissioner of Customs ..... Respondent  
(Preventive), 5th Floor,  
Catholic Centre, Broadway, Cochin – 682031.

Appeal against ORDER (ORIGINAL) No.COC-CUSTM-PRV-  
COM-03-2024-25 dt. 19-02-2025 / 20-02-2025

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In

M/s. S & J Travels & Cargo Services (P) Ltd.,  
T.C. No. 26/863, Panavila Junction,  
Thycaud Post, Trivandrum  
Kerala – 695 014

## Applicants

## Versus

Commissioner of Customs  
(Preventive), 5th Floor, Catholic  
Centre, Broadway, Cochin - 682031.

Respondent

	<p>In the matter of the proviso to section 129 E of the Customs Act, 1962; and</p> <p>In the matter of Rule 28A of the Customs Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982</p>
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## APPLICATION FOR STAY

1. Being aggrieved with ORDER (ORIGINAL) No.COC-CUSTM-PRV-COM-03-2024-25 dt. 19-02-2025 / 20-02-2025 passed by the Commissioner of Customs (Preventive), Cochin (hereinafter referred to as the 'Ld. Commissioner') which was received by the Applicants on 24/02/2025, the Applicants have filed an Appeal against the said Order before the Customs, Excise and Service Tax Appellate Tribunal, on ..... March 2025. The said Appeal has been registered as Appeal No. /2025.

2. Pending hearing and final disposal of the said Appeal the Applicants request that the pre-deposit of the penalty of Rs.86,445/- imposed under section 114AA ibid, be stayed and that the said appeal be heard and finally disposed off. A certified copy of the Order of the Commissioner of Customs (Preventive), Cochin, dated 19-02-2025 / 20-02-2025, has been annexed to the Appeal as **[ANNEXURE – XI]**, which the Applicants crave leave to refer to and rely upon as and when necessary.
3. In order to enable the Hon'ble Tribunal to consider the Application for Stay the Applicants are setting forth herein below:

- (a) **The facts regarding the demand of duty or penalty, the deposit whereof is sought to be stayed:**

The facts leading to the duty demanded from the Applicants have been narrated in paras 1 to 16 of the Memorandum of Appeal filed before the Hon'ble Tribunal, which the Applicants crave leave to refer any rely upon.

- (b) **The exact amount of duty demanded and the amount undisputed there from and the amount outstanding:**

Under the impugned Order dated 19-02-2025 / 20-02-2025, the Ld. Commissioner ordered as follows:

#### Order

- (i) I drop the proceedings in respect of demanding the duty initiated against M/s S & J Travels and Cargo Services (P) Ltd. vide Show Cause Notice No. 09/2013 dated 27.03.2013.
- (ii) I am imposing a penalty of Rs. 86,445/- for use of false and incorrect material under Section 114AA of the Customs Act, 1962.

- (c) **The date of filing of the Appeal before the Tribunal and its number, if known:**

The Appeal against the impugned Order was filed before the Hon'ble Tribunal on ..... March 2025. The said Appeal has been registered as Appeal No /2025.

- (d) **Whether the Application for Stay was made before any Authority under the relevant Act or any Civil Court and if so, the result thereof (copies of the correspondence, if any, with such authorities to be attached):**

The applicants have not filed an Appeal or a Stay Application before any other Authority or a Civil Court.

- (e) **Reasons in brief for seeking stay**

- (i) The Applicants pray that the pending disposal of this appeal, may be heard to consider their request to dispense with the pre-deposit of the duty demanded and penalties imposed on them under the impugned Order.

- (ii) The power to grant stay is an incidental or ancillary function to the appellate jurisdiction besides dispensing with the condition of pre-deposit of the duty demanded on the Applicants. In this connection, the Hon'ble tribunal's attention is invited to the decision of the Calcutta High Court in the case of J.N. Chemicals (Pvt.) Ltd. Vs. CEGAT – 1991 (53) ELT. 543 (Cal.), wherein the decision of the Supreme Court in the case of Hirday Narain Vs. ITO (AIR 1971 SC 33) was relied upon. Similar decisions were given in the case of ITO Vs. M.K. Mohd. Kunhi (1969 71 ITR 815 and Kun Prasad Vs. Central Board of Excise & Customs – 1978 (2) ELT J 697 (A.P.)
- (iii) Particularly three basic principles have been enunciated in a catena of decision for the purposes of dispensing with the pre-deposit of duty demanded, before the appeal can be admitted for consideration.
- a. Where a prima-facie case exists on merits;**
  - b. Where pre-deposit of duty demanded would cause undue hardship; and**
  - c. Where there was violation of principles of natural justice**
- (iv) The detailed reasons on the basis of which the impugned order is not sustainable have been given in paras 1 to 16 of the Grounds of Appeal, in the Appeal Memorandum, which the Applicants crave leave to refer to and rely upon as and when necessary.
- (f) **Whether the Applicants are prepared to offer security and if so in what form:**

The Applicants submit that they are not liable for a penalty in the light of the detailed submissions made in the Grounds of Appeal. Apart from this, the Applicants submit that they are not in a position either to deposit the duty demanded or the penalty imposed on them since it would cause a financial burden which they are not in a position to bear.

Under the above circumstances, the Applicants request that the Appeal filed by the Applicants be heard and disposed off without requiring them to offer any security, since it would cause them undue financial hardship.

**(g) Prayers to be mentioned clearly and concisely:**

- i. The Applicant Company prays to the Hon'ble Tribunal that the impugned Order dated 19-02-2025 / 20-02-2025 passed by the Ld. Commissioner be stayed and the Appeal filed by them against the said Order be heard and finally disposed off, dispensing with the pre-deposit of the penalty of Rs.86,445/- imposed under section 114AA ibid.
- ii. Such further and other interim orders be passed and directions be given as the Hon'ble Tribunal might deem fit in the facts and circumstances of the case.

Signature of authorized  
Representative, if any,

Signature of the Applicant

**VERIFICATION**

I, Victor Stanley Paulus, the Appellant hereby declare that what is stated above is true to the best of my information and belief.

Signed at Trivandrum on

5th day March 2025

Signature of authorized  
Representative, if any

Signature of the Applicant



**Form No. C.A. 3****Form of Appeal to Appellate Tribunal under sub-section (1) of section  
129A of Customs Act, 1962****In the Customs, Excise and Service Tax Appellate Tribunal****Appeal No----- of 2025**

M/s. S & J Travels & Cargo Services (P) Ltd.,  
T.C. No. 26/863, Panavila Junction,  
Thycaud Post, Trivandrum  
Kerala – 695 014

Appellant

Versus

Commissioner of Customs  
(Preventive), 5th Floor, Catholic  
Centre, Broadway, Cochin – 682031.

Respondent

1. Assessee Code\*

IEC Code\*\*

PAN

AAGCS8917HST001

5305000726

AAGCS8917H

E-Mail Address

Phone No.

Fax No.

[info@sndjonline.com](mailto:info@sndjonline.com)

+91 9895068106

N.A

2.	The designation and address of the authority passing the Order appealed against	:	Commissioner of Customs (Preventive), Office of the Commissioner of Customs (Preventive), 5th Floor, Catholic Centre, Broadway, Cochin - 682031
3.	Number and date of the Order appealed against	:	ORDER (ORIGINAL) No.COC-CUSTM-PRV-COM-03-2024-25 dt. 19-02-2025 / 20-02-2025 passed by the Commissioner of Customs (Preventive), Cochin

4.	Date of communication of a copy of the order appealed against	:	ORDER (ORIGINAL) No.COC-CUSTM-PRV-COM-03-2024-25 dt. 19-02-2025 / 20-02-2025 was received on 24/02/2025
5.	State or Union Territory and the Commissionerate in which the order or decision of assessment, penalty was made	:	Kerala, Cochin
6.	If the Order appealed against relates to more than one Commissionerate mention the names of all the Commissionerates, so far as it relates to Appellant	:	N A
7.	Designation and address of the adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals)	:	Commissioner of Customs (Preventive), 5th Floor, Catholic Centre, Broadway, Cochin – 682031.
8.	Address to which notices may be sent to the Appellant		(i) as above
9.	Address to which notices may be sent to the Respondent		Commissioner of Customs (Preventive), 5th Floor, Catholic Centre, Broadway, Cochin – 682031.
10	Whether the decision or order appealed against involves any question having a relation to the rate of duty of Customs or to the value of goods for the purpose of assessment	:	The order appealed against involves a question having a relation to the rate of duty of Customs, applicable to commercial samples / prototypes or bonafide gifts of articles or personal use of value not exceeding Rs.10,000/- in terms of Notification No. 171/93 – Cus. dtd. 16/09/1993.
11	Description and classification of goods	:	Commercial samples / prototypes or bonafide gifts of articles of personal use of value not exceeding Rs.10,00/-

12.	Period of dispute	:	12/2010 to 10/2012
13.	(i) Amount of Customs Duty, if any, demanded for the period of dispute  (ii) Amount of interest involved up to the date of the order appealed against	:  :	Nil  Nil
	(iii) Amount of refund, if any, rejected or disallowed for the period of dispute	:	N A
	(iv) Amount of fine imposed	:	N A
	(v) Amount of penalty imposed	:  :	Nil u/s. 114 A  <b>Rs. 86,445/- u/s 114AA of the Customs Act, 1962</b>
	(vi) Market value of seized goods	:	N A
14.	(i) Amount of duty or fine or penalty or interest deposited. If so, inform the amount deposited under each head in the box below. <i>(A copy of the chalan under which the deposit is made shall be furnished)</i>	:	The duty demanded and the penalties imposed have not been deposited.
	(ii) If not whether any application for dispensing with such deposit has been made?	:	A separate Stay Application has been filed
15.	Does the order appealed against also involve any Central Excise Duty demand, and related fine or penalty, so far as the appellant is concerned?	:	No
16.	Does the order appealed against also involve any Service Tax demand, and related fine or penalty, so far as the appellant is concerned?	:	No

17.	<p>[(i) Classification – indicate the Chapter(s), (ii) Valuation – Whether related persons issue or Others, (iii) SSI Exemption (iv) Application of Exemption Notification – Indicate the Notification No. (v) Cenvat, (vi) seizure / Clandestine Removal, (vii) Refund (other than rebate), (viii) Others</p> <p>Priority 1</p> <p>Priority 2</p>	<p>:</p> <p>:</p> <p>:</p>	<p>Application of Exemption Notification No. 171/1993 – Cus. dated 16/09/1993</p>
18.	Service Tax Assessee Code, if registered with Service Tax	:	N A
19.	Central Excise Assessee Code, if registered with Central Excise	:	N A
20.	Give details of Importer Exporter Code (IEC), if registered with Director General of Foreign Trade	:	5305000726
21.	If the appeal is against an O-in-A of Commissioner (Appeals), the number of Orders-in-Original covered by the said Order-in-Appeal	:	N A
22.	Whether the Respondent has also filed appeal against the Order against which this appeal is made?	:	N A
23.	If answer to serial number 21 above is 'yes', furnish the details of the appeal	:	N A
24.	Whether the Appellant wishes to be heard in person	:	Yes
25.	Relief claimed in appeal	:	<p>The Hon'ble Tribunal may be pleased to hold that:</p> <p>i. The Ld. Commissioner has not cited or placed on record any evidence on the basis of which it was held</p>

			<p>that the Appellant Company “has submitted insufficient material for using false or incorrect material in customs-related matter”</p> <p>ii. For the same reason the penalties imposed on the Appellants under section 114A and section 114AA ibid are not sustainable in law.</p> <p>iii. Such further and other interim orders be passed and directions be given as the Hon’ble Tribunal might deem fit in the circumstances of the case</p>

**STATEMENT OF FACTS**

1. The brief facts of the case and the allegations made against the Appellant Company as mentioned in show Cause Notice No. 09/2013 (Commr) dt. 27/03/2013 [**ANNEXURE – I**] are as follows:
2. Commissioner of Customs & Central Excise, Trivandrum, issued Courier Registration No. 03/2010 under Regulation 10 of Courier Import and Export (Clearance) Regulations, 1998 (hereinafter referred to as CIECR) to the Appellant to act as an authorized courier in Trivandrum International Airport.
3. The main allegations in the Show Cause Notice are summarized below:
  - i. Intelligence was received by the Department that the Courier operations at Trivandrum International airport were importing non-bona fide unaccompanied baggage” intended for trade / business and clearing the said goods in the guise of bona fide gifts availing the benefit of Notification No. 171/93 Cus. dated 16/09/1993 read with CIECR, thus causing huge loss to the exchequer in terms of Customs duty.
  - ii. On the basis of this intelligence, inspection / verification was ordered and in order to verifying the existence and genuineness of the consignees for whom such imports were stated to have been made, the courier operator was asked to produce the consignee authorizations obtained by them under Regulation 13 (a) of CIECR. They maintained that they had produced the documents to the Additional Commissioner and Deputy Commissioner of Central Excise & Customs (Head Quarters), Trivandrum, on 04/01/2012 and 28/12/2012.

- iii. Shri. Stanley Paulus, Director of the Appellant Company, in his statement given under section 108 of the Customs Act, 1962, on 22/02/2013, [ANNEXURE – III ] has stated, inter alia, that they used to collect from each of the consignees, for whom they had acted as agents, for clearance of the imported goods, as required under Regulations 13 (a) of CIECR, and that they had produced the same before the Customs officials as mentioned above.
  - iv. Respondent's department came to the prima facie conclusion that the courier authorizations produced by the Appellant were not genuine ones, and that the Appellant had imported non- bona fide unaccompanied baggage intended for trade and cleared without payment of duty under 39 Bills of entry (CBE –IV) in the guise of bona fide gifts availing the benefit of exemption under Notification 171/93 Cus. dt. 16/09/1993 in violation of the provisions of CIECR and Customs Act, 1962.
  - v. It was also alleged that the records were falsified and documents fabricated and willful mis-declarations were made to the effect that the goods were bona fide gifts sent by various persons residing abroad to their relatives in India whereas the goods were actually consigned by the same person abroad in the name of various fictitious and bogus persons in India in order to fraudulently avail the benefit of exemption under Notification 71/93 Cus. dt. 16/09/1993.
4. On the basis of the above allegations Respondent issued SCN No. 09/2013 (Commr) dt. 27/03/2013, demanding payment of Customs duty of Rs.16,10,183/- [ANNEXURE – I] under section 28 (4) of Customs Act, with interest and proposing penalty under section 114A and 114AA *ibid*.
  5. Appellant filed a detailed reply to the SCN dt. 19/04/2013.
  6. A Personal Hearing was held of 07/02/2014 and the Appellant was represented by Shri. Stanley Paulus, Director. A written explanation was filed before the Respondent.

7. Thereafter Respondent passed impugned Order-in-Original TVM-EXCUS-000-COM-38-13-14 dt. 27/03/2014 / 07/04/2014 **[ANNEXURE – II]**.
8. On the basis of the above order, Respondent found that the goods were consigned by the same person abroad to the Courier operator in the name of various fictitious and bogus persons in India in order to fraudulently avail the benefit of duty exemption under Notification 171/1993 Cus. dt. 16/09/1993 read with Regulation 3 (d) of the CIECR.
9. Respondent found that the records were falsified mis-declared and documents fabricated and hence extended period under section 28 (4) of the Customs Act could be invoked. Respondent applied the rate of 100% for Customs duty and 3% Cess and demanded Rs.16,10,183/-. Respondent also imposed equal amount of penalty under section 114A and Rs.2,00,000/- under section 114AA of the Customs Act.
10. Being aggrieved with the above said O-in-O Appellant filed the Stay No. C/Stay/22434/2014 and Appeal no. C/22196/2014-DB, before the Hon'ble CESTAT.
11. The Hon'ble CESTAT Tribunal allowed the stay and vide its final order No. 21881/2014 dated 14.10.2014 **[ANNEXURE – III]** set aside the impugned O-in-O and the matter was remanded to the original authority for deciding the matter afresh after giving reasonable opportunity to the appellants to present their case.
12. The SCN was kept in Call Book for 9 long years creating lot of hardship for the appellant company on the ground that similar issues were pending in the High Court as per Circular No.1028/ 16/2016-CX dated 26.04.2016, **[ANNEXURE – IV]** (cases where injunction has been issued by SC/HC/CESTAT). Finally, the case was taken out of Call Book as per the previous Commissioner's review order on 05.08.2023.



13. First the case was taken by the Commissioner of Customs (Preventive), Cochin Mr. Rajendra Kumar on 26/09/2023, Vide Letter C.No.VIII/10/9/2013-Cus Adj/1783/23, dated 11.09.2023 **[ANNEXURE – V]** & Letter No. VIII/10/9/2013 Cus Adj, dated 21.09.2023 **[ANNEXURE – VI]**. The case was heard through virtual mode. After that the appellant have not heard any decision by him, even after the appellant have submitted the written submission on 28/09/2023 **[ANNEXURE – VII]** wherein, he replied that there was no bogus authorization submitted; that the Adjudicating Authority had failed to prove the nature and the number of bogus authorizations produced. Due to the transfer of the earlier adjudicating authority the case was transferred to the present adjudicating authority to look upon the matter freshly.
  
14. Personal hearing was again granted on 25.11.2024, Vide Letter C.No.VIII/10/9/2013-Cus Adj/943, dated 30.10.2024, **[ANNEXURE – VIII]** and Shri Stanley Paulus appeared on behalf of M/s S & J Travel & Cargo Services (P)Ltd and gave written submission dated 25.11.2024 **[ANNEXURE – IX]** and additional submission dated 26.11.2024 **[ANNEXURE – X]**.
  
15. Based on the Appellants written submission and documentary evidence the Respondent concluded as follows,
 

“ In light of the deficiencies in the investigation and the incomplete set of documents, the SCN did not present sufficient evidence to establish that the Courier Agency was involved in fraudulent activities. The investigation failed to link the Courier Agency to the alleged fraudulent clearance of goods, and no evidence was provided to prove that the consignments were misclassified as free gifts to evade customs duties. Even if I were to consider the two Bills of Entry (MAWB number 986 91013160 dated 09.10.2011 with a declared value of Rs. 8067/- and MAWB number 986 9101 3521 dated 14.10.2012 with a declared value of Rs. 9222/-) to be bogus, the duty cannot be demanded based on the goods imported at the rates specified in the Courier Bill of Entry. This is because the assessment and valuation of these goods were not disputed during the investigation nor recorded in the Show Cause Notice. Additionally, the goods were declared as genuine gifts with a value below the threshold of Rs.10,000/-. Thus, I am unable to confirm the demand as the evidence on record falls to meet the necessary standards of substantiation. In the absence of clear evidence, I, as an adjudicating authority cannot proceed with the demand of Rs. 16,10,183/- under section 28(4) of the Customs Act, 1962 for customs duty. Further as the

liability of the duty herein is not established by the investigation, I cannot charge an interest on delayed payment of duty under section 28AA of the Customs Act, 1962.

Consequently, as mentioned above, my incapacity of demanding the duty also refrains me from imposing penalty for short-levy or non-levy of duty under section 114A of the Customs Act, 1962.

In order to follow the directions of the Honble CESTAT in final Order No. 21881 dated 14.10.2014, it is imperative to analyse the available authorizations thoroughly. On perusal of the authorizations in the names of Abdullah Niyaz, V. Stanley Paulus, Anju John, Prashanth B. P., and Bindu Vargese given by the Courier Agency. I find that these authorizations lack correct addresses of the consignees. The addresses declared are incorrect and improper except mobile numbers. **Ideally the inspecting officer has to take it forward to prove its fictitious nature at the initial inspection.** (affixed with Court Fee stamp) . Also, as per CIECR, 1998 read with CIE(EDP)R, 2010- Authorized couriers are required to obtain authorization from consignees for the clearance of import or export goods. They must advise clients to comply with the provisions of the Customs Act., 1962, and related rules and regulations. Couriers are obligated to exercise due diligence in furnishing information to customs authorities and maintain prescribed records and accounts. The Courier Agency had to maintain the KYC details wherever necessary and ought to have produced before the investigation or adjudicating authority. As per Section 114AA of the Customs Act, 1962 *"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."* I find that the aforementioned authorizations, are incomplete, the Courier Agency has submitted insufficient material for using false or incorrect material in customs-related matter and shall be liable under Section 114AA of the Customs Act, 1962. In this case, the penalty applies to five authorizations in two Bills of Entry-MAWB number 986 91013160 dated 09.10.2011, with a declared value of Rs. 8,067/-, and MAWB number 986 9101 3521 dated 14.10.2012, with a declared value of Rs.9,222/- which were produced before the adjudication authority. Therefore, I am imposing a penalty of Rs.86,445/-for the use of false and incorrect material under Section 114AA of the Customs Act.

Subsequently, I am constrained by the principle that adjudicating authorities cannot go beyond the scope of the Show Cause Notice. Even if I were to consider the possibility of imposing a penalty for the non-submission of authorizations beyond the available five, for a contravention not expressly mentioned in the statute, under Section 117 of the Customs Act, 1962, along with a penalty under Regulation 14 of the CIE(EDP)R, 2010, for the absence of a complete address. Imposing penalty on grounds not enumerated in the notice would be beyond jurisdiction. Furthermore, the Courier Agency was not afforded an opportunity to defend against such a charge, which would violate the principles of natural justice, specifically the principle of audi alteram partem. Additionally, a review of the reply submitted by the Courier Agency reveals that no arguments were made regarding a penalty under this provision, which further underscores the inability to proceed with imposing a penalty in this instance.

Given the absence of sufficient evidence to support the allegations, and in accordance with the principles of natural justice, the benefit of doubt is extended to the Courier Agency. **I conclude that the investigation did not provide conclusive evidence to support the demand for duty or to prove the fraudulent nature of the consignments cleared by the Courier Agency.** The SCN's reliance on incomplete and inadequate documentation led to a failure to substantiate the allegations. **The SCN is found to be deficient, and the allegations raised in the notice are not substantiated. Therefore, the proceedings against M/s S & J Travels and Cargo Services (P) Ltd. are dropped, and no duty demand or penalty is imposed."**

16. Based on the above conclusion, Respondent issued the ORDER (ORIGINAL) No. COG-CUSTOM-PRV-COM-03-2024-25 dt. 19-02-2025 / 20-02-2025 and imposed a penalty of Rs. 86,445/- for use of false and incorrect material under Section 114AA of the Customs Act, 1962.
17. Being aggrieved with the above said O-in-O Appellant begs to file the present appeal.

**GROUND OF APPEAL**

1. The issues involved in this Appeal are:
  - (a) Whether the demand of penalty is sustainable in law, in view of the fact that no evidence has been placed on the record to prove that the consignee authorizations lack correct addresses of the consignees and the addresses declared are incorrect and improper except mobile numbers.
  - (b) Whether the impugned Order is sustainable in law in the light of the submissions made in the Grounds of Appeal and in particular since it is an admitted position that the impugned consignments were cleared after verification and assessment by the proper Customs Officers the CBE – IV forms filed by the Appellant company.
  - (c) Whether the Appellants firm is liable for a penalty in the light of the submissions made in the Grounds of Appeal under section 114AA of the Customs Act, 1962.
2. At the outset, the Appellants would like to submit that they were granted Courier Licence No. 03/2010 dt. 30/11/2010. The said Licence was issued under Regulation 10 of the Courier Import & Export (Clearance ) Regulations, 1998 [CIECR for short]. The Appellants have been complying with the procedure prescribed under Public Notice No. 08/2006 dt. 23/02/2006 to the letter and spirit of the same. For the issue of the Certificate or Registration, the Appellants submitted the necessary documents and, after necessary scrutiny and satisfaction only, the Ld. Commissioner had issued the Certificate of Registration.
3. (a) Appellant is one of the reputed flight forwarders at Trivandrum Airport from 1982, and was responsible for movement of export cargo of Trivandrum, mainly perishables. Appellant is having a good track record of thirty one years in Trivandrum Customs.

- (b) Appellant obtained the courier registration mainly to send export consignments on express mode and not for import of courier articles.
  - (c) Appellant was awarded by Indian Airlines / Air India for excellent performance in the movement of international cargo from 1994.
4. S&J Travel and Cargo Services PVT Ltd, TC No. 26/863, Panavila Junction, ThycaUd, Trivandrum – 695014, Kerala (hereafter called Customs Authorized Courier Agent) holder of Registration No. 03/2010 Courier date 30/12/2010 issued under Regulation of Courier import and export (Clearance) Regulation 1998 and renewed on 07.09.2020 for ten years and **valid up to 06.09.2030**.
  5. Honorable Tribunal of Customs Excise and Service Tax Tribunal set aside the above Order No. TVM-EXCUS-000-CUM-38-13-14 Dated 27/03/2014 which the Appellant have filed the appeal before the Tribunal and the Tribunal Set aside the above order of the Commissioner of Trivandrum under Order 21881/2014 dated 14-10-2024 and remanded back the case for fresh adjudication by the Commissioner and the following observation.
    - i. The first step is to verify the authorization given by the importer and its genuineness and only then duty can be demanded from the courier.
    - ii. If the authorizations are not considered and at least a few authorizations are not proved to be bogus/fictitious, it may be unfair to demand the duty from the courier operator. Therefore we consider that matter requires more detailed consideration in the hands of the Commissioner and all the authorizations have to be considered and at least a few at random verified before demanding duty from the courier without expressing any opinion.
  6. First the case was taken by the Commissioner of Customs (Preventive) Cochin Mr. Rajendra Kumar on 26/09/2023. The case was heard through virtual mode after that the Appellant have not heard any decision by him, even after the Appellant have submitted the written submission on 28/09/2023.

**[ANNEXURE – VII]**

7. On 22-09-2023, Appellant received a letter No. C No. VIII/10/9/2023 CUS ADJ in reply to Appellant's email dated 20.09.2023 regarding the adjudication of this case on 27.03.2014. The same was adjudicated by CESTAT Bangalore, stating that the SCN was kept in the call book on the grounds of similarity, which is incorrect, as it was stated as pending in the High Court. As per Circular No. 1028/16/2016 (Check) dated 26.04.2016, **[ANNEXURE – IV]** these cases were taken out of the call book as per the Commissioner (Preventive) review order on 05-08-2023. Appellant sent an email dated 22.09.2023 stating Circular No. 1028/16/2016 (Check) dated 16th April 2016, it is applicable for pending cases where an injunction has been issued by HC/SC/CEGT and is not applicable to the Appellant Company because the case was decided by CESTAT Bangalore on 14.10.2014.
8. Appellant have also informed that it should have been called for by them rather than **waiting for 9 years.**
9. Appellant have also requested a copy of the review order dated 05.08.2023 to enable to prepare our defense for the personal hearing. The same mail was replied to by the Asst. Commissioner (Adjudication). **Still, no copies were enclosed.**
10. The first case was taken by the Commissioner (Preventive), Cochin, Mr. Rajendra Kumar, on 26.09.2023. The case was heard through virtual mode. After that, Appellant have not heard any decision, even though Appellant gave written submission dated 28.09.2023 **[ANNEXURE – VII]** to the Commissioner on his order .
11. Appellant submitted written submission with all details on 28.09.2023, but **there was no response from the Commissioner.** Later, Appellant came to understand that the Commissioner left without making any decision on our submission, which contained 14 points in our favor.
12. On 30.10.2024, Appellant received a notice from the new Commissioner (Preventive), Cochin. Based on this, Appellant attended on 25.11.2024, explained all the facts, and submitted two written submissions (dated 25.11.2024 & 26.11.2024) with copy of consignee authorization, stating all the facts by the Preventive Commissioner (enclosed).

13. The Commissioner fined Rs. 86,445/-, stating that the consignee authorization did not have the correct details and had an incomplete address but had the correct mobile number. This was incorrect, as all consignee authorizations **[ANNEXURE – XII]** had the correct addresses, as follows:
  1. V Stanley Paulus, Glass House, Panavila Jn, Trivandrum-695014, Kerala.
  2. Anju John, C/o Island Aviation Services Ltd, Trivandrum International Airport, Kerala. Ph- 9567762106.
  3. Bindhu Varghese, C/o Island Aviation Services Ltd, Trivandrum International Airport, Kerala. Ph- 8129050082.
  4. Abdullah Niyaz, C/o Island Aviation Services Ltd, Trivandrum International Airport, Kerala. Ph- 9744888323.
  5. Prasanth B. P, C/o Island Aviation Services Ltd, Trivandrum International Airport, Kerala. Ph- 8129050081.
14. Additionally, the master airway bills and the copy of the bill of entry **[ANNEXURE – XIII]**, certified and approved by the Superintendent, Courier Cell at Trivandrum International Airport, were enclosed.
15. The respondent itself has admitted that the investigation has failed to conclusively establish that the courier agent knowingly or intentionally made, signed, used, or caused to be made, signed, or used, any declaration, statement, or document that was false or incorrect in any material aspect in the course of conducting their courier business for clearance purposes
16. Even though Appellant submitted these documents, which included the correct address of the consignees, the Commissioner **overlooked the contents of the bill of entry and consignee authorization**. This was false, and the matter was adjudicated as follows:
 

“I am imposing a penalty of Rs. 86,445/- for use of false and incorrect material under Section 114AA of the Customs Act, 1962.”
17. The Appellants submits that when the demand of duty itself is not sustainable in law the demand of the penalty of Rs. 86,445/- imposed under section 114AA *ibid* is not sustainable in law.

18. The Hon'ble Tribunal may be please to hold that:

- i. The Ld. Commissioner has not cited or placed any evidence on the record to prove that the consignee authorizations lack correct addresses of the consignees and the addresses declared are incorrect and improper.
- ii. The demand of Penalty of Rs.86,445/- under Sections 114AA ibid is not sustainable in law, on the basis of the submissions made in the Grounds of Appeal and the judicial decisions cited.

19. The Appellant requests the Hon' Tribunal to go through the facts along with the documents of consignee authorization and set aside Order II of the Commissioner's ORDER (ORIGINAL) No.COC-CUSTOM-PRV-COM-03-2024-25 dt. 19-02-2025 / 20-02-2025.

20. The Appellant requests the Hon' Tribunal to give him an opportunity for a Personal Hearing to present the case in person.

Signature of authorized  
Representative, if any

Signature of the Appellant

### **VERIFICATION**

I, Victor Stanley Paulus, the Appellant hereby declare that what is stated above is true to the best of my information and belief.

Signed at Trivandrum on

5th day March 2025

Signature of authorized  
Representative, if any

Signature of the Appellant