# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHENNAI

REGIONAL BENCH – COURT NO. I

## Customs Appeal No. 40346 of 2022

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 312/2022 dated 20.05.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**M/s. Caravel Logistics Private Limited** **: Appellant**
No. 484, Pantheon Plaza,
III Floor, Pantheon Road,
Egmore, Chennai – 600 008

**VERSUS**

**The Commissioner of Customs** **: Respondent**
Chennai-IV Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

**APPEARANCE:**

Shri L. Gokul Raj, Advocate for the Appellant

Shri M. Ambe, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 40349 / 2022**

DATE OF HEARING: 13.10.2022

DATE OF DECISION: 27.10.2022

**Order :**

The only issue to be decided is about the justifiability of the penalty imposed under Section 112(a) of the Customs Act, 1962 on the appellant.

2. Heard Shri L. Gokul Raj, Learned Advocate for the appellant and Shri M. Ambe, Learned Deputy Commissioner for the Revenue.

3. I have considered the rival contentions and have also gone through the written submissions as well as the

case-law furnished by both the parties during the course of arguments.

4. Brief and undisputed facts, which are relevant, *inter alia*, are that there was an import of Aluminium Scrap vide Bill-of-Entry No. 3592939 dated 24.05.2011; that the IGM was filed by the appellant, who is a Steamer Agent, on 22.01.2011; that the said consignment had remained uncleared, for which reason the Custodian had issued a notice dated 05.03.2011 under Section 48 ibid. to the importer, followed by a final notice dated 20.03.2011; that thereafter, since there was no response from the importer, the goods were examined and valued by a Government approved valuer appointed by the Custodian, in the presence of Customs Officials (Valuation Report dated 08.07.2011); that thereafter, the goods were also examined by the Preventive Officer posted at the CFS on 12.11.2012 wherein the goods were found to be Aluminium Scrap; that no action was initiated up to 24.12.2020, on which date a Show Cause Notice under Section 124 ibid. was issued on both the importer as well as the appellant, proposing to confiscate the goods in question apart from proposing to impose penalty under Section 112(a) / 117 ibid.

5. The appellant filed a detailed reply and thereafter, Order-in-Original No. 80781/2021 dated 08.03.2021 was passed whereby the impugned goods were absolutely confiscated and a penalty of Rs.1,00,000/- (Rupees One Lakh only) was imposed on the appellant. The said penalty was imposed on the ground that the appellant had violated the conditions / instructions contained in the Board Circular No. 56/2004 dated 18.10.2004 read with Public Notice No. 152/2004 dated 19.10.2004. Aggrieved by the above order, the appellant preferred an appeal before the First Appellate Authority. The First Appellate Authority, after hearing the appellant, however, having rejected the appeal of the appellant, the same has been assailed in this appeal before this forum. The First Appellate Authority has also

referred to a Memorandum dated 20.01.2014 which was issued to all Shipping Lines by the Assistant Commissioner of Customs (Docks), wherein the additional responsibility was fastened on Shipping Lines to ensure the furnishing of pre-shipment inspection certificate before the same was loaded on the ship.

6.1 The Handbook of Procedures issued by the Directorate General of Foreign Trade (DGFT) dated 08.04.2005 (2004-09) requires, at paragraph 2.32, in the case of import in the form of metallic waste, scrap, etc., referred to therein, the furnishing of pre-shipment inspection certificate **at the time of clearance of goods**. Further, the Handbook of Procedures (Vol. I) with effect from 23.08.2010 (2009-14) also mandates the furnishing of pre-shipment inspection certificate **at the time of clearance of goods**, at paragraph 2.32.2. Further, there is no dispute that the FTP (2009-14), which is notified by the Central Government, is in exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

6.2 From the above, it is clear that the pre-shipment inspection certificate, as required, is to be furnished at the time of clearance of the goods by an importer and hence, any other person including a Steamer Agent has no *locus* to meet the above requirement. The responsibility was that of the importer, as prescribed, and in any case, the non-fulfilment of the above requirement would not *ipso facto* tantamount to declaring the goods as 'prohibited' under Section 111(d) ibid. This is because Section 111(d) could be invoked only when any goods are imported or attempted to be imported contrary to ***any prohibition imposed*** and in any case, it is not the case of the Revenue that the import of Aluminium Scrap was never prohibited under any law for the time being in force. Moreover, Revenue has not whispered anywhere if it was the duty of the Steamer Agent to seek clearance of any goods since it

is the importer who is required to fulfil any obligations 'at the time of clearance of goods'.

7. The First Appellate Authority has also referred to a Memorandum dated 20.01.2014 whereby the responsibility to ensure furnishing of pre-shipment inspection certificate was fastened on all Shipping Lines. Here, the Bill-of-Entry is dated 24.05.2011 and hence, the said Memorandum cannot be made applicable just because the Revenue woke up after more than 8 years to issue the Show Cause Notice.

8. In view of the above discussions, I am of the clear view that the penalty under Section 112(a) of the Customs Act, 1962, as levied and confirmed on the appellant, is not sustainable, for which reason the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on **27.10.2022**)

Sd/-
**(P. DINESHA)**
MEMBER (JUDICIAL)

Sdd