CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11489 of 2016-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-011-16-17 dated 18.04.2016 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

D P Logistics Private Limited **...Appellant**

601, Raikar Chambers, 6 Th Floor
K D Marg Near Jain Temple Gowandi
MUMBAI
MAHARASTRA-400088

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar
Gujarat

APPEARANCE:
Shri Prashant Patankar, Consultant for the Appellant
Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
HON'BLE MEMBER (JUDICIAL) ,SOMESH ARORA

FINAL ORDER NO.A / 11160 /2023

DATE OF HEARING: 30.05.2023
DATE OF DECISION: 30.05.2023

SOMESH ARORA

When the matter was called, learned Counsel for the appellant stated that the same has been coming on board earlier also, and though the other parties are also involved in the same SCN, this case may be heard separately as it only has issues in relation to legal interpretation of the provision and can be decided without effecting the interest of other parties.

2. The Learned Counsel also made a statement at the bar that though the SCN has been issued by DRI officers, however for the purpose of this appellant he is not pressing the point of proper officer and the matter may be decided without the issue being pressed as per the decision in the matter of Canon India on the point of proper officer. Accordingly, the present appeal is

proceeded with. The appellant in this case is a CHA, who allegedly participated in clearance of Red Sanders Logs, in the past in certain containers, which could not be intercepted by the DRI, when they were working on intelligence at Pipavav Customs in relation to particular Container bearing No. MRAU 3836507. He took us through the SCN and the impugned decision indicating the charge against him was of abetment in the offence, but the SCN itself mentioned that there was no knowledge on their part, about the offending goods. He stated that as per the provisions of Section 114(i), there is no thing which indicates that abetment charge can be sustained despite a person having no knowledge and that too for goods which were entered into export in the past and got cleared. That the Section 113(b) which has been invoked pertains to attempted exportation and not the goods which were exported in the past. This coupled with no allegation of knowledge in the SCN and the impugned order being sustained only on the ground that proper authorization was not brought on record, offence under provision of Section 114(i) cannot be sustained, for violation.

3. As against this, the Learned AR pointed out that the act of not taking authorization is a serious lapse which is also serious omission of due diligence and such lapse if allowed to be under taken can cause prejudice to the department and facilitate frauds, therefore, the penalty as imposed by the Learned Commissioner (Appeals) is justified.

4. We have gone through the rival submissions, we find that right from the stage of SCN itself, the department has alleged though there is no knowledge still abetment is attracted. This has also been the basis of invocation of penalty under Section 114(i) read with Section 113(d). It is to be noted with any lapse of regulations or rules, for which no penalty is prescribed or expressly mentioned can be dealt with in the provisions of Sections 117 or first leg of Sections 114, which does not require any *mens rea*, but extends to goods

liable to confiscation. We find that there is apparent contradiction in the findings, when charge of abetment is being upheld on the basis of violation of regulation under the CHALR/CBLR in this case, even when no knowledge is also the finding. Abetment warrants *mens rea* is trite law.

5. In view of the foregoing, we find the penalty as proposed and sustained through the impugned order under Section 114 is liable to be set aside. However we are not commenting anything about the maintenance of action or otherwise under CBLR/CHALR as it is not an issue before us.

6. The appeal is therefore allowed as far as penalty on the present appellant is concerned. The appeal is allowed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Palak