CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 11145 OF 2016

[Arising out of OIO-MCH-PRCOMMR-PVR-39-2015-16 dated 30/03/2016 passed by Commissioner of CUSTOMS-MUNDRA]

Leo Forwarderz **Appellant**
Shop No. 20, Ground Floor, Deepak Complex,
Plot No. 315, Ward-12b,
Gandhidham,
Kutch,
Gujarat

Vs.

C.C.-Mundra **Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra, Kutch
Gujarat-370421

Appearance:
Present for the Appellant : Shri A.K. Jayaraj, Advocate
Present for the Respondent: Shri Anoop Kumar Mudvel, Superintendent (AR)

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Date of Hearing/Decision : 07.03.2024

FINAL ORDER NO. 10594 /2024

SOMESH ARORA

The advocate for the party mentions the matter pertains to penal action having been taken under Section 114 against the Customs House Agent (present appellant), who had allowed another person to function as per show cause notice which pertains to negligence or lack of due diligence on the part of CHA, which is appellant before this court. The Ld. Advocate seeks to place reliance on 2015 (320) ELT 264 (Madras High Court) in the matter of Commissioner of Customs (Exports) Chennai Vs. Sahaya Edin Prabhu, in which it has been surmised that the appropriate action to a negligence can be taken under C.H.A. Regulation and Section 114 cannot be invoked in the absence of malafide on the part of the party. He also places reliance upon the order of the tribunal in the matter of Shri Chandan Chatterjee Vs. Commissioner of Customs of Final Order No. 77585/2023 of the Kolkata bench in which relying on various judgments mentioned as follows, decision was taken:

> *"11. It is settled law that for imposition of penalty, it is necessary to establish a positive role on the part of the concerned person or the establish of mensrea on part of such a person is a must. Vague allegations and negligence, if any, howsoever grave cannot be assumed to mean abetment so as to invoke penal action. For any penal action to be enforced, the establishment of an active role on the part of the accused is imperative. For the said propositions in law, reliance is placed on the ratio of the law as pronounced in the following cases:*
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> 1. *Commissioner of Customs Export Chennai Vs. Sahaya Edin Prabhu – 2015 (320) E.L.T. 264 (Mad.),*
> 2. *Ashok Kumar Vs. Commissioner of Customs Export (Port) – 2010 (262) E.L.T. 321 (Tri.Chennai), Chennai,*
> 3. *Neptune Cargo Movers Pvt. Ltd. Vs. Commissioner of Customs Export Chennai – 2007 (219) E.L.T. 673 (Tri.) Chennai,*
> 4. *AN Bhatt Vs. Collector of Customs – 1991 (55) E.L.T. 580 (Tri.),*
> 5. *Sahaya Edin Prabhu Vs. Commissioner of Customs, Chennai - 2015 (320) E.L.T. 264 (Mad.),*
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> *as affirmed by Madras High Court,*
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> *12. In view of our findings above and the ratio of the law as flowing from the aforesaid case laws, we are of the view that the department case falls woefully short of substantiating the invocation of penalty under section 114(i) of the Customs Act. The impugned order is liable to be set aside. We therefore, set aside the order passed by the learned Adjudicating Authority and allow the appeal, with consequential relief, if any, in law."*

In view of the forgoing the charge itself being only of negligence, penalty imposed is set aside. Appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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