CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 10205 of 2022
(Arising out of OIA-MUN-CUSTM-000-APP-311-21-22 dated 07.03.2022 passed by Commissioner of Central Customs (Appeals)-Ahmedabad)

Insaaf Qureshi **...Appellant**
Proprietor of M/s Bhavya Shipping,
8, Plot No. 368, 369, 377,
Ward No. 3/B, Adipur, Gandhidham – 370 205

VERSUS

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

APPEARANCE:
Shri Vikas Mehta, Consultant appeared for the Appellant
Shri A.R. Kanani, Superintendent (AR) appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 11300 /2024

DATE OF HEARING: 18.04.2024
DATE OF DECISION: 13.06.2024

RAMESH NAIR

The present appeal is filed against the order-in-appeal No. MUN-CUSTN-000-APP-311-21-22 dtd. 07.03.2022 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that an exporter company namely M/s Celot& Comet Pvt. Ltd., Delhi filed three Shipping bills all dtd. 18.01.2019 at Mundra port for export of 'Casual Shoes of Rubber Sole with Canvas Upper', through Customs Broker M/s Bhavya Shipping, Gandhidham. The appellant is the proprietor of M/s Bhavya Shipping and holder of F-card. During examination of goods, the goods appeared of inferior quality and of lower value. The samples of goods were sent for valuation purpose to M/s Accurate Appraisal Services, Mumbai. The valuation firm ascertained the value of to be Rs. 175 per pair against the declared value per pair of Rs. 1207.5 per pair. As it appeared that the exporter had over-valued the goods to avail the wrongful benefit of drawback and IGST refund, further investigation in the matter was made and a show cause notice was issued on 10.01.2020, which inter-alia proposed penalties on the appellant under Section 114(iii) and 114AA of

the Customs Act, 1962. In adjudication vide Order-In-Original dtd. 20.10.2020 the adjudicating authority rejected the declared value of goods; confiscated the goods under section 113(i) and 113(ia) with an option to redeem the same on payment of fine; restricted the drawback amount. He also imposed various penalties, including penalties on the appellant under section 114(iii) and 114AA of the Customs Act, 1962 Rs. 1,50,000/- and Rs. 1,50,000/- respectively. Being aggrieved, appellant filed appeal before the Commissioner (Appeals), who vide impugned order-in-appeal rejected the appeal of appellant. Hence the present appeal before us.

2. Shri Vikas Mehta, Ld. Consultant appearing on behalf of theappellant submits that there is no evidences regarding the knowledge about alleged overvaluation by the exporter to the appellant. There is also no evidence to show that appellant was given or promised any extraordinary gain out of this transaction. It is settled law that Customs Broker is not responsible for valuation of goods entered for export (or import) and is also not required to cause inquiry into this aspect. He placed reliance on the following decisions.

(i) Moriks Shipping & Trading P.Ltd–2008(227)ELT577(Tri.-Chen)
(ii) Brijesh International, 2017(352) ELT 220(Tri. Del)
(iii) P.P.l Dutta 2014(313)ELT 351 (Tri. Del.)
(iv) World Cargo Movers, 2002(139)ELT 408 (Tri. Del.)
(v) Dipankar Sen, 2003(159)ELT 260 (Tri. Kolkata)
(vi) Mohak Enterprises, (2024) 15 Centax 451 (Tri. Ahmd)

3. Shr A.R. Kanani, Ld. Superintendent (AR) appeared and argued for the Department. He supported the findings in the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records.

5. We find that while discussing the issue of imposition of penalty upon appellant, Adjudicating authority and revenue has only referred to the fact of over-valuation of the export goods by the exporter, M/s.Celot & Comert Pvt. Ltd., Delhi and has nowhere produced any evidence to show that the Appellant knew about alleged over valuation of the goods. We observe that the Appellant declared the value of goods in the Shipping Bill based upon the information given to him by the exporter and is not expected to investigate and find out the correct value of the goods.There is no material available on records that Appellant had

knowledge of over valuation of the goods.In any case, Appellant who apparently acted in a *bona fide* manner in terms of the instructions of the exporter cannot be penalized on the ground of abetment of any offence of the exporter. It is seen that the Tribunal in series of cases set aside penalty in such circumstance as under:-

(a) *Ashok Jaiswar* v. *Commissioner of Customs, Mumbai* - 2006 (200) E.L.T. 122 (Tribunal-Delhi)

> The CHA has merely signed the shipping bill. In absence of evidence showing CHA being aware of declaration made in the shipping bill and supporting documents were false, penalty is liable to be set aside.

(b) *Sindhu Cargo Services Ltd.* v. *CC, Coimbatore* -2008 (226) E.L.T. 282 (Tribunal-Chennai)-

> Functions of CHA are to verify correctness of particulars mentioned in the shipping bill accompanying declaration.

(c) *Success Engineering* v. *CC, Kandla* -2007 (215) E.L.T. 220 (Tribunal-Ahmd.)-

> No evidence showing knowledge/intention on CHA's part in misdeclaration of lower price with a view to wrongly avail benefit and failure/negligence, if any, on appellant's part, not to justify of imposition of penalty.

(d) *Prime Forwarders* v. *CC, Kandla* -2008 (222) E.L.T. 137 (Tribunal-Ahmd.)-

> CHA acted on basis of documents given to them and there is nothing to show that he was aware of containers being stuffed with Ferro Titanium instead of brass scrap. Hence, in absence of any evidence to the contrary providing their involvement or knowledge about mis-declaration, penalty cannot be imposable on CHA.

6. In such aforesaid scenario, we find no reason to impose penalty upon the appellant, the imposition of the penalty on the appellant are not warranted. Accordingly, penalties on the appellant are set aside. The appeal is allowed.

(Pronounced in the open court on 13.06.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha