Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 11699 of 2017 - DB

(Arising out of OIO-MUN-CUSTM-000-COM-002-17-18 dated 30/06/2017 passed by Commissioner of CUSTOMS-MUNDRA)

Lily Apparels Pvt Ltd ....**Appellant**
Unit-ii, Plot No.409, Sector-iii,kandla,
Kandla Special Economic Zone, Gandhidham
Kutch, Gujarat

VERSUS

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

With

CUSTOMS Appeal No. 11700 of 2017 - DB

(Arising out of OIO-MUN-CUSTM-000-COM-002-17-18 dated 30/06/2017 passed by Commissioner of CUSTOMS-MUNDRA)

Shri Kamal Makkar ....**Appellant**
Director, Of M/s.lily Apparels Pvt Ltd.
Unit-ii, Plot No. 409, Sector-iii, Kandla,
Kandla Special Economic Zone, Gandhidham
Kutch, Gujarat

VERSUS

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

APPEARANCE:
Shri Sudhanshu Bissa, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR)for the Respondent

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

Final Order No.11611-11612/2024

DATE OF HEARING: 05.04.2024
DATE OF DECISION: 23.07.2024

RAMESH NAIR

The brief facts of the present case are that the appellant being an SEZ unit in Kandla Special Economic Zone were granted letter of Approval No. 20/2014-15 dated 12.03.2015 issued from F. No. KASEZ/20/2014-

15/IA-I dated 16.03.2015 by Joint Development Commissioner, KASEZ, Gandhidham, for "Warehousing Service Activity and Trading Service Activity" in respect of following items as below:-

Sr.No.	Items	HS Code
1	All kinds of textile, fabric	53110011
2	All kinds of knit and hosiery	61151000
3	All kinds of readymade garments	61151000
4	All kinds of accessories of garments	61119090
5	All kinds of home furnishing	51081250
6	All kinds of textile and fabric yarn	53110011
7	All kinds of blankets and rolls	63012000
8	All kinds of textile and dyes and chemicals	63012000

1.1 The appellant filed bill of entry No. 0015820 dated 12.10.2014 at KASEZ, Gandhidham and sought clearance of the following items stuffed in a container bearing No. OOLU8168359 by declaring classification and value of the same as under :-

Sr. No.	Description of the goods	CTH No. as declared	Quantity Declared (pieces)	Declared Value (Rs.)	Declared Duty (Rs.)
1	Socks	61152990	14560	2,44,652.75	72,172.36
2	Girls Leggings	61112000	8750	2,64,648.41	78,071.06
3	Girls T-Shirts Knitted	61062010	2870	3,37,573.74	1,45,389.23
			TOTAL	846874.90	2,95,632.65

1.2 The said bill of entry was assessed by the appraiser of Knadla Special Economic Zone on 12.10.2015 and based on the assessed bill of entry, the appellant sought clearances of the container No. OOLU8168359 from Mundra port for KASEZ, Gandhidham. Based on intelligence, the officer of the Rummaging and Intelligence Wing of the Custom House, Mundra, intercepted the container No. OOLU8168359 at Mundra port on 19.10.2015 and taken to M/s All Cargo Logistic Ltd. CFS for detailed examination. During the course of examination of the goods stuffed in the container, in presence of independent witnesses under panchnama dated 20.10.2015, it was found that the container was stuffed with the following Goods:-

Sr. No.	Description of items found in container	CTH No.	Qty. found (Pcs.)	Qty. declared (Pcs.)
1.	Socks	61159990	17280	14560
2.	Leggings	61046990	3705	8750
3.	T-Shirts	61099090	400	2870
4.	Ladies Tops	61099090	50440	Nil
5.	Padded Bras	62121000	34800	Nil
6.	Sweaters	61101120	270	Nil
7.	Jackets	62043300	1178	Nil
8.	Skirts	61045300	1540	Nil
9.	Ladies Gowns	61083100	362	Nil
10.	Woolen Tops	61069020	240	Nil
11.	"Sound Craft" branded "Mixing Consoles"	85437022	95	Nil

From the above, it appeared that the appellant have grossly mis-declared the quantity as well as the value of the goods. Therefore, the appellant were issued a show cause notice as to why the goods valued at Rs. 2,21,21,536/- seized under panchnama dated 20.10.2015 should not be confiscated under Section 111(f),111(i),111(l) and 111(m) of the Customs Act, 1965; Customs duty Rs. 82,00,034/- should not be demand under Section 28 (4) of the Customs Act 1962 and penalty should not be imposed under Section 112(a) and/or 114(A) of the Customs Act 1962. The said show cause notice was adjudicated by the Principal Commissioner of Customs, Customs House-Mundra- kuthch whereby the following order was passed:-

> *"(i). I confiscate the seized goods valued (assessable value) at Rs. 61,42,922/- smuggled into India with intention to evade customs Duty of Rs. 64,62,635/- under Section 111(f), 111(i), 111(1) and 111(m) of the Customs Act, 1962. However, I give an option to redeem the goods on*

payment of redemption fine of Rs. 10,00,000/-(Rs. Ten Lakhs only) in lieu of Confiscation under Section 125 of the Customs Act, 1962

(ii) I impose penalty of Rs. 10,00,000/- (Rs. Ten Lakhs only) upon M/s Lily Apparels Pvt. Ltd., Unit-II, Plot No.409, Sector-III, KASEZ, Gandhidham under Section 112(a) of Customs Act, 1962.

(iii) I confirm Customs Duty of Rs. 64,62,635/- (Rupees Sixty Four Lakhs Sixty Two Thousand Six Hundred Thirty Five Only) and order to recover from
1.3 Being aggrieved by the aforesaid order, the appellant filed appeals before this Tribunal. M/s Lily Apparels Pvt. Ltd., Unit-II, Plot No.409, Sector-III, KASEZ, Gandhidham under Section 28(4) of the Customs Act, 1962.

(iv) I impose a penalty of Rs 64,62,635/- plus an amount equivalent to interest payable on confirmed duty, supra, upon M/s Lily Apparels Pvt Ltd., Unit-II, Plot No.409, Sector-III, KASEZ, Gandhidham under Section 114A of the Customs Act, 1962.

(v) I impose a penalty of Rs. 5,00,000/- on Shri Kamal Makkar, Director of M/s Lily Apparels Pvt. Ltd., KASEZ, Gandhidham under Section 112(a) of the Customs Act, 1962.

(vi) I impose a penalty of Rs. 2,00,000/- on Shri Kamal Makkar, Director of M/s Lily Apparels Pvt. Ltd., KASEZ, Gandhidham under Section 114AA of the Customs Act, 1962."

2. Shri Sudhanshu Bissa, Learned Counsel appearing on behalf of the appellant at the outset submits that the appellant seeks limited relief that the option of 25% penalty was not given by the Adjudicating Authority in the order-in-original which as per statutes he was supposed to give the option of 25% penalty. He further submits that as regard the penalty imposed under Section 112(a) since the penalty under Section 114A Customs Act, 1962 was imposed. The penalty under Section 112(a) cannot be imposed.

2.1 As regard the penalty on the Director, he submits that taking lenient view the penalty on the director may please be reduced by considering the overall facts of the present case.

3. Shri Anand Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that as regard the issue of confirmation of demand, redemption fine, interest and penalty imposed under Section 114A, the appellant is not contesting, hence, the same is upheld. However, Learned Counsel only seek relief of reduced penalty of 25% on the ground that the adjudicating authority has not extended the option in the impugned order. In this regard we agree tthat statutory provision provides that the adjudicating authority must give an option for reduced penalty in the case the appellant pay the amount of duty, interest and 25% penalty under Section 114A within a period of one month form the date of order. Since, no such option was granted, the same option can be extended now. Accordingly, we hold that the aappellant's penalty shall stand reduced to 25% under Section 114A subject to condition that the appellant pay total duty confirmed, interest thereon as per law and 25% penalty under Section 114A within a one month form the date of this order.

4.1 As regard submission of the Learned Counsel that penalty under Section 112(a) is not legal and correct, on the ground that the penalty under Section 114A has been imposed. We feel it necessary to go through the Section 114A Customs Act, 1962 carefully, which reads as under :-

> ***SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. -*** *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under* [1]*[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :*

Provided *that where such duty or interest, as the case may be, as determined under* ***1****[sub-section (8) of section 28], and the interest payable thereon under section* ***2****[28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined :*

Provided further *that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

Provided also *that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account :*

Provided also *that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section* ***2****[28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :*

Provided also *that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

Explanation*. - For the removal of doubts, it is hereby declared that -*

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under ***1****[sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

From the above 5th Proviso to Section 114A, it is crystal clear that where any penalty has been levied under Section 114A no penalty shall be levied under Section 112 or 114. In view of this clear legal position, since the penalty has been imposed under Section 114A, no penalty under Section 112(a) will survive. Accordingly, the penalty imposed under Section 112(a) is set aside.

5 As regard the penalty on the Director, we find that though the director, Shri Kamal Makkar, was directly involved in overall affair of filling bill of entity and knowing the mis-declaration of the goods is liable for penalty. However, taking into consideration that the appellant company has under taking to pay duty, interest and penalty and considering overall facts and circumstances of the case. We are of the view that the penalty imposed on the director Shri Kamal Makkar, needs to be reduced. Accordingly the penalty on Shri Kamal Makkar is reduced from Rs. 5 Lakh to Rs. 3 Lakh under Section 112(a) and from Rs. 2 Lakh to Rs. 1 Lakh under Section 114A.

5. Accordingly, both the appeals are partly allowed in the above terms.

(Pronounced in the open court on 23.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha