

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

REGIONAL BENCH-COURT NO.3

CUSTOMS APPEAL NO. 10466 of 2024-DB

(Arising out of Order in Original MUN-CUSTM-000-COM-012-24-25 dated 16/05/2024 passed by the Principal Commissioner of Customs, Custom House, Mundra)

SAARTHEE SHIPPING CO

Plot No. 211, Ward No. 12/B, Office No. 1 & 2,
Second floor, Shah Avenue- 1,
Gandhidham-370201

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax - Mundra Customs**

Office of the Principal Commissioner of Customs,
Custom House, AP & SEZ,
Mundra, 370 421

.....Respondent

WITH

CUSTOMS APPEAL NO. 10467 of 2024-DB

(Arising out of Order in Original MUN-CUSTM-000-COM-012-24-25 dated 16/05/2024 passed by the Principal Commissioner of Customs, Custom House, Mundra)

SUNIL TANEJA ASSOCIATES

Mr. Ritesh Jain, Proprietor, Office No. 1442/10,
Galli Chulley Wali, Pan Mandi,
Sadar Bazar, Delhi-110006

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax - Mundra Customs**

Office of the Principal Commissioner of Customs,
Custom House, AP & SEZ,
Mundra, 370 421

.....Respondent

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant

Shri Prashant Tripathi, Superintendent(AR) for the Respondent

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

Final Order No.12841-12842/2024

DATE OF HEARING: 11.11.2024

DATE OF DECISION: 26.11.2024

RAMESH NAIR

These appeals have been filed against the Order No. MUN-CUSTM-000-COM-012-24-25 dtd. 16.05.2024 passed by the Commissioner of Customs, Custom House, Mundra Port, Kutch.

1.1 The brief facts leading to this case are that M/s Sunil Taneja Associates had imported the two consignments of PVC resin 130 MT. from China and 87.500 MT. from South Korea and sold the said two consignments on High Sea Sale basis to M/s Blazeing Star Trade Pvt. Ltd who had filed two Bills of Entry for import of 130 MT of PVC Resin and for import of 87.500 MT. of PVC Resin without payment of Customs duty under Advance Authorization. On the basis of information received from the DRI, Pune that the imports made by M/s Blazeing Star Trade Pvt. Ltd. under Advance Authorization appears to be suspicious, enquiry was initiated and on being reported by CGST, Dehradun that the said importer firm is non-existent at the declared address, the goods imported vide Bills of Entry filed by M/s. Blazeing Star Trade Pvt. Ltd. were placed under Seizure. During the investigation statements of Custom Broker M/s Sarthee Shipping Co., Shri Ritesh Jain, Proprietor of M/s Sunil Taneja Associates were recorded and summons/letters were also issued to the Director of M/s. Blazeing Star Trade Pvt. Ltd. The said goods were claimed to have been sold on High sea sale basis by M/s Sunil Taneja Associates to M/s Blazing Star. After the initiation of enquiry and seizure of goods M/s Sunil Taneja Associates cancelled the HSS and required to allow them to pay the duty to clear the goods. When no reply was received from the importer M/s Blazeing Star Trade Pvt. Ltd., the request of M/s Sunil Taneja Associates was considered and they were allowed to amend the Bills of Entry in their name and accordingly, the Bills of Entry were amended and assessed provisionally on payment of duty and execution of bond/B.G.

1.2 In view of above investigation, show cause notice dtd. 17.05.2023 was issued to the Appellants asking them to explain as to why the goods covered under the impugned Bills of Entry should not be assessed finally with full duty of Rs. 79,94,853/- and duty of Rs.79,94,853/- and interest of Rs. 10,70,374/- paid by M/s Sunil Taneja Associates should not be appropriated; the goods covered under the impugned Bills of Entry should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962 and penalty should not be imposed under Section 112(a)and/or 112(b) of the Customs Act, 1962 and 114AA of the Customs Act, 1962 ; penalty should not be imposed under Section 117 of the Customs Act, 1962 on M/s Saarthee Shipping Co. (Customs Broker). In adjudication, by impugned Order-in-Original dated 16-05-2024, Ld. Commissioner confirmed charges levelled in show cause notice. Aggrieved by the said Order, the appellant are before this Tribunal.

2. Shri Hardik P. Modh, Ld. counsel appearing on behalf of the appellants submits that Section 111(m) deals with confiscation of goods when any goods do not correspond in respect of value or any other particular, however in the present case after the amendment in Bills of Entry, there is no mis-declaration in Bills of Entry. After the amendment, the goods in dispute are not imported under Advance Authorization and there are no discrepancies in relation to value or quantity of the goods, therefore, the said goods are not liable to confiscation. He placed reliance on the following judgements:-

- (i) Sony India (Pvt) Ltd. Vs. Commissioner of Customs -2008(230)ELT 550 (T)
- (ii) Nikom Copper and Conductors Pvt. Ltd. Vs. Union of India - 2021(378)ELT 421 (Bom.)
- (iii) Commissioner of Customs, Noida Vs. Ess Aar Automotive Pvt. Ltd. 2018-TIOL-3071-CESTAT –ALL

2.1 He also submits that the Ld. Commissioner has wrongly imposed penalty upon the Appellant and its proprietor without considering the fact that the Bills of Entry were amended and the Appellant paid the entire Customs Duty without taking benefit of Advance Autorisation along with interest before issuance of the show cause notice dtd. 17.05.2023.

2.2 He further submits that the Ld. Commissioner has not taken into consideration the bona fide intent of the Appellant. The Appellant on realizing that the original importer may be fictitious, paid entire duty along with interest. Penalty ought not be imposed in the absence of mens rea. It is settled law that for imposition of penalty under Section 112 of the Act mens-rea has to be established about the wrongful act. He placed reliance on following judgements:-

- (i) Commissioner of Customs (Import) Vs. Trinetra Impex Pvt. Ltd. - 2020(372)ELT 332 (Del)
- (ii) Suresh Rajaram Newagi Vs. Commissioner of Cus 2008(228)ELT 211.
- (iii) Suresh Rajaram Newagi Vs. Commissioner of Cus. 2008(228) ELT 211
- (iv) Hindustan Steel Ltd. Vs. State of Orissa – 1978(2)ELT (J159) (SC)
- (v) Commissioner of Customs, Amritsar Vs. Kamal Kappor – 2007(216)ELT 21 (P&H)

2.3 He argued that the Appellant in the normal course of business entered into a High Sea Sales agreement for import of PVC Resin with Blazeing Star who were the holder of Advance Authorisation. As per the HSS agreement, the Appellant was entitled to 2% CIF value as consideration. Other than this consideration, the Appellant has not gained in any way from the alleged contravention. In fact, the Appellant did not receive their 2% on CIF value from M/s Blazeing Star and had to amend the Bill of Entry and pay the entire duty on the consignments imported by M/s Blazeing Star. Had the Appellant in connivance with Blazeing Star imported the goods under fake Advance Authorisation, the Appellant had gained something over and above the consideration price. In the absence of any gain/benefit from the alleged act, the Appellant ought not be penalized.

2.4 He also submits that the provision of Section 114AA applies only when a person 'knowingly or intentionally' makes incorrect or false documents. In the present case, the Proprietor has not produced any documents which is fake or incorrect. In the present case, neither the Revenue has brought any false documents submitted by the appellant nor have they have shown knowledge on the part of the Appellant in submission of false Advance Authorisation and GST certificate, therefore, the Ld. Commissioner has wrongly imposed penalty under Section 114AA. He placed reliance on the following documents:-

- (i) Ismail Ibrahim Vs. Commissioner of Customs, Bangalore-2019(370)ELT 1321 (Tri. Bang.)
- (ii) Waqar Vs. Commissioner of Customs (Preventive), Lucknow – 2024(387)ELT 91 (Tri. All.)
- (iii) Agarwal Industrial Corporation Ltd. Vs. Commissioner of Customs, Mangalore – 2020(373)ELT 280 (Tri. Bang.)

2.5 He also submits that there is no evidence brought by the Revenue to conclude that there was any deliberate intention on the part of Appellant to import the said goods under fake Advance Authorization in connection with M/s Blazeing Star. Therefore redemption fine ought not be imposed.

2.6 As regard the imposition of penalty on Customs Broker he submits that on reading of Section 117 of the Act, it is clear that person should have contravened any provisions of the Act or abetted any such contravention. In the present case, the Appellant has neither contravened any provisions of the

Act nor abetted in any such contravention. Appellant acts as the Custom Broker as per the Authorization letter issued to the Appellant. The role of the Appellant starts at the time when the Vessel arrives at the respective ports and the documents are handed over to the Appellant for carrying out assessment in terms of the provisions of the Customs Act. As a custom broker, the appellant files Bill of Entry as per the documents such as invoice, packing list, bill of lading, Country of Origin Certificate provided by the importer or his agents. In the present case, the Appellant has not facilitated the alleged offender in committing the alleged offence. The revenue has not brought forward any evidence to show that the appellant was aware about the fictitious nature of the High Sea Buyer and has done any positive act in the alleged offence. He placed reliance on the following decisions:-

(i) Syndicate Shipping Services (P) Ltd. Vs. Commissioner of Customs, Chennai – 2003-(154)ELT 756 (CESTAT- Chennai)

(ii) Yogesh Kumar Vs. CC -2016(344)ELT 1042

(iii) M/s Schenker India Pvt. Ltd. Vs. Commissioner of Customs -2019-TIOL-2741-CESTAT-BANG.

(iv) M/s. Diamond Shipping Agencies Pvt. Ltd. Vs. Commissioner of Customs, Tiruchirappalli – 2017-TIOL-4151-CESTAT-MAD.

3. Shri Prashant Tripathi, Ld. Superintendent(AR)appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. Heard both sides and have gone through the submissions made by them as well as facts on record. The issue that comes up for decision is whether the Appellant and its proprietor are liable to pay penalty under Section 112(a)(ii) and 114AA of the Act, respectively, along with redemption fine on alleged premise that the Appellant in connivance with High Sea Buyer i.e M/s Blazeing Star Trade Pvt. Ltd. facilitated the import of PVC resin to non-existent entity i.e Blazeing Star on the basis of fake Advance Authorisation and GST certificate and whether penalty under Section 117 of the Customs Act is imposable on M/s Saarthee Shipping Co. (Custom Broker).

4.1 We find that Appellant and Blazeing Star entered into a High Sea Sales agreement wherein Blazeing Star imported the said goods vide Bills of Entry No. 5440564 dtd. 14.09.2021 under Advance Authorisation and another Bill of Entry No. 5548138 dtd. 22.09.2021 without duty under Advance Authorisation. After the investigation, revenue alleged that Blazeing Star is

fictitious and non-existent entity. Appellant vide its letter dtd. 17.01.2022 and 18.02.2022 requested to cancel the High Sea Sales Agreement and requested to allow to amend the Bill of Entry dtd. 14.09.2021 and 22.09.2021. The Deputy Commissioner of Customs House, Mundra vide letter dtd. 07.06.2022 accepted the request of the Appellant and directed them to make payment of duty, execution of Bond/ Bank Guarantee etc., and on payment of duty and on furnishing of Bond/Bank Guarantee, the Bills of Entry were amended. The said goods were released provisionally, and value was reduced on account of deduction of 2% High Sea Sales charges.

4.2 We find that by allowing amendment, obviously under Section 149, the authority had no rationale to deny having allowed said amendment under Section 149. In the present matter in terms of Section 149 of the Customs Act, the importer's name was substituted in the Bill of Entry and department allowed him to clear the imported goods with payment of customs duty without taking benefit of disputed advance authorization. So after allowing such amendment the Department had no ground to confiscate the goods and impose fine and penalty. Moreover, the revenue has not challenged the said amendment. Further we also find that Revenue did not appeal against the order passed by Original Authority under Section 149 of Customs Act, 1962, allowing the amendment to the Bills of Entry. Section 111(m) deals with confiscation of goods when for any goods information given is not correct in respect of value or any other particular, however after amendment in Bills of Entry, in the present disputed matter, there is no mis-declaration in Bills of Entry. After the amendment, the goods in dispute are not imported under Advance Authroization and there are no discrepancies in relation to value, quantity of the goods. In these circumstances, we find no reason to sustain the confiscation of goods and imposition of penalties on Appellant.

4.3 Without prejudice, we also find that appellant has, prior to issuance of show cause notice dtd. 17.05.2023, deposited the entire duty, without taking benefit of Advance Authorization, alogn with interest. This shows that the intention of Appellant was always bona fide. Further revenue has not brought any evidence to show that the Appellant in any way abetted Balzeing Star in importing the said goods under fake Advance Auhorisation or that the Appellant was aware about the fictitious nature of Blazeing Star. Further it is also not the case of the revenue that the Appellant had any stake in the firm or business of Blazeing Star. It is also not the case that the Appellant – Proprietor had any connection with Blezeing Star. Importantly, the Appellant

on realising that the original importer may be fictitious, paid entire duty along with interest. We also agree with the argument of Ld. Counsel that for imposition of penalty mens-rea has to be established about the wrongful act. In the present case, the only document made/signed by the Appellant are High Sea Sales agreements which are not alleged to be fake/incorrect.

4.4 Further from the plain reading of Section 114AA it is evident that penalty under this section can be imposed on a person who intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular for the transaction of any business under the Customs Act, 1962. In the present case nothing has been brought on record by which it can be said that the appellant had made or caused to be made any declaration/used or caused to be used any statement or document which is false or incorrect. No document etc., which has been produced by him was found to be materially wrong. As the ingredients for invocation of provisions of Section 114AA are absent in the present case penalty under the said section is not justified. Tge Cestat's Bangalore bench has in case of *Ismail Ibrahim* [2019 (370) E.L.T. 1321 (Tri. - Bang.)] held as follows :

"6.3 Further penalty under Section 114AA of the Customs Act is concerned, I find that the penalty under Section 114AA can only be imposed if the person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Further I find that in the present case, the appellants have not made intentionally any false sign or declaration, incorrect statements or declarations to attract penalty under Section 114AA of the Act. Therefore I set aside the penalty imposed under Section 114AA of the Customs Act, 1962 on both the appellants."

4.5 In the case of *Jitender Singh* [2019 (369) E.L.T. 1683 (G.O.I.)] following has been held :-

"4. Government also agrees with the applicant's plea that penalty under Section 11AA of Customs Act, 1962 is also not maintainable in this case as the Section is attracted only where false declaration/statement document is used. But no such false declaration, etc., was made by the applicant and rather the case against the applicant is that he did not declare the TV to the Customs authorities for

which Section 112 is appropriately attracted. Therefore, the justice and fairness demands that penalty of Rs. 25,000/- will be sufficient under Section 112 of the Customs Act on the applicant in this case for carrying the TV for ulterior design of smuggling of TV for monetary consideration.”

4.6 As regard the imposition of penalty under Section 117 of the Act on M/s Saarthee Shipping Co, (Custom Broker) we find that as far as penalty under Section 117 is concerned, it can be imposed on any person for contravention of any provision of the Act or abetting any such contravention or failing to comply with any provision of the Act with which it was his duty to comply for which no express penalty is provided. As it is clear, penalty under Section 117 are for contravention, not expressly mentioned. But, there should be sufficient evidences to show *mala fide* intention resulting in contravention of any provisions warranting penalty. There is no material on record to conclude that the appellant facilitated misdeclaration of imported goods. Penalty under Section 117 of the Customs Act, 1962 can be imposed only if abetment on the part of the appellant is brought out which means that the appellant should have knowledge or reason to believe that the provisions of the Customs Act relating to correct valuation of the goods were being contravened. No such evidence is forthcoming; therefore, penalty upon the appellant cannot be sustained. Further in the present matter being a customs broker appellant only performing his duties. He is not aware about the fictitious status of High Sea Buyer. We do not find any justifiable ground to impose penalty on the Appellant.

5. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 26.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)