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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 13001 of 2019-SM
(Arising out of OIA-AHD-CUSTM-000-APP-350-19-20 Dated-18/09/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

PARTHIV V DAVE **........Appellant**
Cha, 403, 4th Floor, Upnishad, Nr.
Rly- Overbridge, Above Shraddha Mototors, Ambawadi
Ahmedabad, Ahmedabad, Gujarat

VERSUS

C.C.-AHMEDABAD **........Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. D.K. Trivedi, Advocate for the Appellant
Shri. Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10279 /2023

DATE OF HEARING:13.10.2022
DATE OF DECISION:10.02.2023

RAMESH NAIR

This appeal is directed against Order-In-Appeal No- OIA-AHD-CUSTM-000-APP-350-19-20 dated 18.09.2019 passed by the Commissioner of Customs (Appeals) whereby penalties imposed upon the appellant for Rs. 5 Lakhs each under Section 114 (iii) and Section 114AA respectively of the Customs Act, 1962 was upheld. The case of the department against the appellant is that the appellant has facilitated the exporter of M/s. Nilcha Int. Traders for fraudulent export of ladies Leather Uppers Shoe for claiming Drawback Incentive Scheme from ICD, Khodiyar. As per the department the goods attempted to be exported vide 8 shipping Bills were declared with a value of Rs. 47852112/- and drawback amount of Rs. 39,23,870/- whereas on examination of the cargo, it was found that instead of 30,000 pairs declared by the exporter, it was found only 405 pairs. Moreover the goods were also different. Thus, the exporter has mis-declared the description as well as quantity of the goods with intent to avail fraudulent drawback. It was observed by the lower authority that against one single consignment under one invoice from M/s Squire Enterprises, Noida the exporter with the help of present appellant split the consignment into 8 shipping Bills. The charge on the appellant is that despite this splitting of the consignment, he has neither enquired nor informed to the Customs Department. Therefore, he was made liable for penalty under Section 114(iii) and Section 114AA.

2. Shri. D K Trivedi, Learned Counsel appearing on behalf of the appellant submits that the appellant is a CHA and in the entire episode his role was only to act as CHA and as regard the fraud committed by the exporter, the appellant is neither aware nor facilitated the exporter for this wrong doing, therefore, there is no reason to impose penalty upon the appellant being CHA. He placed reliance on the following judgments:-

- JHA SHIPPING AGENCY-2002 (145) E.L.T. 83 (Tri. KOLKATA)
- ALRTRAVEL ENTERPRISES INDIA LTD-2009 (239) E.L.T. (Tri.-CHENNAI)
- PARVEZ J IRANI-2016 (33) E.L.T. 333 (Tri.- MUMBAI)
- SYNDICATE SHIPPING SERVICES PVT.LTD.-2003 (154) E.L.T 758 (Tri.-CHENNAI)
- COLLECTOR OF CUSTOMS-1991 (55) E.L.T 580 (TRIBUNAL)

3. Shri. Rajesh K Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the exporter has made a serious offence by mis-declaring the quantity i.e. against 30,000 pairs declared in the export document only physical quantity found 405 pairs. Moreover, the value was also shown exorbitantly high. I find that though the appellant has acted as CHA and it does not appear the direct involvement of the appellant in the fraud of export goods but when against one invoice, the exporter asked the appellant CHA to split the consignment and make 8 shipping Bills, that itself is a reason that the appellant should have acted diligently and inquired about the reason for this abnormal act of splitting the consignment into 8 shipping Bills. He was also supposed to inform this to the Customs authority. The Customs authority also found suspicious because of 8 shipping Bills against one consignment. Therefore, this negligence of the CHA resulted into attempted of fraudulent export by his client. Therefore, the appellant is liable for penalty under Section 114(iii) and Section 114AA. However,

looking to the nature of role of the CHA in the entire episode, I am of the view that the penalty of Rs. 5,00,000/- in each section is very harsh, therefore, I reduce the penalty from 5 lakhs each under Section 114(iii) and Section 114AA to Rs. 2 Lakhs in each section.

5. Accordingly, the impugned order is modified to the above extent, the appeal is partly allowed in the above terms.

(Pronounced in the open court on 10.02.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

PRACHIpp