CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 11581 OF 2017

[Arising out of OIO-MUN-CUSTM-000-COM-01-17-18 dated 28/04/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-MUNDRA]

D P LOGISTICS PVT LTD **Appellant**
601/602, Rajkar Chambers, K.D. Marg. Govandi (East)
Mumbai, Maharashtra

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-MUNDRA **Respondent**
Office of the Principal Commissioner of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

Appearance:
Shri Prashant Patanakar, Counsultant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

<u>FINAL ORDER NO. 10578/2025</u>

Date of Hearing : 18.03.2025
Date of Decision : 17.07.2025

<u>Dr. AJAYA KRISHNA VISHVESHA</u>

This appeal is directed against the Order-in-Original dated 20th April, 2017 passed by the Principal Commissioner of Customs Mundra through which the learned Commissioner imposed penalty of Rs. 25,000/- on the appellant under Section 114 (iii) and penalty of Rs. 25,000/- under Section 117 of the Customs Act, 1962.

1.1 The case of the appellant in brief is that an intelligence was gathered by Special Intelligence and Investigation Branch, Customs House Mundra to the effect that M/s. Dynamic International, Surat are trying to export waste clothes 'chindis' in the guise of Ladies Fancy Scarves in 7 containers to avail the benefit of duty draw back sought to be cleared at Exim Yard CFS under 36 shipping bills filed by Customs Broker M/s. DP Logistics for export of goods valued at Rs. 19.60 crores and attempting to avail duty drawback of Rs. 1.85 crores. The SIIB section started the investigation in the case and the goods were examined under panchnama. On examination, goods were found to be waste clothes 'chindis' instead of declared Ladies Fancy Scarves. The goods were seized under section 110 (1) of the customs Act, 1962 under a reasonable belief that same were liable for confiscation under provisions of Section 113 (h) and (i) of the Customs Act, vide seizure memo dated 20th August, 2015. During investigation, summons were issued to Shri Nitesh Gangwani and others. Statements of Shri Nitesh Gangwani, H Card holders of Customs Broker M/s. D P Logistics, Shri Arun Kumar Superintendent, Shri Vishal Punjabi Proprietor of M/s. Vishal Impex and Shri Sumit Valecha Mediator were recorded. From their statements, it came out that Shri Vishal Punjabi, Shri Nitesh Gangwani, Shri Sumit Valecha and Shri Arun Kumar willfully indulged in attempt to export waste clothes instead of declared Ladies Fancy Scarves to avail drawback of Rs. 1.85 crores.

2. The Show Cause Notice was issued to the appellant in which they were called upon to show cause why they should not be penalised under Section 114 (iii) and 117 of the Customs Act.

2.1 In the present case, the investigation conducted, clearly proved the negligence of CHA i.e. appellant in conducting the business, which could have resulted in loss of Rs. 1.85 crores to Government exchequer. The license of appellant / CHA was suspended on 9th October, 2015 by the Principal Commissioner of Customs General (Mumbai) and its suspension, was revoked on 5th November, 2015 pending final inquiry as contemplated in CBLR 2013. Regarding the allegations, M/s. D P Logistics stated that they have not received e-mail intimation in respect of special shipping bills filed through CMC

Service Centre, as the same were not filed using ICEGATE User-ID. Shri Nitesh Gangwani who filed shipping bills was not holding H Card at the time of filing of such shipping bills as it was expired on 30th June, 2015. Shri Nitesh Gangwani in his statement dated 20th August, 2015 stated that he filed the shipping bills without knowledge of M/s. D. P. Logistics.

3. In the impugned Order-in-Original learned Principal Commissioner concluded that even if it is assumed that M/s. D. P. Logistics may not have received e-mail intimation as the shipping bills were filed through CMC Service Center, but they have failed in supervision of work of their employee. There was the negligence on the part of the said noticee. The validity of H Card issued to Shri Nitesh Gangwani was expired at 13th June, 2015 but on expiry of such H Card, any required steps were not taken by the said noticee, to restrict the entry of said H Card holder in Customs house for their work. They should have intimated to the department about expiry of said H Card of Shri Nitesh Gangwani. Thus except small negligence on the part of the said noticee which attracts action under CBLR, 2013 if any, no evidence is found against the appellant regarding abetment or omission to do any act which render the goods liable to confiscation and in contravention of any of the provisions of Customs Act, 1962. Hence, it warrants leniency from the proposed penal action under Section 114 (iii) and 117 of Customs Act, 1962. Accordingly, penalty of Rs. 25,000/- was imposed on the appellant under Section 114 (iii) of the Customs Act and penalty of Rs. 25,000/- under Section 117 of the Customs Act.

3.1 Feeling aggrieved from the impugned order, the present appeal has been filed before this Tribunal.

4. The learned consultant for the appellant submitted that M/s. Nitesh Gangwani filed shipping bills without knowledge of M/s. D P Logistics. Mr.

Nitesh Gangwani did not hold even a valid H Card at the time of filing the shipping bills on 17/18-08-2015. Thus, shipping bills were filed without authority. The learned consultant Shri Prashant Patankar also submitted that the Commissioner has observed in the impugned order that except small negligence about not intimating the department about expiry of H Card of Nitesh Gangwani on the part of the CB which attracts action under CBLR 2013, if any no evidence was found against the appellant Customs Broker regarding abetment or omission to do any act which rendered the goods liable for confiscation or in contravention of any of the provisions of the Customs Act, 1962.

4.1 The learned consultant also submitted that no penalty can be imposed under Section 114 (i) for alleged violation of CBLR, 2013. The learned consultant also submitted that no penalty can be imposed under Section 114 for lack of supervision and failure to report misuse of license. The learned consultant also submitted that penalty under Section 117 is residual penalty which should not be imposed on the appellant and conduct of the appellant attracts action only under CBLR 2013, if any. The learned consultant also argued that expiry date of H Card of Nitesh Gagwani was known to the department. The learned consultant also submitted that there was failure on the part of the appellant in supervising Mr. Nitesh Gangwani. The lapse is on the part of CMC rather than the appellant as H-Card Holder is not authorised to sign any documents. He did not even hold a valid H Card at the time of filing the shipping bills on 17/18 August, 2015. Those shipping bills were filed by him without authority, in his personal capacity. The consultant also submitted that the appellant filed shipping bills only using ICEGATE ID from Ahmedabad and Gandhidham office and never through CMC service center like in the present case. The appellant did not receive any message on ICEGATE ID as suggested in Show Cause Notice. No ICEGATE mails are on record in show cause notice. The learned consultant prayed that the order imposing penalty upon the appellant be set aside.

5. The learned AR reiterated the impugned order and submitted that impugned order has been passed in accordance with the provisions of Customs Act and there is no ground for interference in the said order. He prayed that the appeal may be rejected.

6. After hearing learned consultant for the appellant and the learned AR for the department, I have perused the record.

6.1 I am of the view that impugned order, passed by the learned Commissioner regarding imposition of penalty under Section 114 (iii) and 117 of Customs Act, 1962 is against his own observations made at page no. 53 para 24.3 of the impugned order. It is pertinent to mention here that at page 53 para no. 24.3, the learned Commissioner has observed, "except for small negligence on the part of the said noticee, which attracts action under CBLR, 2013 if any, I do not find any evidence against the said noticee in the abetment or omission to do any act which rendered the goods liable to confiscation or in contravention of any of the provisions of Customs Act, 1962. Hence, it warrants leniency from the proposed penal action under Section 114 (iii) and 117 of Customs Act.

6.2 In Section 114 of Customs Act, following provision has been made:-

> **"114. Penalty for attempt to export goods improperly, etc.**
>
> Any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,

(i) In the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is greater;

(ii) In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of 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 penalty so determined;

(iii) In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is greater."

6.3 Therefore, penalty under Section 114 (iii) can be imposed only if the person concerned does or omits to do any act which would render the goods liable to confiscation under section 113 or abets the doing of such act or omission. In this case, the learned Commissioner has himself concluded at page 53 para 24.3 that he did not find any evidence against the appellant in the abetment or omission of any act which rendered the goods liable to confiscation. Therefore, in these circumstances, penalty under Section 114 (iii) against the appellant is not sustainable and is liable to be set aside.

Section 117 of the Customs Act provides as follows:-

> **"117. Penalties for contravention, etc., not expressly mentioned**
>
> Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding Four lakh rupees."

From the above provision of Section 117 it is clear that penalty under Section 117 can be imposed upon the person, who contravenes any provision of Customs Act or abets such contravention of any provision or who fails to comply with any provision of this Act. However, learned Commissioner has observed at page 53 in para 24.3 of his impugned order that he did not find any evidence against appellant regarding contravention of any of the provisions of Customs Act, 1962. Therefore, penalty under 117 of the Customs Act cannot be sustained and it is liable to be set aside.

6.4 I am of the view that as appellant has been found guilty of negligence which attracts action under CBLR, 2013, therefore, proceedings under CBLR, 2013 may be undertaken by the department regarding suspension or revocation of its license. With these observations, I am of the view that appeal is liable to be allowed.

7. Consequently, appeal is allowed. The impugned order regarding the imposition of penalty of Rs. 25,000/- on the appellant under Section 114 (iii) of Customs Act and imposition of penalty under Section 117 of the Customs Act are set aside.

(Order pronounced in the open Court on 17.07.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Dharmi