CUSTOMS, EXCISE & SERVICE TAX APPELLATETRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. I

Customs Appeal No.70410 of 2020

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-142 & 143-20-21 dated 04/06/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Green Overseas, **.....Appellant**

(G-1/129, RIICO Industrial Area,
Sahjanpur, Alwar, Rajasthan)

VERSUS

Commissioner of Customs (Pre.), Noida **....Respondent**

(Concor Complex, P.O. Container Depot, Noida)

<u>APPEARANCE:</u>

Shri Ashish Bhatt, Advocate for the Appellants
Shri A.K. Choudhary, Authorised Representativefor the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70176/2024

DATE OF HEARING	:	27 March, 2024
DATE OF DECISION	:	27 March, 2024

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.NOI-CUSTM-000-APP-142 & 143-20-21 dated 04/06/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order Commissioner (Appeals) has upheld the Order-in-Original No.69/ADC/CUS/ICD-DD/2018 dated 11.02.2019, wherein following has been held:-

ORDER

(i) I impose a penalty of Rs.6,50,000/- (Rs. Six Lac Fifty Thousand only) under Section 114AA of the Customs Act 1962 on M/s Green Overseas, G-1/ 129, RIICO Industrial Area, Sahjahanpur, Alwar, Rajasthan.

(ii) *I impose a penalty of Rs. 75,000/- (Rs. Seventy Five only) under Section 117 of the Customs Act 1962 on Shri Naveen Gupta, Partner of M/s Green Overseas, G-1/ 129, RIICO Industrial Area, Sahjahanpur, Alwar, Rajasthan.*

(iii) *I refrain from imposing any penalty under Section 117 of Customs Act, 1962 on Shri Lovekesh Kuashik (F-Card Holder & partner in M/s O.V. Shipping Agency) HR/ 104, First Floor, Street No.5, Pul-Prahladpur, Surajkund Road, New Delhi-44."*

2.1 Appellant have filed Bill of Entry No.2639363 dated 28.07.2017 for clearance of imported goods stuffed in Container No.DFSU1209684/20 vide Bill of Lading No.MSCAS003991 dated 31.05.2017.

2.2 Before Bill of Entry would be processed another importer namely M/s Vardhman Sales Agency filed a letter dated 17.08.2017 to the Additional Commissioner of Customs, Noida expressing that they were unable to file Bill of Entry in respect of their consignment in the same container stating that some other person have wrongfully file Bill of Entry in this regard.

2.3 Taking note of the above letter, a show cause notice dated 17.04.2018 was issued to the appellant asking them to show cause as to why-

(15)(A). Now, therefore, M/s Green Overseas, G-1/129, RIICO Industrial Area, Sahjahanpur, Alwar, Rajasthan are hereby required to Show Cause to the Additional Commissioner of Customs, ICD Dadri, Noida Customs, as to why the penalty should not be imposed on them under Section 114 (AA) of the Customs Act, 1962 for use of false, incorrect and incomplete documents as discussed in preceding paras;

15(B). Sh. Naveen Gupta, partner in M/s Green Overseas, G - 1/129 RIICO Industrial Area, Sahjahanpur, Alwar, Rajasthan are hereby required to Show Cause to the Additional Commissioner of Customs, ICD Dadri, Noida

Customs, as to why the personal penalty should not be imposed on him under Section 117 of the Customs Act, 1962 as discussed in preceding paras;

15 (C). Sh, Love Kesh Kaushik, F-Card Holder and partner in M/s O.V. Shipping Agency, HR/104, First Floor, Street No.5, Pul-Prahladpur, Surajkund Road, New Delhi-44 are hereby required to Show Cause to the Additional Commissioner of Customs, ICD Dadri, Noida Customs, as to why the penalty should not be imposed on him under Section-117 of the Customs Act, 1962, as discussed in preceding paras;"

2.4 This show cause notice was adjudicated as per the Order-in-Original referred in para no.1 above. On appeal Commissioner (Appeals) has dropped the penalty of Rs.75,000/- under Section 117 of the Customs Act, 1962 on Shri Naveen Gupta, Partner and upheld the penalty imposed under Section 114AA of the Customs Act, on the present appellant. Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Ashish Bhatt learned Counsel for the appellant and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Chronology of events relating to the present case is as follows:-

May 2017	Appellant placed an Order on M/s Vivo Nova Inc., New York for supply of Zinc Scrap for delivery at ICD, Dadri and remitted an advance payment through proper Banking channel.
31.05.2017	M/s Vivo Nova Inc., New York dispatched a consignment comprising 19.160 Metric Tons of Zinc Scrap per Container No. DFSU1209684 under Bill of Lading No. MACAS003991 to Appellant for delivery at ICD, Dadri.
05.06.2017	Overseas supplier issued Invoice No.

	VN/EXP/015/2017 in respect of subject consignment for sale of goods to Appellant.
25.07.2017	On arrival of goods, Shipping Line filed Gateway IGM No. 2170435 at Mundra port in respect of aforesaid goods.
27.07.2017	The consignment arrived at Inland Container Depot, Dadri under Local IGM No. 2841108.
28.07.2017	Appellant inquired from the Bank qua receipt of original documents pertaining to subject consignment and as the documents had not arrived, Appellant filed a B/E No. 2639363 on the basis of documents received through e-mail. As the particulars entered into the Checklist B/E matched with those mentioned at relevant Line Number of IGM, Customs EDI System accepted the B/E and generated Checklist B/E No. 2639363.
17.08.2017	M/s Vardhman Sales Agency filed a letter stating that they were the owners of subject consignment and that they were unable to file B/E for clearance of subject consignment.
25.08.2017	Appellant received letter C. No. VIII (30)Cus /ICD-DD/SIIB/Complaint/Vardhman/30/17/279-280 seeking clarification qua subject B/E and furnishing of documents.
25.08.2017	Appellant immediately contacted the foreign supplier and on being informed that overseas supplier had sold the goods to M/s Vardhman Sales Agency, Appellant issued a No Objection Certificate on the same date stating that *"We have no objection, if supplier sold the material to another part and we are not liable for any other outstanding against the shipment of BL No. MASAC003991 dated 31.05.2017 like Customs Duty and Shipping Line charges etc."*

From the above table it is quite evident that appellant had acted under a bonafide belief that the consignment against which he is filing the bill of entry was actually the one which has been imported by him. He had filed the same on the basis of advance payment made by him to supplier and the documents which he received from the foreign supplier. There is not even an iota of doubt that till the time M/s Vardhman Sales Agency, filed the letter expressing his inability to file the Bill of Entry checklist against the same consignment, appellant could have entertained any view contrary to the one he had while filing the checklist in respect of the imports being made by him. Undoubtedly there is some error in communications received by him from the foreign supplier, but same could not be said to an intentional act for filing the bill of entry in the present case. In any case the advanced Bill of Entry filed by the appellant would have been purged from the system after sometime. As per the standing order No 33/2017 dated 09.10.2017 issued by the Nhava Sheva Custom Authorities following has been stated:

"4. Further, Para 3. (iv) and (v) of the Standing Order No. 17/2017, dated 03.07.2017 is substituted as under :-

> *3. (iv) Where the importer files an advance/prior bill of entry, it will be incumbent on the importer to get the same regularized in the system within 24 hours of entry inward. In case, the concerned bill of entry gets purged on account of failure on the part of importer necessitating the filing of a fresh bill of entry, the late filing charges in such cases shall be restricted to the extent of 50% of the qualified charges or Rs. 25000, whichever is lower. In case the bill of entry is purged due to delay in grant of entry inward, the importer is expected to file a fresh bill of entry within 24 hours of entry inward.*
>
> *3. (v) Further, in case an advance/prior bill of entry is filed and either gets purged or is not regularized on account of initiation and completion of an investigation by the department, which has resulted in issue of an O-I-O, no*

separate fine for late filing of bill of entry or nonregularization of an advance/prior bill of entry will be imposed.

3. (vi) Charges for late presentation of the B/E is to be restricted to total duty charged/chargeable. However, in cases where there is 'NIL' chargeable duty, the charges for late presentation of the B/E would be Rs 5000/- per day, subject to maximum of Rs. 25,000/-."

4.3 I find that in the present case penalty has been imposed on the appellant under Section 114AA. Section 114AA is couched using the words 'knowingly" and "intentionally", the words used for the deliberate act on behalf of any person who may have signed or cause to be filed any forged or manipulated documents while conducting the business with custom authorities. For the purpose of invoking this Section it is necessary that the person should have filed documents specified in the said section or have caused to file such documents intentionally and knowingly. Section 114AA do not allow any interpretation whereby an unintentional mistake is made in filing the documents could be penalized by invoking this section. No evidence as of an FIR filed by the person who was actual importer has been brought on record, nor any such complain has been made by the importer claiming the consignment in this regard. Thus it cannot be adduced that the error committed in filing this bill of entry was intentional. In the case of A.V. Global Corporation Pvt. Ltd. [2022 (382) E.L.T. 65 (Tri. - Mumbai)] Mumbai bench has held as follows:

"Section 114AA of the Customs Act, 1962 read as follows :

"Section 114AA. Penalty for use of false and incorrect material. - *If a 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, in the transaction of any business for the purposes of this Act,* *shall be liable to a penalty not exceeding five times the value of goods."*

From plain reading of the said section it is quite evident that penalty under this section is imposable only in case where 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, in the transaction of any business for the purposes of this Act. Thus for imposing penalties under this section, adjudicating authority is required to determine existence of such declaration, statement or document which is false or incorrect in material particulars. In the present case without making any determination to this penalties under this section have been mechanically imposed by the adjudicating authority. Such penalties imposed without determining existence of such documents and the connection of the such document with the person, penalties imposed under this section cannot be sustained. Thus we set aside the order imposing penalties under this section."

4.4 In case of Ismail Ibrahim [2019 (370) E.L.T. 1321 (Tri. - Bang.)] Bangalore bench 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."

4.6 Admittedly, there is an error committed which relates to filing of this Bill of Entry. Such cases should have been dealt ideally under Section 117 in which maximum penalty at the relevant time was Rs.1 lakh. In my view the end of justice will be met if the penalty imposed on the appellant is reduced to Rs.25,000/- under Section 117 of the Customs Act, 1962. Appellant is advised to become more careful while conducting the business with the custom authorities.

5.1 Appeal is partly allowed as indicated in para 4.6 above.

Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp