IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/126,127,88/2012-CU[DB]

(Arising out of Order-in-Original No.05/Cus./Comm./GZB/2012 dated 31/01/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad)

M/s Devendra Laxmi Chand Cargo Forwarders (P) Ltd.
(In Appeal No.C/126/2012-CU[DB])

Shri Vikas Verma
(In Appeal No.C/127/2012-CU[DB])

Shri Rakesh Datwalia, CHA **Appellant**
(In Appeal No.C/88/2012-CU[DB]
Vs.

Commissioner, Central Excise, Customs & Service Tax, Ghaziabad
…Respondent

Appearance:

Shri A.P. Mathur (Adv.) for Appellant
(In Appeal No.C/126,127/2012-CU[DB])

Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 06/03/2019

FINAL ORDER NO.**70638-70640 / 2019**

Per: Archana Wadhwa

All the three appeals are being disposed of by a common order as they arise out of the same impugned order passed by Commissioner vide which penalty of Rs.10,00,000/- stand imposed upon M/s Devendra Laxmichand Cargo Forwarders (P) Ltd., a CHA concern and of Rs.5 lakhs stand imposed upon Shri Vikas Verma, Branch manager of the said firm in terms of provision of Section 114 (i) & 114AA of the Customs Act, 1962. Further penalty of Rs.15 lakhs is imposed on Shri Rakesh Datwalia, another CHA.

2. On going through the impugned order, we find that penalty stand imposed upon the CHA by observing that he has failed to perform his duty while doing the job of the exporter customer vide which he has exported the wrong type of rice by claiming the same to be Basmati Rice. The Adjudicating Authority has observed that CHA should have been more careful in performing his duties as Customs House Agent. If he would have been more vigilant, the offence would not have been committed by the exporter.

3. After hearing the learned A.R., we note that penalty under Customs Act can be imposed on CHA when he has intentionally and with full knowledge aided and abetted exporter for violating Customs provisions. In the present case Revenue has not attributed any role either to the CHA or to his manager.

In the case of Solly Perumal V/s Commissioner of Customs, Kandla reported as 2013 (291) E.L.T. 66 (Tri.-Ahmd.), it was observed that in the absence of any knowledge on the part of the CHA, as regards the export of the non-basmati rice in guise of basmati rice, penalty imposed upon him was in the nature of presumption and assumption. Further, in the case of Vertex Impex V/s Commissioner of Customs, Tuticorin 2004 (172) E.L.T. 347 (Tri.-Chennai), it was held that no penalty can be imposed on CHA, when he had no knowledge of the illegal acts of the exporter.

4. As we have already observed that the Commissioner in his impugned order is only referring to some of the failure on the part of the CHA which fall under the realm of CHA Regulations and if the Revenue was of the view that the present appellant have not acted as a *bona fide* CHA and has not performed his duty in accordance with regulation, action could have been taken against him under the said regulations instead of initiating penalty under the Customs Act. As such we find no reasons to uphold the penalty. The same are set aside all the three appeals are allowed, with consequential relief to the appellant.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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