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

APPEAL Nos. C/70111-70113/2015-CU[DB]

(Arising out of Order-in-Original No. 08/CUS/COMMR./NOIDA/2015 dated 20/08/2015 passed by Commissioner of Customs, Noida)

Shri Joshy M.J. (in Appeal No. C/70111/2015)**,**

Shri Dev Narayan (in Appeal No. C/70112/2015) **&**

Shri Rajesh M.P. (in Appeal No. C/70113/2015) **Appellant(s)**

Vs.

Commissioner of Customs, Noida **Respondent(s)**

Appearance:

Shri Abhishek Srivastava (Advocate) for Appellant(s)
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent(s)

CORAM:

Hon'ble Justice Shri Dilip Gupta, President
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 09/10/2018
Date of Decision : 09/10/2018

FINAL ORDER NOs **72449-72451 / 2018**

Per: Anil G. Shakkarwar

Above stated three appeals are being taken together for decision since they are arising out of a common impugned Order-in-Original No. 08/CUS/COMMR/NOIDA/2015 dated 20.08.2015 passed by Commissioner of Customs, Noida.

2. Brief facts of the case are that the appellant Shri Rajesh M.P. was owner of a firm by name M/s Y2K Logistics. The

office of M/s Y2K Logistics was being shared with M/s Premier Shipping Agency which was a Custom Broker Licensing Firm. The other appellants Shri Dev Narayan was G Card holder of M/s Premier Shipping Agency at Delhi. The third appellant Shri Joshy M.J. was F Card holder of M/s Premier Shipping Agency. M/s Premier Shipping Agency was engaged in carrying out clearance work of import and export consignments. M/s Premier Shipping Agency was engaged by M/s Fashion Fab Exports, Hyderabad for clearance of imported goods. M/s Premier Shipping Agency filed a Bill of Entry bearing no.3878394 dated 22.11.2013 for clearance of Knitted Polyester Fabric with ICD Dadri. The above stated three appellants were associated with filing of said Bill of Entry and completing other formalities related to assessment and clearance of goods covered by said Bill of Entry at ICD, Dadri. After completion of Customs Formalities the goods were cleared from ICD, Dadri. After the goods were out of the control of Customs and had travelled some distance they were intercepted by Customs Authorities and on investigation a show cause notice dated 16.06.2014 was issued to M/s Fashion Fab Exports stating therein that M/s Fashion Fab Exports mis-declared the goods as Knitted Polyester Fabrics whereas the goods were Velvet Fabric and that they evaded customs duty. Through the same show cause notice the present appellants were called upon to show cause as to why penalties under Sections 112 and 114AA of Customs Act, 1962 should not be imposed on them for failure to carry out due diligence in establishing bona fide of importer and failure to produce the importer for cross examination by Customs Authorities. It was alleged in the said show cause notice that appellants failed in their obligation under Customs House Agent Licensing Regulation to verify the credentials of the import firm. On contest the said show cause notice was adjudicated through impugner Order-in-Original wherein the findings in respect of present appellants are recorded in Para 4.5 to 4.10. The Original Authority has held that the appellants failed in discharging their duties as Customs House Agent. Therefore, all the three appellants were imposed with penalty of Rs.2 lakhs each under the provisions of Section 112 of Customs Act, 1962 and penalty of Rs.1 lakh each under the provision of Section 114AA of Customs Act, 1962. Aggrieved by the said order appellants are before this Tribunal.

3. Heard the learned counsel for the appellants. He has submitted that separate proceedings were initiated by Commissioner of Customs, Cochin, through show cause notice dated 07.05.2015 against M/s Premier Shipping Agency under Regulation 20 of Customs Brokers Licensing Regulations, 2013 which were issued in supersession of Customs House Agents Licensing Regulations, 2004.

4. Heard the learned AR who has supported the impugned order.

5. Having considered the submission from both the sides and on perusal of record we find that the allegations against the appellants were that they did not show due diligence which was requirement of Customs Brokers Licensing Regulations, 2013. We have carefully gone through the said Regulations, 2013. We note that the obligations of Customs Broker are provided in Regulation 11. On going through the said obligations we find that the Customs Brokers are temporarily engaged by the companies or firms for assisting them in processing of documents and assessments of goods for clearance after import or for clearance for the purpose of export. We find from the said regulations and other provisions of the Customs Act that the obligations and responsibility of the Customs Brokers end once the goods are examined by Customs Authorities and orders for “out of charge” are issued and the goods are cleared from the control of Customs on importation. We find that in the present case the goods were duly cleared after completing customs formalities from the control of customs from ICD Dadri. The proceedings are not throwing any light as to how the Customs Authorities did not come to know about the mis-declaration of the goods when the goods were examined when they were in the custody of customs. It is, therefore, not free from doubt that when the

goods were cleared from customs control they were not Velvet Fabric but they were Knitted Polyester Fabric as declared by the importer. We do not find any statement recorded by the Customs Authorities from the officers incharge who were responsible for examination of goods before issuing order of out of charge. We, therefore, do not find that there was any case for imposition of any penalty under Customs Act on the present appellants. We, therefore set aside the impugned order in so far as the same is concerned about the present appellants.

6. In above terms all the three appeals are allowed.

(Pronounced in Court)

Sd/-
(Justice Dilip Gupta)
President

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

Ankit