CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Customs Appeal No.70167 of 2018

(Arising out of Order-in-Original No.12/PR.COMMR./NOIDA-CUS/2016-17 dated 28/10/2016 passed by Principal Commissioner, Customs, Gautam Budh Nagar)

Shri Gaurav Kumar Mishra **.....Appellant**

R/O 9/4771, Gali No.1, Old Seelampur,

Delhi-110096

VERSUS

Principal Commissioner of Customs, **.....Respondent**

Inland Container Depot, Tilpata,

Dadri, Gautam Budh Nagar,

U.P.-201311

APPEARANCE:

Shri Ashutosh, Advocate for Appellant
Shri P.K. Dubey, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71445 / 2019

DATE OF HEARING :25 July, 2019
DATE OF DECISION :25 July, 2019

ARCHANA WADHWA

The challenge in the present appeal is penalty of Rs.30 lakhs in terms of Section 112(a) of the Customs Act and of Rs.10 lakhs imposed under Section 114AA of the Customs Act.

2. After hearing both the sides duly represented by learned advocate, Shri Ashutosh appearing on behalf of the appellant and learned AR, Shri P.K. Dubey appearing on

behalf of the Revenue, we find that the main case and allegations are against one M/s A & R Mesh Solutions importer of the goods, who declared the same in the Bills of Entry as 'Water Glass'. However, inspection of the containers revealed that the imported goods were firecrackers which is a prohibited item for import.

3. The role attributed by the Revenue to the present appellant is that he filed the online bill of entry for the said import and as such must have been aware of the fact that the goods were being declared. The Adjudicating Authority has observed as under:-

> *"Further, it is evident that Shri Gaurav Kumar Mishra was directly involved in filing of Bill of Entry No. 4732277 dated 24.02.2014 for clearance of container No. CPSU6217608 of M/s A. & R. Mesh Solution which was subsequently seized on detection of restricted goods in the container. His role is also evident in the earlier clearances and filing of Bills of Entry of suspected firms. The role and involvement of Shri Gaurav Kumar Mishra comes to the fore from the fact that he filed the Bills of Entry and arranged for Customs clearance on forged letterhead of CHA M/s Multiwings Clearing & Forwarding (P) Ltd. showing his authorization. Shri Rajkumar, Supervisor of transporter M/s Akal Transport company, has clearly stated that the transportation of all the twelve containers of suspected firms were handled by Shri Gaurav Kumar Mishra which included the containers of M/s A & R Mesh Solution and M/s Goyal Industries whose containers were intercepted and fire crackers were detected and seized. The discussed facts and the roles played by Shri Gaurav Kumar Mishra are indicative and suggestive that the online filing of Bills of Entry No. 4732277 dated 24.02.2014 of M/s A & R Mesh Solution for container No. CPSU6217608 must have also been arranged and handled by him in association with Shri Sanjeev Kumar Singh, the goods of which was later on found to be mis-declared and were seized as Chinese firecrackers were found therein. Thus for his above acts of omission and commission, Shri Gaurav Kumar Mishra has rendered*

himself liable for penal action under Section 112 and 114AA of the Customs Act, 1962."

The use of the expression 'must have' is indicative of the fact that Adjudicating Authority is not sure about the role played by the said appellant. Otherwise also we find that filing of online bill of entry by itself cannot be held to be punishable offence unless Revenue produce evidences to establish that the person concerned, by his active involvement, aided and abated the importer. We find no justifiable reasons to impose penalty upon the appellant. Accordingly, the same is set aside and the appeal is allowed with consequential relief to the appellant.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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