FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71634/2017-SM[BR] dated 17/11/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
:	C/71007/2016	**Trans Asian Shipping Services Pvt Ltd** Trans Asian Corporate Park, Xiv/396-c, Seaport Airport Road, Chittethuukara, Kakkanad, Cochin Kerala-682037
		Name and Address of Respondent
2		C E & ST-Noida Ii OFFICE OF THE COMMISSIONER CENTRAL EXCISEHOTEL FORMULE 1, WEGMANS BUSINESS PARK, KP-III, GREATER NOIDA GOTAM BUDH NAGAR U.P.-

Copy To

3Advocate(s) / Consultant(s):

Harikrishnan G (Rrepresentative)
Trans Asia Corporate Park, XIV/396-C, Seaport Airport Road,
Chittethukara, Kakkananad, Cochin-682037

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Cemax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Cus.Appeal No.71007/16

Arising out of O/O No.10/COMM/2016 dated 01.09.2016 passed by Commr.of Customs, Noida.

M/s Trans Asian Shipping Services Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs & S.Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Harikrishnan, Representative for the Appellant (s)
Shri Gyanendra Kr. Tripathi, Asstt. Commr. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 17. 11. 2017
DATE OF PRONOUNCEMENT : 24/11/17

Final ORDER NO.71634/2017

Per Mrs.Archana Wadhwa :

A Challenge in the present appeal is to penalty of Rs.7.5 lakhs imposed upon the appellant under Section 114AA of the Customs Act, 1962.

2. As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s Ankit Metals. On the basis of a letter address by M/s Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap "Tread" Weight 22.096 may be allowed to be amended to Aluminium Scrap "Tread" Weight 7.552 MT & Copper Berry/Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.

3. Subsequently, the importer, M/s Ankit Metals also addressed a number of letters to the Revenue for change in IGM based upon the communication received from the exporter. All the facts are not being adhered to, inasmuch as the same relates to imports by M/s Ankit Metals. The only reason for imposing penalty upon the present appellant as recorded by the Commissioner is as under :

> *"12.13 The shipping line had filed the IGM No.2124032 dated 12.11.2015 on the basis of the Bill of Lading No. TALADS01912416 dated 10.11.2015. The bill of lading No. TALADS01912416 dated 10.11.2015 was produced before the Superintend (SIIB), ICD, Loni on 09.08.2016 wherein the description of the goods was mentioned as Aluminium scrap 'tread' 22.096 MT. The said B/L was issued on the strength of invoice no.Y15/141A dated 04.11.2015 of M/s Ala International Metal Scrap TR LLC and NOC dated 04.11.2015 of M/s Al Raha Trading Company and export declaration no.201-02420065-15 dated 04.11.2015 all containing description of goods as Aluminium Scrap 'tread' 22.096 MT. As per statement dated 09.08.2016 of Shri Sandep Vishwanath A. of the shipping Line, the folio No. of the bill of lading was TAL1066058. The revised bill of lading having the same Sl. No. was issued from Dubai by Dubai Arobian Shipping Agency, LLC, the agent for the carier. As per Shri Sandeep the revised bill of lading had reference no.TAL1157913 which was issued on 05.01.2016. It is pertinent to notice that request for amendment to the IGM was filed on 28.12.2015 by the shipping line. It thus shows that any B/L coul be issued at free will at the behest of the importer/shipper. Having known that an application for*

amendment in the IGM was pending before the customs authorities since 28.12.2015, a final set of B/L was handed over to the shipper on 05.01.2016 without waiting for the outcome of their application for amendment. It has been contended by Shri Sandeep in his statement dated 09.08.2016 that B/L being a Line document, there was no need to seek approval from Customs for issue of the same. The argument is devoid of merit for the reason that statutory document viz. IGM is filed on the basis of bill of lading and therefore, it is imperative that sanctity of the documents i.e. bill of lading is maintained. Without checking the details of goods being carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by mis-declaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."

4. As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by mis-declaration. However, I find that there is no evidence on record to show that the appellant was a party to such mis-declaration. They simplicitor filed IGM on the basis of bill of lading and on subsequently, after getting an communication from the importer, they applied for amendment of the same. In such a scenario, the allegation

of the aiding and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant.

Pronounced in the open Court on...24/11/17

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
15/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38 M. G. MARG,ALLAHABAD-211001