

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT No.-2

**Customs Appeal No.20897 of 2017**

(Arising out of Order-in-Appeal No.221/2016-17 dated 27/02/2017 passed by  
Commissioner (Appeals) Customs, Cochin)

**N.S. Mahesh**

**.....Appellant**

Door No.67/2626-C, Amulya Street,  
Banerji Road, Ernakulam,  
Cochin-682018

*VERSUS*

**Commissioner of Customs (Appeals), Cochin....Respondent**

Customs House, Willingdon Island,  
Cochin-682009

**APPEARANCE:**

Mr. M. S. Sanjeev Kumar, Advocate for the Appellant  
Mr. K. Vishwanath, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**

**FINAL ORDER NO.21154/2023**

DATE OF HEARING : 01.08.2023  
DATE OF DECISION : 20.10.2023

**PER: P.A. AUGUSTIAN**

In the present appeal, appellant challenging the penalty imposed on the appellant under Section 112 A of the Customs Act 1962. Brief facts of the case is that an importer Shri Rajesh Kumar had imported 475 cartons containing artificial flowers, photo frames, fancy mirrors etc. and filed a Bill of Entry on 20.06.2014. Alleging that said goods is imported by resorting to undervaluation, proceedings were initiated and show cause notice

was issued. Thereafter Adjudication Authority vide Order-In-Original No.116/2016 dated 23.05.2016 adjudicated the matter and confirmed differential duty of Rs.1,41,568/- on the ground that the importer had made an attempt to evade said amount of customs duty by wilful mis-declaration. Among others appellant was also imposed with penalty of Rs.50,000/- each under Section 112A and 114AA of the Customs Act, 1962. Aggrieved by the said order, appeal was filed before the Appellate Authority and the Appellate Authority set aside the penalty imposed under Section 114AA of the Custom Act, 1962. But upheld the penalty of Rs.50,000/- imposed under section 112(a) of the Custom Act, 1962. Aggrieved by the order of the Appellate Authority, present appeal is filed.

2. Learned counsel for the appellant submitted that the appellant was under illegal custody of the investigating officers from 24.06.2014 to 26.06.2014 and was forced to give statement under threat. The said statement was retracted on 20.10.2015. The learned counsel draw my attention to Paragraph 16 of the order and submitted that the sole basis for alleging undervaluation is only on the statement forcefully recorded from the importer as well as the appellant. There is no independent corroborative evidence to reject the transaction value and for imposing penalty there is no evidence of contemporaneous import. Learned counsel draw my attention to the orders of this Tribunal in N S Mahesh V/s Commissioner of Customs, Cochin vide Final Order No.22929-22931 of 2017 dated 27.11.2017, Final Order No.20498 of 2018

dated 05.02.2018 and submitted that based on the very same statements, proceedings were initiated against other importers. In ibid cases, without any corroborative evidence, only based on the statements recorded from the importer, Adjudication Authority held that the goods are undervalued and importer was forced to pay differential duty and penalty for release of the goods. While considering the evidentiary value of the statement, this Tribunal has held that there is no clear-cut evidence abetment or instigation on the part of the appellant to undervalue the goods declared by the importer. This Tribunal also held that the appellant had only acted as a clearing and forwarding agents and there is no independent corroborative evidence to come to the conclusion that the appellant has helped the importer in evading the payment of customs duty. Since there is no legally sustainable evidence of connivance against the appellant, the penalty imposed on appellant in those cases were set aside. The learned counsel also draw my attention to order dated 30.11.2021 in Customs Appeal No.70462 of 2016 in the matter of **Gajraj Singh Baid V/s Commissioner of Customs, C. C. Agra** and submitted that when there is nothing against the appellant to allege that he was doing any of the act of omission/commission with regard to the goods under import so as to render the same liable for confiscation, penalty imposed by adjudication authority is unsustainable.

"34.4. We find further that. It is not the case of the department that he was sharing the profit in the acts of duty evasion etc resorted to by the importers. It is not

established that the appellant had knowledge of the illegal trade indulged in by Shri Rajesh Kumar Gupta. Therefore, we find that the penalty under Section 112(a) is also not attracted."

3. Learned D.R. reiterated the finding of the Adjudication/appellate Authority and submitted that the statement recorded from the appellant clearly shows his involvement in alleged illegal import and retraction made by him at a belated stage cannot be considered as sufficient to nullify the evidentiary value of the statement recorded under Section 108 of the Customs Act, 1962. Learned DR also relied upon the following judgments:

**(i) H.R. Siddique V/s Director, Enforcement Directorate reported in 2015 (318) E.L.T. 182 (Del.).**

**(ii) Romesh Chandra Mehta V/s State of West Bengal reported in 1999 (110) E.L.T. 324 (S.C.).**

**(iii) Naresh J. Sukhawani V/s Union of India reported in 1996 (83) E.L.T. 258 (S.C.).**

**(iv) K.P. Abdul Majeed V/s Commissioner of Customs, Cochin reported in 2014 (309) E.L.T. 671 (Ker.).**

4. I have gone through the records and submissions made by both sides. No acts of omission or commission, which would render the goods liable for confiscation have been alleged or proved on the part of the appellant. No charge of abetment is also evidenced against the appellant. Moreover, finding of this Tribunal based on the very same statement is squarely applicable in present case. Considering the same, appeal is allowed. Penalty imposed on the appellant is set aside with the consequential relief if any.

(Order pronounced in the Open Court on **20.10.2023**)

**(P.A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

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