

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21216 of 2018

(Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-88/17-18 dated 06.04.2018 passed by the Commissioner of Customs, Cochin.)

M/s. Bhanjee Jevath Khona

Customs Broker,
Willingdon Island,
Cochin – 682 009.

Appellant(s)

VERSUS

The Commissioner of Customs

Customs House,
Willingdon Island,
Cochin – 682 009.

Respondent(s)

WITH

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APPEARANCE:

Shri Pradyumna G.H, Advocate for the Appellant

Shri K. Vishwanath, Authorised Representative for the Respondent

**CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order Nos. 20189 - 20190 /2024

DATE OF HEARING: 06.03.2024

DATE OF DECISION: 06.03.2024

PER : R. BHAGYA DEVI

The present appeal has been filed by the appellant M/s. Bhanjee Jevath Khona challenging imposition of penalties of Rs.50,000/- each in the impugned Order-in-Original No.88/17-18 dated 06.04.2018 and Order-in-Original No.89/17-18 dated 06.04.2018.

2. The basic facts are that the importer M/s. Bedy Associates and M/s. Data Enterprises imported used Multifunction Digital Photocopiers and Printers (referred as MFDs). On investigation, it was found that these importers had imported the above products without following the mandatory requirements as stipulated in the Hazardous and Other Waste (Management and Transboundary Movement) Rules 2016, Electronics and IT Goods (Requirement for Compulsory Registration Order, (CRO), 2012 and Foreign Trade Policy 2015 to 2020. Accordingly, the Commissioner in the impugned orders confiscated the goods without granting any option for redemption under Section 125 of the Customs Act 1962. He also rejected the declared value of Rs.8,15,912/- and Rs.8,31,828/- respectively, under Rule 12 of the Customs Valuation Rules 2007 and enhanced the value to Rs.16,39,780/- and Rs. 16,46,458/- as per Rule 9 of the Customs Valuation Rules, 2007 and imposed penalty on the firms but refrained from imposing any penalty on the Proprietors. He imposed penalty of Rs.50,000/- on the

appellant, customs broker under Section 112(a) of the Customs Act 1962, in each of the imports.

2. The learned counsel on behalf of the appellant assailing the above orders submits that these orders were appealed by both the importers before this Tribunal and this Tribunal vide Final Order No.20330-20340/2019 dated 02.04.2019 held as follows:

“6.2. In view of the above, we hold that the imported goods are liable for confiscation under Section 111 (d) of the customs Act, 1962. Next, we turn to the observations of the adjudicating authority that the import has been made in violation of the Electronics and Information Technology (Requirement for Compulsory Registration) Order, 2012 (CRO). We have perused the said order ; the goods notified under the said Order ; as well as the letter issued by the Jt. Secretary in the Ministry of Electronics and Information Technology to Jt. Secretary (Customs), CBEC. The schedule attached to the CRO order specifies various goods which are required to take compulsory registration. While we find that printers and photocopiers find place in 13 the schedule, the MFD does not find place in the said order. In this connection, the Hon’ble High Court of Andhra Pradesh and Telangana in the order cited by the appellant has examined the same issue and has concluded that the item MFD was not notified under the CRO and as such, it is not open to the Customs authorities to blindly apply the directives of Department of Electronics and Information Technology through the letter dt. 16/12/2016 to the appellant’s goods. In view of the above, we are of the view that the appellants cannot be held to have violated the provisions of the Compulsory Registration Order.

6.3. Having concluded that the imported goods are liable for confiscation but ordering absolute confiscation is not justified, we are left with the task of deciding what would be the appropriate redemption fine and penalty to be imposed on the importers. In the earlier decision of this Bench, the issue has been considered and it has been held that 10% and 5% of the enhanced value would be appropriate for redemption fine and penalty respectively. We adopt the same yardstick in arriving at the redemption fine and penalty and order that imported goods may be allowed for clearance on payment of redemption at 10% and penalty 5% of the re-assessed value, besides payment of applicable Customs duty.”

2.1 It is further submitted that the show-cause notice did not make any specific allegations/omissions against the

appellant for imposing penalty under Section 112(a) and also there has been no penalty imposed under Section 114AA against the appellant for violation of the conditions laid down in Customs House Agents Licensing Regulations, 2004. It is also stated that the Commissioner acknowledges that the Bills of Entry had been presented to the customs on the basis of the documents furnished by the importer and there was no obligation on the part of the customs broker to obtain permission from Directorate General of Foreign Trade (DGFT) or the approvals as required under Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016. It is further claimed that Section 112(a) penalty is to be imposed only for improper importation or for abetting such importation but in these cases, there is no evidence on record to show that the appellant had anything to do with the violations specified therein. Therefore, the allegation that the appellant had connived with the importers without any evidence cannot be sustained, hence requested for setting aside the penalties imposed on the appellant in both the cases.

2.2 The learned counsel relied on the following decisions:

- **Commissioner of Customs (Sea Port-Import), Chennai vs. City Office Equipment: 2016 (336) ELT 19 (Mad.)**
- **Chakiat Agencies vs. Commissioner of Customs (Exports) Chennai: 2023 (385) ELT 270 (Tri.-Mad.)**

3. The learned Authorized Representative submits that since the Tribunal had upheld confiscation and allowed the goods on redemption fine and penalty and also upheld the penalty on the

firm under Section 112(a), penalties on the Customs Broker has to be upheld in view of the violations committed by the importer and the appellant.

4. Heard both sides. The Tribunal vide Final Order No.20330-20340/2019 dated 03.04.2019 held that the secondhand Multifunction Digital Photocopiers and Printers (MFDs) were restricted goods and hence, liable for confiscation under Section 111(d) of the Customs Act 1962, and allowed the goods to be redeemed on payment of redemption fine and penalty on the enhanced value. In addition, penalty under Section 112(a) on the firm was also upheld.

5. The present appeals are with regard to the involvement of the appellant (Customs Broker) in importing the above said items which were considered to be restricted, which attracted penal provision under Section 112(a) of the Customs Act, 1962.

Section 112(a) reads as:

SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ¹ [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

² [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer

determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

³ [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77" (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty ⁴ [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty ⁵ [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty ⁶ [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

6. In the present cases, the Commissioner at Para 44.31 in the impugned order (in appeal No. C/21216/2018) holds that "The appellant has connived with the importer for the clearance of old and used MFDs and played a vital role in clearing the consignment through cochin port without submitting mandatory documents and they played a decisive role in the illegal import of the MFDs. Action Under Customs broker Regulation are to be initiated independently". However, there is nothing on record as evidence to prove the involvement of the appellant directly or indirectly that he had connived with the importer. It also intimated that no action was initiated against the appellant under the Customs Broker Regulations till date and therefore, the appellants claim that in good faith he had filed the documents as per the importers' directions cannot be ignored.

7. In the case of **Commissioner of Customs (Sea port – import), Chennai Vs. City Office Equipment** (supra), the Hon'ble High Court in an identical case held that:

"10. The Commissioners of different regions, namely, Kolkata, Mumbai, Delhi and Chennai are exercising their discretions inconsistently. Mumbai and Kolkata Commissioners are releasing the goods on deposit of customs duty and also on payment of fine under Section 125 of the Customs Act, 1962 in the identical facts, wherein the old and used digital multifunction devices with standard

accessories and attachments are imported without authorisation. On the other hand, the Commissioner, Chennai is taking a contrary stand. Thus the inconsistent views while exercising discretion have led to indiscretion at the hands of the Commissioners, resulting in divergent orders being passed. It is well settled that exercise of discretion dehors proper guidelines may create sometimes discrimination and arbitrariness. As a sequitur, we are of the considered view that the Central authorities may consider issuance of proper guidelines to all Commissioners, dealing with the goods, which are imported without authorisation in respect of release of goods, subject to adjudication as contemplated under the provisions of law.

11. Resultantly, the writ appeal stands dismissed, upholding the order of the learned Single Judge. However, we direct that the respondent herein shall furnish a bond for making penalty, if any found imposable on adjudication along with the customs duty. No costs. Consequently connected miscellaneous petition is closed.”

8. In the case of **G Narayan and Company Vs. Commissioner of Customs, Mangalore, 2021-378 ELT 298 (Tri. Bang) dated 10.03.2021**, the Tribunal held that:

“6. After considering the submissions of both the parties and on perusal of the record, I find that the Revenue has not been able to bring any evidence on record which shows that the appellant had prior knowledge regarding the violation of the provisions of the Customs Act. Further I find that this Tribunal in its Final Order No. 20523/2019, dated 4-7-2019 reduced the penalties imposed on the passenger after holding that there was no suppression of facts by the passenger. Once the passenger has not suppressed any material fact then how it can be said that the appellant has abetted the passenger in the commission of certain violation of the Customs Act. Further I find that in the case of *Triways Transportation Pvt. Ltd. v. Commissioner of Customs, New Delhi* - 2018 (363) E.L.T. 1027 (Tri. - Del.) wherein it was held that penalty under Section 112(a) of the Act is not imposable on the CHA when no proceedings are initiated against him under the Customs Brokers Licensing Regulations, 2013. In the present case, no proceedings were initiated against the appellant under the Customs Broker Licensing Regulations, 2013. Moreover, issuance of show cause notice in *de novo* remand proceedings is not permitted under law. In view of my discussion above, I am of the considered opinion that in the facts and circumstances of the present case, the imposition of penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on the appellant is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant.

9. In view of the above, as there is nothing on record to prove that the appellant had connived/abetted with the importers in filing the documents for importing the restricted products without the mandatory documents, the penalty cannot

be sustained. The impugned orders for the said offence have already penalized the importers in terms of redemption fine and penalty. As held by the Tribunal in the case of **G Narayan and Company** (supra), since the appellant has not been penalized under the Customs House Agents Licensing Regulations, for any irregularity, the question of imposing penalty under Section 112a of the Customs Act, 1962 does not arise.

10. In the result, the penalties imposed on the appellant are set aside and the appeals are allowed.

(Dictated and pronounced in Open Court)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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