CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

**C/21185-21186/2017; C/20926-20927/2017;
C/20928-20929/2017**

[Arising out of Order-in-Original No.COC-CUSTM-000-COM-55-16-17 dt. 28/02/2017; No.COC-CUSTM-000-COM-56-16-17 dt. 28/02/2017 passed by Commissioner of Customs, COCHIN]

Shri Ajith P.
Shir E.N. Unnikirshnan Appellant(s)
M/s. Ajay Overseas

Versus

Commissioner Customs Cochin Respondent(s)

Appearance:

Shri P.A. Augustine, Advocate For the Appellant
For the Appellant
Dr. J. Harish, Dy. Commissioner(AR) For the Respondent

Date of Hearing: 07/11/2017
Date of Decision: …………………

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 2018

Per : S.S GARG

The appellants have filed these 6 appeals against the impugned orders dt. 28/02/2017 vide which the Commissioner of Customs has imposed penalty under Section 112(a) and penalty under Section 114AA for various irregularities committed by the main importer M/s. Atul Automation Pvt. Ltd. and M/s. Parag Domestic Appliances. Since the issue is identical in all the 6 appeals, all the appeals are being disposed of by this common order. The details of 6 appeals are given herein below:-

Appeal No.	Appellant	Penalty u/s 112(a)	Penalty u/s 114AA
C/21185/2017	Ajith P	Rs.10 lakhs	Rs.1 lakh
C/21186/2017	Ajith P	Rs.3 lakhs	Rs.3 lakhs
C/20926/2017	M/s. Ajay Overseas	Rs.1 lakh	--
C/20927/2017	M/s. Ajay Overseas	Rs.30,000/-	---
C/20928/2017	Shri E.N. Unnikrishnan	Rs.10 lakhs	--
C/20929/2017	Shri E.N. Unnikrishnan	Rs.3 lakhs	---

2. Mainly the issue in all the appeals are related to penalties imposed under Section 112(a) and Section 114AA of the Customs Act, 1962. The appellants Shri Ajith P is a Chartered Engineer, M/s. Ajay Overseas is the Custom broker and Shri E.N. Unnikrishnan is the local representative of the importer in Cochin. In fact appeal of the importer M/s. Atul Automation Pvt. Ltd. and M/s. Parag Domestic Appliances were considered by the Division Bench of this Tribunal and disposed of vide Final Order No.21592 – 21594/2017 dt. 09/08/2017 and this Tribunal has held that there is no false document submitted by the importer and set aside the penalty under Section 114AA of the Customs Act, but upheld the penalty for violation of import condition.

3. Briefly the facts of the case are that in 2016, the importers M/s. Atul Automation and M/s/. Parag Domestic Appliances imported the goods

through Cochin Port and for completing customs formalities, they approached the local agent Shri E.N. Unnikrishnan who is also the appellant herein to arrange clearance of goods. Shri Unnikrishnan took assistance from other appellants M/s. Ajay Overseas who is the custom broker and for ascertaining the value and other details, he approached the Chartered Engineer Shri Ajith P who is also appellant herein. As per the existing practice, goods were subject to examination by the Customs authorities with the assistance of Chartered Engineer and valuation report was also furnished. Since the appellant Shri Ajith P refused to give finding that goods are e-waste, respondent, then Commissioner of Customs suspended the appellant Shri Ajith P from panel of Chartered Engineer and directed SSIB to investigate the issue and appointed another Chartered Engineer. After completion of the investigation by the Department, show-cause notice was issued on 14/02/2017 to the importers as well as to the appellants. The learned Commissioner without affording a reasonable opportunity of hearing passed the impugned order holding the appellants guilty in illegal import of goods and imposed penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

4. Heard both the parties and perused records.

5. Learned counsel for the appellants submitted that the impugned order passed by the Commissioner is not sustainable in law as the same has been passed without properly appreciating the role of the appellants in

the import of Multifunction Digital Photocopiers and Printers (MFD, for short). He further submitted that the case of the main importer M/s. Atul Automation (P) Ltd. and M/s. Parag Domestic Appliances has been decided by this Tribunal after considering the entire facts and circumstances. The Tribunal after taking into account all the facts and evidences on record has set aside the penalties imposed under Section 114AA by observing that the provisions of Section 114AA will apply in cases where a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Further the Tribunal has observed at no stage any false document submitted by the importer or by the Director of the importer and consequently the imposition of penalty under Section 114AA was held not justified. He further submitted that in the impugned order the finding by the Commissioner against the appellant Shri Ajith P who is the Chartered Engineer is that he has not conducted inspection properly before submitted the report whereas the fact of the matter is that as per the report which is appearing at page 124 of the appeal paper book, it is clearly stated that "inspected the lot opened and examined all the packages along with CE". The said report shows that three officers of the Customs had conducted examination of the goods with the assistance of the appellant Shri Ajith P who is the Chartered Engineer and confirmed that they have verified the entire details. He further submitted that the allegation against another appellant Shri E.N. Unnikrishnan who is the local representative of the importer in Cochin is that from the office of the local representative, some unsigned reports were recovered which has affected the valuation report. To counter this, the learned counsel further submitted that there is no illegality in those reports and there is no allegation that Shri Unnikrishnan or any other persons has made any attempt to influence the finding in the valuation report. He also submitted that merely by recovery of a copy of email communication, no presumption can be drawn that the appellant had acted with the connivance with the agent of the importers as held by the adjudicating authority. The learned counsel further submitted that the allegation against other appellant M/s. Ajay Overseas who was the custom broker were that they have abetted the main importer in misdeclaration and illegal import. To counter this allegation, the learned counsel submitted that the role of CHA was very limited to the filing of the Bill of Entry and there is no allegation against the CHA that he was involved in pre-import activities to allege abetment and to impose penalty under Section 113(a) of the Customs Act, 1962.

6. On the other hand, the learned AR reiterated the finding of the impugned order. He further submitted that the appellants cannot escape the liability when they had filed the clearance document with the Customs. He further submitted that in the impugned order, it has been held by the Commissioner that all the appellants were involved in the illegal import made by the importer and therefore the penalties imposed on them in the impugned order is justified.

7. After considering the submissions of both the parties, I note that by the impugned order, penalties have been imposed on these three appellants under the provisions of Section 112(a) and penalty under Section 114AA of the Customs Act, 1962 against Shri Ajith P. Penalties under Section 114AA has been dropped against the main importer vide the Final order No.21592-21594/2017 dt. 09/08/2017 by Division Bench of this Tribunal because the requirements of Section 114AA are not fulfilled. Therefore since the penalty under Section 114AA dropped against the main importer and there is no material evidence against the present appellant Shri Ajith P to impose penalty under Section 114AA, I also drop the penalty against him.

8. Further, I find that the penalties have been imposed against all the three appellants under Section 112(a) of the Customs Act. The said section provides for imposition of penalty on any person who abets the doing or omission or any act or omission which will render the goods liable to confiscation. In other words, there should be a clear evidence to come to the conclusion that the appellants by their specific act or omission or any act abetted the illegal importation of offending goods. Therefore I find that in the impugned order, no such cogent evidence has been recorded. Further for penalty under the Customs Act, 1962, it is apparent that mere filing of Bill of Entry without the knowledge or a role in the importation of cargo is not sufficient. Further I also find that the report submitted by the

Chartered Engineer has been signed by three officers of the Customs as the examination of the good was done in their presence. Further I find that in the case of New Amar Goods Carriers Vs. CC, New Delhi [2012(276) ELT 389 (Tri. Del.)], it was held that in the absence of evidence regarding knowledge of appellant about the contents of the cargo, penalty cannot be imposed. Further in the case of Electronik Lab Vs. CC(P), Mumbai [2005(187) ELT 362 (Tri. Mum.)], Joseph Itteyara Vs. CC, Mumbai [2004(176) ELT 165 (Tri. Mum.)] and in Calculltta Ahmedabad Carriers Vs. CC, New Delhi [2004(164) ELT 367 (Tri. Del.)], it is held that penalty on the abettor cannot be imposed on assumptions and presumptions. Cogent, tangible and reliable evidence is required. Further the appellant has also relied upon the following decisions in support of his case:-

i. Vinay Aggarwal Vs. CC, Jaipur-I [2016(344) ELT 1024 (Tri. Del.)]
ii. Rajan Arora Vs. CC(ICD TKD), New Delhi [2017(352) ELT 37 (Tri. Del.)]

9. After considering the entire material on record, I find that the penalty imposed under Section 112(a) on the three appellants as well as penalty under Section 114AA imposed on Shri Ajith P, Chartered Engineer is not sustainable in law in view of my discussion above. Therefore, I set aside the penalties and allow the appeals of the appellants. Consequently all the appeals are allowed.

(Pronounced on ....)

S.S GARG
JUDICIAL MEMBER

Raja….