

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

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20431/2019-SM

[Arising out of Order-in-Appeal No. 09/2019 dated
30/01/2019 passed by Commissioner of CUSTOMS,
BANGALORE-I (Appeal).]

M/s. Schenker India Pvt. Ltd.

101 1st Floor Touch
Down Building No 1-2
HAL Industrial Area
HAL Airport Road Adjacent To Hal Museum
BANGALORE - 560037
KARNATAKA

Appellant(s)

VERSUS

**Commissioner of Customs
Bangalore - Cus.**

C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

Respondent(s)

Appearance:

**Ms. Sandhya, Advocate
LAKSHMI KUMARAN &
SRIDHARAN**

WORLD TRADE CENTRE NO.404-406,
4TH FLOOR, SOUTH WING BRIGADE GATEWAY
CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE - 560 055
KARNATAKA

For the Appellant

**Mr. Gopa Kumar,
Jt. Commissioner (AR)**

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20643 / 2019

Date of Hearing: 13/08/2019

Date of Decision: 13/08/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 30.01.2019 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant and upheld the Order-in-Original whereby the penalty of Rs.50,000/- has been imposed on the appellant under Section 117 of the Customs Act, 1962.

2. Briefly the facts of the present case are that the appellant who is working as Custom House Agent (CHA) were authorized by M/s. Weir Minerals India Pvt. Ltd., Bangalore (hereinafter referred to as Weir/importer) to collect the documents pertaining to Bill of Lading No.KEH305320 dated 26.11.2011 from M/s. Panalpina being the freight forwarder and clear the consignment. Thereafter, the appellant prepared a checklist on the basis of the documents provided by M/s. Panalpina with details of M/s. Auma Riester GmbH & Co. Germany as the supplier and valued at 1,79,925 EUR as mentioned in the invoice. The said checklist was forwarded to Weir and upon approval from Weir, the appellant filed the bill of Entry No.5669696 dated 6.1.2012 and cleared the goods on payment of duty of Rs.30,35,394/-. During post clearance, audit department sought for copy of purchase orders and payment details of Weir and it was then noted that Weir had placed the order on M/s. Barron GJM Pty Ltd., Australia for 2,89,665 AUD. As per the department, the said amount of 2,89,665 AUD (Rs.1,58,86,694/-) was remitted to Barron by Weir for which the duty liability amounts to Rs.37,96,104/- as against the liability of Rs.30,36,641/- paid at the time of clearance. Subsequently, Weir vide letter dated 15.6.2012 paid the differential custom duty of Rs.7,60,247/- along with interest of Rs.50,334/-. As per the department, the appellant was aware of the import of the goods by Weir from M/s. Barron as the invoice submitted at the time of import mentioned 'for customs purposes only' and 'on behalf of M/s. Barron' and thus should have suitably rectified the Bill of Entry and thus failed to comply with the provisions of the Act.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the role of CHA under the Act. She further submitted that the appellants were provided only with the copy of the invoices dated 2.11.2011 of Auma based on which they have prepared the checklist for filing the Bill of Entry. On receipt of confirmation from Weir that the shipment is a commercial consignment, the appellant prepared the checklist based on invoice dated 2.11.2011 of Auma and upon approval from Weir, they filed the documents with the Customs. She further submitted that the appellants have acted with due diligence in ascertaining whether the shipment is a commercial shipment and preparing the checklist based on the invoices provided to them. Further whether the Bill of Entry contains the declaration as contained in the invoices, the allegation of mis-declaration is not sustainable against the appellant. She also submitted that only after confirmation by Weir, the appellant have filed the Bill of Entry and the above facts were submitted before the adjudicating authority and the appellate authority against which they have not given any finding. She also submitted that final invoice raised by M/s. Barron on Weir was never provided to the appellant, which is also evident from the statement dated 11.6.2012 from Mr. Shihabuddeen, Manager, ICD Operation of the appellant. She also submitted that proviso to Section 46(4) requires the importer to make and subscribe to a declaration as to the truth of the contents of the Bill of Entry and to produce to the proper officer the invoice, if any, relating to the imported goods. Further, in case the importer has produced the wrong invoice and Bill of Entry is filed based on such invoice, then the said contravention is committed by the importer and not by the appellant. Therefore, penalty cannot be imposed on the appellant as the appellant is not at fault. In support of this submission, she relied upon the following decisions:

- ***P.D. Prasad & Sons Pvt. Ltd. vs. Commissioner of Customs (Exports), New Delhi: 2017 (358) ELT 1004 (Tri.-Del.)***
- ***M. Renganathan vs. Commissioner of Customs, Chennai: 2009 (235) ELT 860 (Tri.-Chennai)***

- ***Brijesh International vs. The Commissioner of Customs (Import & General), New Delhi : 2017 (352) ELT 229 (Tri.-Del.)***
- ***S. Rajendra & Co. vs. CC, Mumbai: 2008 (227) ELT 224 (Tri.-Mum.)***
- ***Transocean Discoverer 534 LLC vs. CC, Visakhapatnam: 2009 (236) ELT 56 (Tri.-Bang.)***
- ***HLPL Global Logistics Pvt. Ltd. vs. Commissioner of Customs (Gen.), New Delhi: 2018 (364) ELT 427 (Tri.-Del.)***
- ***Falcon India vs. Commissioner of Customs, ICD, Tughlakabad, New Delhi: 2018 (363) ELT 835 (Tri.-Del.)***
- ***Rajesh Maikhuri vs. Commissioner of Customs, New Delhi: 2018 (363) ELT 274 (Tri.-Del.)***
- ***Chakreshwari Shipping Agency P. Ltd. vs. CC (ACC & Export), Mumbai: 2014 (310) ELT 614 (Tri.-Mumbai).***

4.1 Inasmuch as they have not acted with intent to enable the importer to evade duty payment. In support of this submission, she relied upon the following decisions:

- ***Mahendra Shah vs. CC, Mumbai: 2010 (261) ELT 497***
- ***M.J. Joshy vs. CC, Chennai: 2010 (258) ELT 460 (Tri.-Chennai)***

4.2 She also submitted that the penalty on the appellant cannot be imposed unless there is evidence to show that the failure on the part of the appellant was on account of the mala fide intention. In support of this submission, she relied upon the following decisions:

- ***CCE vs. Prakash Freight Movers LTd. : 2012 (275) ELT 100 (Tri.-Del.)***
- ***G.M. Enterprises vs. CC: 2010 (262) ELT 796 (Tri.-Mum.)***
- ***D.S. Cargo Service vs. CC: 2009 (247) ELT 769 (Tri.-Del.)***
- ***Syndicate Shipping Services Pvt. Ltd. vs. CC, Chennai: 2003 (154) ELT 756 (Tri.-Chennai)***
- ***A.N. Bhat vs. Collector of Customs: 1991 (55) ELT 580 (Tri.)***

4.3 Further, she submitted that the impugned order does not hold that the appellant had knowledge of the final invoice or the payments made by Weir to M/s. Barron.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant before filing the Bill of Entry has sent the checklist and after confirmation from the importer, he filed the bill of Entry containing the details which were supplied to him by the importer. Further, I find that the appellant has filed the Bill of Entry on the basis of the invoices which is given to him and if the importer has given him the wrong invoice then it is the importer who has contravened the provisions of the Act and penalty should have been imposed on the importer and not the appellant who is only acting as a CHA. Further, I find that the department has not brought any evidence on record to prove that the appellant had the knowledge of the final invoice or the payment made by Weir to M/s. Barron. This issue has been considered in many decisions of the Tribunal and it has been consistently held that if there is no evidence of aiding and abetting against the CHA, then penalty cannot be imposed on CHA. In the case of **Falcon India** cited supra, the Division Bench of CESTAT, Delhi in identical circumstances in para 4 has held as under:

“4. After hearing both sides and on perusal of record, it appears that what the documents were supplied by M/s. JMD India, the appellant has filed Bill of Entry on the basis of the papers where the number of boxes were matching. There was no discrepancy found in the number of boxes at the time of landing of the goods. The CHA was not aware about the weight of the goods. Only later stage, it was found that the goods are having different weight. The importer has not disclosed the weight of the goods to the CHA. When it is so, then CHA cannot be penalised. Hence, we set aside the impugned order and cancel the penalties.”

6.1 In the case of **HLPL Global Logistics Pvt. Ltd.** cited supra, the Division Bench of this Tribunal in the case of CHA has held in para 4 as under:

“4. After hearing both the sides, it appears that Shri Raj Kumar Wadhwa, the importer has supplied the necessary information and on the basis of the documents, the appellant has classified the goods which were rectified later. From the impugned order, it appears that importer Shri Raj Kumar Wadhwa is the controller of importer firm and on the basis of whatever documents he has sent, Bill of Entry was filed by CHA. Thus, in the instant case, no mala fide intention is on the part of the appellant and he filed Bill of Entry in bona fide manner.”

7. In view of my discussions above, I am of the considered view that imposition of penalty of Rs.50,000/- on the appellant under Section 117 of the Customs Act, 1962 is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **13/08/2019.**)

S.S GARG
JUDICIAL MEMBER