CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/21308/2018-SM, C/21296/2018-SM, C/21302/2018-SM, C/21307/2018-SM, C/21305/2018-SM, C/21303/2018-SM

[Arising out of Order-in-Original No. COC-CUSTM-000-COM-80-17-18 dated 06/04/2018 passed by Commissioner of CUSTOMS , COCHIN]

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-84-17-18 dated 06/04/2018 passed by Commissioner of CUSTOMS , COCHIN]

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-85-17-18 dated 06/04/2018 passed by Commissioner of CUSTOMS , COCHIN]

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-86-17-18 dated 06/04/2018 passed by Commissioner of CUSTOMS , COCHIN]

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-87-17-18 dated 06/04/2018 passed by Commissioner of CUSTOMS , COCHIN]

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-90-17-18 dated 06/04/2018 passed by Commissioner of CUSTOMS , COCHIN]

Ajay Overseas Shipping
R/o Ambadi Velli Road
COCHIN - 680003
KERALA

Appellant(s)

VERSUS

Commissioner of Customs Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

MR. P.A.AUGUSTIAN, ADVOCATE
FAIZEL CHAMERS, PULLEPADY CROSS ROAD,
COCHIN-682018

For the Appellant

Mr. Madhup Sharan, Asst. Commissioner (AR) For the Respondent

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

Final Order No. 20699-20704 / 2019

Date of Hearing: 06/09/2019
Date of Decision: 06/09/2019

Per : S.S GARG

The appellants have filed these 6 appeals against the impugned orders dated 06.04.2018 whereby the Commissioner has imposed penalty of Rs.50,000/- under Section 112(a) for various irregularities committed by the main importers. Since the issue in all the 6 appeals is identical, therefore all the 6 appeals are being disposed of by this common order. The details of 6 appeals are given herein below:

SI. No.	Appeal No.	Appellant	Penalty u/s 112(a)
1.	C/21302/2018	Ajay Overseas Shipping	Rs.50,000/-
2.	C/21303/2018	Ajay Overseas Shipping	Rs.50,000/-
3.	C/21305/2018	Ajay Overseas Shipping	Rs.50,000/-
4.	C/21307/2018	Ajay Overseas Shipping	Rs.50,000/-
5.	C/21308/2018	Ajay Overseas Shipping	Rs.50,000/-
6.	C/21296/2018	Ajay Overseas Shipping	Rs.50,000/-

2. Briefly the facts of the present case are that the appellant is engaged in Customs Broker activities as per the CBLR Regulation over a period of time and during the last few years, large number of importers had used the appellant’s service for clearing goods regarding the import of used photocopiers and import of used digital multifunction machines, disputes are pending with the Customs authority over a period of time and in large number of cases, while adjudicating the matter, goods were allowed to redeem on payment of redemption fine and penalty. Even in those cases, no proceedings were initiated against the Customs Brokers alleging that by

filing of Bill of Entry related to goods which are found liable for confiscation, the Customs Broker abetted such illegal import. On alleging irregularities by various importers to whom the SCNs were issued, the appellant was also issued SCN directing to show cause as to why penalty should not be imposed on the appellant under Section 112(a) and 114AA of the Customs Act, 1962. After following the due process, the Commissioner imposed penalty on the appellant under Section 112(a) in each of the 6 appeals.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellant submitted that the impugned orders are not sustainable in law as the same have been passed without properly appreciating the role of the appellant in the import of multifunction digital photocopier and printer. He further submitted that the importers have filed the Bill of Entry through the appellant and the Customs raised the objections and issued the notice to the importers and the cases of the importers were cleared by this Tribunal in separate proceedings after examining them on merits. He further submitted that the Customs has not brought any evidence on record to show convience of the appellant in the import of machines. The Learned Counsel further submitted that on identical allegations, this Tribunal has allowed the appeal of the appellant vide its Final Order No.20034-20038/2018 dated 11.01.2018 wherein the allegations were the same and the penalty on the appellant was imposed under Section 112(a) of the Customs Act.

5. On the other hand, Learned AR defended the impugned order and submitted that the appellant 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 the appellant failed to take due diligence in filing the Bill of Entry on behalf of the importer.

6. After considering the submissions of both the parties and perusal of the material on record, I find that in the present case, the penalties have been imposed 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. Further, I find that in the impugned order, no such evidence has been recorded. Further, for penalty under Customs Act, 1962, it is apparent that mere filing of Bill of Entry without the knowledge or of role in the importation of cargo is not sufficient. Further, I also 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.)]

6.1. Further, I find that the Tribunal, in the appellant's own case on the same allegation, dropped the penalty under Section 112(a). Consequently, by following the ratio of the said decisions, I set aside the penalties imposed on the appellant in all the 6 appeals by allowing the appeals of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **06/09/2019**)

S.S GARG
JUDICIAL MEMBER

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