CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20554 of 2018

(Arising out of Order-in-Appeal No. 1037-1038/2017 dated 26/12/2017 passed by Commissioner of CUSTOMS , BANGALORE-I (Appeals))

M/s Jeena And Company
Elphinstone Building 1st Floor 10 Veer
Nariman Road
FORT MUMBAI - 400001
MH

Appellant(s)

VERSUS

Commissioner of Customs
Bangalore-cus
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

Respondent(s)

APPEARANCE:

Shri Kiran S. Javali, Advocate for the Appellant
Shri P.Gopakumar, Authorized Representative for the Respondent

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

Final Order No. 20054 / 2021

Date of Hearing: 04/03/2021
Date of Decision: 04/03/2021

Per : S.S GARG

The present appeal is directed against the impugned order dated 26.12.2017 passed by the Commissioner of Customs (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original confirming the penalty of Rs.1 Lakh under Section 112 of Customs Act on the appellant who acted as CHA on behalf of the importer, M/s Networkers Eduhome Pvt. Ltd.

2. Briefly the facts of the present case are that the appellant who is working as a CHA filed Bill of Entry on behalf of the importer on the basis of the instructions of importer and supporting documents furnished by the importers such as invoice, airway bill etc. Subsequently, the Customs found mis-declaration during the physical examination of the goods and seized them and got evaluated by a qualified Chartered Engineer and thereafter SCN was issued to the importer as well as to the appellant. The stand of the appellant was that he relied upon the documents furnished by the importer and filed the Bill of Entry as per the declaration made by the importer in the invoice and he was not aware of any mis-declaration or under-valuation done by the importer. After examining the defense, the Original Authority found him guilty of mis-conduct and collusion with the importer and imposed penalty of Rs.1 Lakh under Section 112 of the Customs Act. The appellant filed appeal before the Commissioner (Appeals) who upheld the penalty on the ground that the CHA cannot absolve themselves from the wrong doings of the importers and that CHA has colluded with the importer to defraud the Revenue. Hence the appellant filed the present appeal.

3. Heard both the parties and perused the records of the case.

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, the evidence and the binding judicial precedents on the identical issue. He further submitted that there is no iota of evidence on record produced by the Revenue establishing the knowledge as well as the collusion with the importer on the part of the appellant. He further submitted that in the statement made by the importer before the Original Authority in reply to Question No. 10, the importer has categorically stated that the CHA had filed the Bill of Entry based on the description on the invoice and that they have not instructed the CHA in this regard as there were documents for filing the necessary Bill of Entry. He further submitted that without any evidence on record both the authorities have come to the conclusion that the

CHA cannot absolved themselves from the wrong doings of the importer, such a finding is neither tenable in law nor it is in accordance with the principle of natural justice wherein the CHA is held liable for the action of the importer moreso when there is no evidence such as collusion between the importer and the CHA. He also submitted that presumption of guilt against CHA for wrong doing of the importer is not sustainable in law. He also submitted that both the authorities have drawn conclusions on conjectures without any evidence in support of the culpability of the appellant and has held that CHA is liable for the wrong doing of the importer ignoring the fact that the CHA acted on good faith on the written instructions of the importer. In support of his submission, he relied upon the following decisions:

- ***Sai Shipping Services Vs Commissioner of Customs, New Delhi, 2009 (239) ELT 104 (T-Del)***
- ***Ashok Jaiswar Vs Commissioner of Customs (Adj) Mumbai, 2006 (200) ELT 122 (Tri-Del)***
- ***Sindhu Cargo Services Ltd. Vs Commissioner of Customs, Coimbatore, 2008 (226) ELT 282 (Tri-Chennai)***
- ***Success Engineering Vs Commissioner of Customs, Kandla, 2007 (215) ELT 220 (Tri-Ahm)***
- ***Prime Forwarders Vs Commissioner of Customs, kandla, 2008 (222) ELT 137 (Tri-Ahmd)***

5. On the other hand, learned AR reiterated the findings of impugned order.

6. After considering the submission of both the parties and perusal of the material on record, I find that there is no material evidence with the Revenue to come to the conclusion that the appellant had the knowledge of the wrong doing of the importer and has colluded with the importer to defraud the Revenue. I also find that the importer has also stated in his statement before the Original Authority in reply to Question No.10 that the CHA has filed the Bill of Entry based on the description on the invoice and there is no instruction by the importer to the CHA to do any wrong act. In the absence of any material evidence of knowledge and collusion between the appellant and the importer, it is not appropriate to punish the CHA for filing the document in good faith and on the basis of documents supplied by the importer. Further, I find that all the decisions relied upon by the

appellant cited supra has consistently held that in order to impose penalty on the CHA under Section 112 of the Customs Act, there has to be a knowledge on the part of the CHA and there should be a collusion between the CHA and the importer in defrauding the Revenue. Further, I find that the Tribunal in the case of Ashok Jaiswar Vs Commissioner of Customs (cited supra), the Tribunal in Para 5 has held as under:

> ***5.*** *I have perused the records and considered the submissions made by both the sides. The finding against the appellant is merely that he signed the shipping bill, upon the business being brought by Shri Md. Farooq. The finding is also that Shri Mohd. Farooq and other persons were the guilty parties in committing the drawback fraud. There is no mention of the appellant being aware that the fraud was being committed. This Tribunal has held in the case of Syndicate Shipping Services Pvt. Ltd. v. CC, Chennai [2003 (154) E.L.T. 756 (Tnbunal-Chennai)] that, "a customs house agent is not liable to penalty merely for signing a shipping bill in relation to contraband goods. More positive evidence of participation is necessary".*

7. In view of the various decisions cited supra and on the basis of material on record, I am of the considered opinion that the penalty imposed is not sustainable in the absence of any specific role performed by the appellant in the wrong doing done by the importer. Hence, I set aside the penalty by allowing the appeal of the appellant.

(Order pronounced in the open court on 04/03/2021)

(S.S GARG)
JUDICIAL MEMBER

PK...