

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20031 of 2020

[Arising out of Order-in-Appeal No. 147/2019 dated 25/10/2019 passed
by the Commissioner of Customs, Bangalore-I (Appeals)]

G. Narayan & Co.

V.G.S Building, 1st Floor,
Near Shirdi Sai Baba Mandir, Lady Hill
Mangalore – 575 006
Karnataka

Appellant(s)

VERSUS

**Commissioner of Customs
Mangalore**

New Customs House
Panambur
Mangalore – 575 010
Karnataka

Respondent(s)

Appearance:

Mr. Pradyumna G.H. Advocate
BVC & Co., 1st Floor,
No. 371, 8th Main, Sadashiva Nagar,
Bangalore – 560 080
Karnataka

For the Appellant

Mrs. C.V. Savitha, Supdt. (AR)

For the Respondent

CORAM:

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

Final Order No. 20068 / 2021

Date of Hearing: 10/03/2021

Date of Decision: 10/03/2021

Per : S.S GARG

The present appeal is directed against the impugned order dated 25/10/2019 passed by the Commissioner of Customs (Appeals) whereby the learned Commissioner has reduced the penalty to Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) imposed under Section 112(a) of the Customs Act, 1962 and set aside the penalty imposed under Section 114AA of the Customs Act, 1962.

2. Briefly the facts of the case leading to the present appeal are that a passenger Mrs. Shahin Taj Begum returned to India from Dubai on 24/12/2016 and filed unaccompanied baggage declaration under Section 77 of the Customs Act, 1962 on 02/01/2017 through the present appellants for clearance of 128 packages as personal effects/household articles under the Baggage Rules, 2016. The said consignment was examined in the presence of the appellant on 13/10/2017, 16/10/2017 and 17/10/2017 at Central Warehousing Corporation, Panambur, Mangalore. The said consignment consists of 128 packages but on detailed examination by the Customs Officer it was noticed that certain packages contained household effects whereas certain other packages contained only cosmetic items. On detailed inventory of the said packages, it was found that the same was in commercial quantity. As per the Customs, the appellant has misdeclared the consignment and it was found by the Customs that only 54 packages pertained to household articles and personal effects and the remaining 85 packages contained various cosmetic items in commercial quantity. Thereafter, the passenger consented for waiver of the show-cause notice and personal hearing and the Additional Commissioner vide Order-in-Original dated 05/01/2018 held that 54 packages were liable to be classified as baggage under CTH 98030000. The Additional Commissioner also imposed penalties on the passenger

as well as on the appellant amounting to Rs. 8,87,691/- (Rupees Eight Lakhs Eighty Seven Thousand Six Hundred and Ninety One only) under the provisions of Section 112(a) of the Act. Aggrieved by the said order, the appellant filed appeal before the Commissioner against the imposition of penalty under Section 112(a) of the Act. The Commissioner (Appeals) vide Order-in-Appeal dated 24/09/2018 held that the appellants had neither been issued show-cause notice nor extended an opportunity of personal hearing and hence violative of the principles of natural justice. Thereafter, the Commissioner (Appeals) remanded the matter to the original authority with the direction to finalize the issue after providing reasonable and effective opportunity of personal hearing. Subsequently, the Additional Commissioner issued the show-cause notice dated 20/12/2018 alleging that the Customs Broker by their acts of omission and commission had rendered themselves liable for penalties under Section 112(a) and Section 114AA of the Act. After following the due process, the Additional Commissioner vide Order-in-Original dated 28/02/2019 imposed penalties of Rs. 8,87,691/- (Rupees Eight Lakhs Eighty Seven Thousand Six Hundred and Ninety One only) and Rs. 1,00,000/- (Rupees One Lakh only) on the appellant under the provisions of Section 112(a) and Section 114AA of the Act respectively. Aggrieved by the said order, the appellant preferred appeal before the Commissioner and the Commissioner reduced the penalty to Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) under Section 112(a) and set aside the penalty under Section 114AA. Hence the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order passed by the Commissioner imposing the penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on the appellant under Section 112(a) of the Act is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the Additional Commissioner has wrongly held that the appellant has failed to exercise due diligence in the instant matter which had resulted in the violation of Regulation 11(d), 11(e) and 11(n) of the Customs Broker Licensing Regulations, 2013. Learned counsel also took me through the various regulations and submitted that there is nothing on record to suggest that the appellants had in relation to the subject goods, done or omitted to do any act which act or omission had rendered the goods liable to confiscation under Section 111 of the Act or had abetted the doing or omission of such an act. He further submitted that the fact of the matter is that the appellants were in dark as much as the Customs Department about the actual contents of the container in respect of which the passenger had filed the baggage declaration. He further submitted that the Commissioner (Appeals) remanded the matter to the original authority with a direction to provide the opportunity of hearing and then decide the case but the Additional Commissioner choose to issue the show-cause notice in remand proceedings which is not permitted under law. He further submitted that issuance of a show-cause notice alleging other violation under the Customs Broker Licensing Regulations is not permitted under law and hence the order passed by the Additional Commissioner confirming the penalty under Section 112(a) and 114AA is liable to be set aside. He also submitted that in the present case no proceedings were initiated against the appellant under the provisions of Customs Broker Licensing Regulations, 2013 at the time of passing of the original order dated

05/01/2018 by the Additional Commissioner. In support of his submission, the appellant relied upon the decision of the Tribunal in the case of ***Rajesh Maikuri Vs. Commissioner of Customs, New Delhi – 2018 (363) E.L.T. 274 (Tri.-Del.)*** wherein it has been held that no positive evidence is brought on record about prior knowledge regarding violation of the provisions of the Customs Act, hence no penalty under Section 112(a) of the Act is imposable on the CHA. In the same case it was held that lack of due diligence and failure to take precautions would not itself bring in penal consequences under Section 112(a) of the Customs Act. He further submitted that the Order-in-Appeal dated 24/09/2018 passed by the Commissioner of Customs (Appeals) was challenged by the passenger Mrs. Shahin Taj Begum before the CESTAT and the CESTAT vide Final Order No. 20523/2019 dated 04/07/2019 was pleased to reduce the penalties after holding that there was no suppression of facts by the passenger. Learned counsel further submitted that once the Tribunal has held that the passenger had not suppressed any facts from the Department and the goods had been imported by the passenger oblivious to the Drugs and Cosmetics Act, hence there is no justification to hold that the appellant had abetted the illegal import and that too without any material evidence being placed on record.

5. On the other hand the learned AR reiterated the impugned order.

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 04/07/2019 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. Vs. 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.

(Operative portion of the Order was pronounced
in Open Court on **10/03/2021**)

(S.S GARG)
JUDICIAL MEMBER

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