CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 60417 Of 2020

[Arising out of OIA-LUD-EXCUS-001-APP-408-2020 dated 01/09/2020 passed by the Commissioner (Appeals) of CUSTOMS-LUDHIANA]

M/s M S Exim Services **: Appellant (s)**
M S Exim Services, B-xxx-1742/1a/6/2,
phase-v, Focal Point, Ludhiana, Punjab

Vs

C.C. Ludhiana **: Respondent (s)**
ICD GRFL,G.T Road,
Sahnewal, LUDHIANA,
PUNJAB, 141001

APPEARANCE:
Shri Sudhir Malhotra, Advocate for the Appellant
Ms. Swati Chopra, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No. A/60493 / 2021

Date of Hearing:04.02.2021

Date of Decision:05.02.2021

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the penalty of Rs. 50,000/- has been imposed under Section 112 readwith Section 114AA of the Customs Act, 1962.

2. The facts of the case are that the appellant is a customs broker and handled import consignment of the importer, namely, M/s Inder International. The appellant filed 4 Bills of entry declaring the goods as cold rolled coil (non-alloy) alongwith invoices, test certificate and other relevant documents for clearance of the same. After filing bills of entry, the importer filed a declaration that the exporter has intimated
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to the appellant that the goods is of prime in nature. Thereafter, the goods were examined and found to be prime in nature, therefore, a case has been booked against the importer for mis-declaration of the goods to evade payment of duty on the said goods. A show cause notice was also issued to the appellant alleging that the appellant being an experienced customs broker was expected to understand the difference between prime material and secondary/defective material. Therefore, it was alleged that the appellant has made a false declaration in respect of the said consignments. The matter was adjudicated and penalty of Rs. 50,000/- was imposed on the appellant under Section 112 readwith Section 114AA of the Customs Act, 1962. Aggrieved by the said order, the appellant is before me.

3. The Ld. Counsel appearing on behalf of the appellant submits that the appellant has filed bills of entry as per the directions of the importer who has imported the said goods on high-seas sale basis the relevant documents, namely, invoices, high-seas agreement, test certificate were also filed by the appellant alongwith the bills of entry and the appellant had never examined the goods before filing the bills of entry, in that circumstances, it cannot be alleged that the appellant has knowingly mis-declared the goods on behalf of the importer. Therefore, there is no *mens-rea* of the appellant to have undue benefit of mis-declaration, in that circumstances, the penalty cannot be imposed on the appellant. He also submits that the mere allegation in the show cause notice is that the appellant being an experienced customs broker was expected to understand the difference between prime material and secondary & defective material. It shows that the appellant has examined the goods before filing the bills of entry. In

fact, it is not the case. Without examining the goods, it cannot be said that the goods are prime material or secondary/defective material. Further, during adjudication, it has been alleged that the test certificate attached with the bills of entry show that there is a variation in thickness/width and length of CR coil sheets and their weight is below the prescribed norms of prime goods, but it was not alleged in the show cause notice, therefore, the adjudicating authority has gone beyond the scope of the show cause notice. He further relied on the decision of the ***Hon'ble Delhi High Court in the case of Commissioner of Customs (Import) vs. Trinetra Impex Pvt. Ltd. 2020 (372) ELT 332 (Del.)***. He also relied on the decision of this Tribunal in the case of ***P. S. Bedi & Company vs. Commissioner of Customs, New Delhi 2001 (133) ELT 86 (Tri. Del.).*** He further submits that reliance made by the Revenue in the case of ***Kwick Handling Services P. Ltd. vs. Jt. Sec. Dept. Of Revenue, Ministry of Finance 2009 (234) ELT (Mad.),*** is not relevant as it is clearly mentioned that it is a case of export of goods and the goods in question were examined by the CHA and packed the same before filing the shipping bill which means that before filing the shipping bill, the CHA was having the knowledge of the description of goods in question which is not the case in hand. He further submits that Revenue has also relied on the decision in the case of ***Kunal Travel (CARGO) vs. Commissioner of Customs & Central Excise – 2017 (354) ELT 46 (All.)***, the said decision is also not applicable to the facts of this case as the said case also is of the mis-declaration of Non-Basmati Rice in the guise of Basmati Rice and it was observed that the appellant was guilty of *mens-rea* of tempering with the goods that was seeking of export which is not the case in hand. He also submits that no proceedings were initiated against the appellant under Customs Borker Licenses Regulations, 2013.

4. On the other hand, the Ld. AR supported the impugned order and submits that at the time of examination of the goods it was found that the imported goods as sheets/coils of defective/secondary category and are not allowed for import at Ludhiana Port. Further, the appellant was technically educated and having a practical experience, therefore, the appellant could have understood the difference between prime and secondary/defective material and it is his duty and responsibility to comply with the law on importability of the goods and to advise the client accordingly. Therefore, the penalty is rightly imposed on the appellant.

5. Heard both sides and perused the case records in detail and examined the arguments advanced before me.

6. I find that in show cause notice, the allegation against the appellant is that the appellant being customs broker had filed 4 bills of entry for clearance of consignment of cold rolled coil (non-alloy) and cold rolled sheets (non-alloy) of prime nature which were found on examination as secondary and defective nature and the appellant being an experienced customs broker was expected to understand the difference between prime material and secondary & defective material. Therefore, he has made a false declaration in respect of the said import consignment.

7. Admittedly, no where it has been placed on record that the appellant was having prior knowledge of defective/secondary material. In fact, in the invoices, high-seas agreements, test certificates, it is

mentioned that the material is of prime nature. Moreover, whatever documents have been supplied to the appellant by the importer, the appellant has filed bills of entry for clearance. On the basis of those documents merely being the appellant an experienced person it cannot be alleged that the appellant was having malafide intentions for clearance of the said goods by mis-declaring the same. The Revenue has failed to established against the appellant that he has omitted to do any act which act or omission would render the such goods liable to confiscation. The Revenue has further failed to establish the fact that the appellant abats the doing omission of the act which would render the goods liable for confiscation.

8. A similar issue came in the knowledge of the ***Hon'ble Delhi High Court in the case of Trinetra Impex Pvt. Ltd. (supra)*** where the Hon'ble High Court has held as follows:-

> *In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bonafide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-a vis the respondent.*

Therefore, the penalty is imposable on the appellant.

9. Further, in the case of ***P. S. Bedi & Company (supra)*** this Tribunal again has observed as under:-

> *5. Considering the submissions, I not that, before proceeding to impose a penalty on the CHA under Section 112 (a) of the Customs Act, it is incumbent on the Departmental authorities to record a finding in the first instance that some commission or omission of the CHA had rendered the goods confiscable. Such a finding is not forthcoming in the order of the Deputy Commissioner or that of the Commissioner (Appeals). In the absence of such a finding, penalty cannot be imposed under Section 112 (a) of the Act. The adjudicating authority has not even mentioned the provision of law under which the penalty was imposed. The order of the adjudicating authority has been upheld by the lower appellate authority. This is a clear case of non-*

> *application of mind on the part of the Commissioner (Appeals), to the findings of the adjudicating authority. I further observe that, apart from stating that the case law relied on by the appellant is not relevant the Commissioner (Appeals) has not stated as to why the case law was not relevant. The impugned order is, therefore, not a speaking order on the point.*

10. Further, the case laws relied by the Ld. AR are not relevant to the facts of this case as in those case, it is in the knowledge of CHA regarding the description of goods before filing the shipping bills. There is no allegation in the show cause notice in respect of the test certificate produced by the appellant. The mere allegation is that the appellant being an experienced person should know the difference between prime and secondary/defective material. The act of filing the test certificate shows that the appellant has no *mens rea* and filed the documents being a bonafide facilitator.

11. In view of the above discussion, no penalty is imposable upon the appellant, therefore, the penalty imposed on the appellant under Section 112 alongwith 114AA of the Customs Act, 1962 is set-aside and the appeal is allowed with consequential relief, if any.

(Order pronounced on 05.02.2021)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.