IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/277/2011

(Arising out of Order-in-Appeal. No. 43//2011 dated 24.05.2011 passed by the Commissioner of Customs & Central Excise, (Appeals), Trichy).

CC, Tuticorin : Appellant

Vs.

M/s. Sri Durga Shipping Services : Respondent

Appearance

Shri A. Cletus, ADC (AR)
for the Appellant

Shri S. Murugappan, Advocate,
Shri R. Mansor Ilahi, Advocate
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **02.04.2018**

FINAL ORDER No. **___________/2018**

Per Bench

The facts of the case are that M/s. Sri Durga Shipping Agencies, the respondent herein had filed two Shipping Bills both dated 27.02.2009 on behalf of M/s. JVM International. The export cargo was declared as "Kitchen Household Articles (Utensils) Stainless Steel in 64 boxes and 33 boxes respectively.

On specific intelligence the goods were intercepted by DRI. On detailed examination polythene packet stuffed with while coloured crystalline substance found concealed in the consignment which after testing was found to be "Ketamine Hydrochloride". On verification it emerged that there is no given name and style of M/s. JVM International functioning at the given address. It further emerged that one M/s. Moshee Enterprises who had no valid CHA licence to undertake the Customs clearance work had however filed these two shipping bills on behalf of M/s. JVM International by getting signature from M/s. Sri Durga Shipping Agencies, CHA. Proceedings were initiated interalia against the respondent which culminated in Order-in-Original dated 30.11.2010, imposing penalty of Rs.5,00,000/- on M/s. Sri Durga Shipping Agencies under Section 114 (i) of the Customs Act 1962, as also another penalty of Rs. 5,00,000/- on M/s. Sri Durga Shipping Agencies under Section 114AA ibid. On appeal, the Commissioner (Appeals) vide an order dated 24.05.2011 (impugned order) ordered waiver of penalties imposed on the appellant. Aggrieved, the department is in appeal before the Tribunal.

2. Today when the matter came up for hearing, the Ld. AR, Shri A. Cletus, ADC, argued that as per Section 114 of the Customs Act 1962, penalty can be imposed on any person who not only for any act but also for any omission. In the present case, the respondent, M/s. Sri Durga Shipping Agencies had

omitted to take due care and diligence by allowing signed shipping bill documents to be utilized by the alleged exporter. Hence, penalties under Section 114 is fully justified. In this case 'Ketamine Hydrochloride', a restricted item, was attempted to be exported by concealment in the said export consignment by issuing signed blank documents in respect of M/s. Moshee Enterprises, without abundant caution and without any effective control over the employees. Respondent had therefore facilitated the alleged smuggling of the restricted ketamine hydrochloride. Hence, setting aside of penalties by the Commissioner (Appeals) is not as per law and the impugned order is therefore be set aside.

3. On behalf of the respondent, the Ld. Counsel, Shri S. Murugappan pointed out that the signed documents were given in good faith to the Manager of the respondent at the Tutucorin Branch Shri C.T. Jegan for filing the shipping bills as and when required. However, Shri C.T. Jegan in connivance with others forged the appellant's signature in Annexure-A and was the person behind the attempted illicit export. The respondent had no knowledge of the alleged export. None of the involved persons have stated that the respondent was in the knowledge of fraud. In fact, respondent themselves made a criminal complaint against Shri C.T. Jegan with the police. For these reasons, the Commissioner has been just and fair in setting aside the penalties imposed on them.

4. Heard both sides and have gone through the records.

5. There is no allegation that the respondents were in any way involved or connived in the attempt to illicitly smuggle out ketamine hydrochloride. At the most, the respondent may have fallen foul of their responsibilities in the CBLR 2013, but failure to control the staff or any other failure of the CBLR cannot translate into doing or committing to any act to render the goods liable for confiscation under Section 113. This being so, we find no infirmity in the decision of the Commissioner (Appeals) to set aside the penalties imposed on the respondent. No merit is therefore found in the appeal filed by the department, for which reason the appeal is dismissed.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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