IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 41402 of 2019

(Arising out of Order-in-Appeal No.57/2019-TTN (CUS) dated 1.7.2019 passed by the Principal Commissioner of GST and Central Excise functioning as Commissioner (Appeals), Coimbatore)

M/s. Calimaa World Logistics Pvt. Ltd. Appellant
No. 5B/16A, Seiseeni Colony, 6th Street
First Floor, Tuticorin

Vs.

Commissioner of Customs Respondent
Custom House
New HarbourEstate
Tuticorin

APPEARANCE:

Shri G. Derrick Sam, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **41146 / 2019**

Date of Hearing: 27.09.2019
Date of Decision: 27.09.2019

Brief facts are that the appellant is a Customs Broker who filed Bill of Entry on behalf of M/s. V.V. Iron & Steel Company Ltd. who had imported heavy melting scrap on high sea sale basis. Originally the purchase order was placed on the overseas supplier by M/s. GMV Enterprise India (P) Ltd., Chennai on high sea sale basis which was sold to M/s. MM Traders, Tuticorin. Thereafter, the goods were again sold on high sea sale basis to M/s. V.V. Iron & Steel Company Ltd. On examination of the goods by SIIB, Custom House, Tuticorin, it was noticed that there were 384 nos. of MS iron plates of size 10 ft. x 5.25 ft. with 5 mm thickness were concealed along with declared cargo as heavy melting scrap. Weight of the iron plates concealed inside the said consignment was 102.520 MTs and that of the HMS scrap was 31.01 MTs. Show Cause Notice was issued to parties along with the appellant herein alleging mis-declaration of the goods. It was alleged against the appellant that they had not obtained any authorization or document from M/s. V.V. Iron & Steel Company Ltd. on behalf of whom they have filed Bill of Entry. After due process of law, the original authority rejected the declaration of description given in the Bill of Entry, imposed penalty of Rs. One lakh under section 112(a) of the Customs Act, 1962 as well as penalty of Rs.5 lakhs under section 114AA of the Customs Act, 1962. The appellant herein approached Commissioner (Appeals) against the said order who upheld the penalty imposed under section 112(a) but reduced the penalty imposed under section 114AA from Rs. 5 lakhs to Rs.2 lakhs. Aggrieved against the said order, the appellant has present appeal.

2. Ld. counsel Shri G. Derrick Sam appeared and argued on behalf of the appellant. He adverted to para 19 of the Order-in-Original and submitted that the allegation against the appellant in the Show Cause Notice is that the appellant had filed the Bill of Entry without obtaining any authorization or document from M/s. V.V. Iron & Steel Company Ltd. Without any evidence the authorities below have reached the conclusion that the appellant has knowingly and

intentionally abetted the misdeclaration of goods in the Bill of Entry. He submitted that as a Customs Broker, the appellant has no knowledge about any mis-declaration of goods. He referred to para 18 of the Order-in-Original and submitted that Shri G. Kamalakannan, MD of M/s. GMV Enterprise India (P) Ltd. who imported the goods originally has given statement that he along with Shri Mahesh of M/s. M.M. Traders went to Dubai and inspected the material. They were informed by the overseas supplier that the goods are rejected MS iron plates. He has asked the shipper to cut the plates before loading but instead of loading the plates after cutting, the overseas supplier has loaded the goods as such. There was no mis-declaration and the allegation is only because plates were not cut into sizes. It is also argued by him that the purchases made by M/s. V.V. Iron & Steel Company Ltd. on high sea sale basis was a DDP transaction wherein the seller has to bear the cost, risk and responsibility for the goods cleared. In the present case, there was an agreement between MM Traders and M/s. V.V. Iron & Steel Company Ltd. that the sale is a DDP transaction. The appellant has therefore received the document from MM Traders who are responsible for all risks with regard to clearance of goods. The appellant therefore has no knowledge or liability as to the alleged mis-declaration if any. He prayed that the penalties imposed may be set aside.

3. The ld. AR Shri Arul C Durairaj appeared for the department. He supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of records, it is seen that the appellant has filed the Bill of Entry of M/s. V.V. Iron & Steel Company Ltd. The high seas

sales between MM Traders and the client of the appellant is a DDP transaction. As per such nature of transaction, the seller bears cost, risk and responsibility for the cleared goods. The seller is thus responsible for import, clearance, duties and taxes that have to be paid. It is therefore the responsibility of MM Traders. Further in the Show Cause Notice, the allegation is that the appellant has not obtained document from M/s. V.V. Iron & Steel Company Ltd. There is no allegation that the appellant has knowingly and intentionally abetted any misdeclaration of goods. On perusal of para 19, the authorities below, though have come to the conclusion that the appellant has abetted making false declaration in the Bill of Entry, there is no iota of evidence furnished by the department to support this conclusion. Further Shri G. Kamalakannan, MD of M/s. GMW Enterprise India Pvt. Ltd. who had originally imported the goods have described the situation how the uncut MS plates came to be shipped into India.

6. After appreciating the overall facts as well as evidences placed before me, there is nothing to establish or prove that the appellant has knowingly or intentionally abetted to make false declaration in the Bill of Entry. Therefore, the penalty imposed under section 112(a) of the Customs Act, 1962 cannot sustain. The penalty imposed under section 114AA would be attracted only if the person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect. In the present case, as I have already held that the appellant has not abetted in mis-declaration of the goods, the penalty

imposed under section 114AA of the Customs Act, 1962 also cannot sustain.

7. From the discussions made above, the impugned order is set aside insofar as the penalties imposed under section 112(a) and 114AA of the Customs Act, 1962 on the appellant. The appeal filed by the appellant-Customs Broker is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex