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

C/40103,40664/2017

[Arising out of Orders-in-Appeal No.151 to 153/2016, dated 15.12.2016 passed by the Commissioner of Customs & Central Excise (Appeals-2), Tiruchirapalli]

M/s. DIAMOND SHIPPING AGENCIES PVT. LTD. APPELLANT/S
M/s. CLASSING SHIPPING CO.

Versus

COMMISSIONER OF CUSTOMS, TIRUCHIRAPALLI RESPONDENT/S
COMMISSIONER OF CUSTOMS, TUTITCORIN

Appearance:

For the Appellant	Shri Y. Michaelraj, Adv.
For the Respondent	Shri B. Balamurugan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing	**24-07-2017**
Date of Pronouncement	**01.08.2017**

FINAL ORDER NOs. 41429 - 41430 /2017

Per Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise out of a common impugned order.

2. The challenge in the appeal is to the penalty of Rs.50,000/- imposed upon M/s. Diamond Shipping Agencies Pvt. Ltd., and Rs.25,000/- imposed on M/s. Classing Shipping Co., in terms of provisions of section 117 of the Customs Act, 1962.

3. Both the appellants are Customs brokers duly licensed under the Customs Brokers Licensing Regulations. They filed shipping bills on behalf of the exporter under the claim of drawback, which was subsequently found to be on the higher side. While imposing

penalties, it stands observed by the lower authorities that the appellants have not applied their mind and had simply acted as the agents to the exporters claiming undue drawback. They have not properly advised their clients and have not guided them to abide by the rules and regulations, resulting in excess payment of drawback to the exporter.

4. The appellants contentions are that they have acted as CHA and have filed the documents based upon the declarations made by the exporter. No *mens rea* cane be attributed to them and there is no determination of the role played by them so as to allege abatement on their part; documents are filed before the Customs authority, who are within their rights to check the same and decide about the entitlement of the drawback.

5. After hearing the learned departmental representatives and after going through the impugned order, I find that the penalties have been imposed upon the importers without attributing any identified role to them. The documents were filed on behalf of the exporter based upon the documents provided to them and there is no allegation of any wrong statement or suppression of any fact. In such a scenario, it can be safely concluded that the appellants were not a party to fraud, if any, committed by the exporter; thus justifying any imposition of penalty upon them.

6. Tribunal in a number of decisions has observed that it is not the CHA's role to check the correctness of the declarations made by importer/exporter. Reference can be made to the Tribunal's decision in the case of *Jay Kay Exports & Industries Vs Commissioner of Customs (Port), Kolkata* reported as *2004 (163) E.L.T.359 (Tri,-*

Kolkata) and in the case of *Raj Television Network Vs Commissioner of Customs, Chennai* reported as *2007 (215) E.L.T.71 (Tri.-Chennai)*.

7. As such, I find no justification for imposition of penalty upon the appellants. The same is accordingly set aside and appeals are allowed with consequential relief to the appellants.

(Pronounced in open court on **01.08.2017**) AP

1/8/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
31-07-2017

Customs, Excise & Service Tax Appellate Tribunal

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Asst. Registrar
सेवा कर
(CESTAT)
चेन्नै / Chennai