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

Appeal No.C/41565/2016

[Arising out of Order-in-Original No.47523/2016 dt. 31.05.2016 passed by the Commissioner of Customs, Chennai-II, Chennai]

Premax Logistics — Appellant

Vs

Commissioner of Customs,
Chennai-II — Respondent

Appearance:

Shri S. Murugappan, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/ Decision :30.03.2017

FINAL ORDER No. 40588/2017

Issue in dispute relates to penalty of Rs.10 lakhs imposed on the appellant under Section 112(a) of the Customs Act, 1962 and Rs.10 lakhs under Section 114AA ibid by the adjudicating authority in the impugned order appealed against.

2. Brief facts of the case are that DRI on specific intelligence stopped two import consignments and found it to contain wooden doors. It was also found to contain foreign brand cigarettes and

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other high valued goods such as branded LED TVs, cosmetics etc. Pursuant to further investigation into live consignments and previous imports of 18 consignments, it appeared to the department that one Shri P.Mahivannan was the main person behind the said import using the IEC of Sri Sai Enterprises owned by Shri Dilli Babu, in collusion with one Shri Akbar of Malaysia. Accordingly, a show cause notice dt. 22.01.2016 was issued, inter alia proposing rejection of the value declared/assessed in respect of the goods imported, demand of differential duty of customs of Rs.7,14,08,175/- and confiscation of the seized goods. Penalties were also proposed on the importers and other concerned persons including the Custom House Agent who had filed Bills of Entry on behalf of M/s.Premax Logistics, appellant herein. After process of adjudication, the lower authority confirmed the proposals in the SCN and, inter alia, imposed penalties of Rs.10 lakhs under Section 112 (a) ibid and Rs. 10 lakhs under section 114AA ibid. on the appellant. Hence this appeal.

2. Today when the matter came up for hearing, Shri S. Murugappan, Ld. Advocate reiterated the grounds of appeal and in particular made the following arguments :

(i) Shri R.M. Nagasundaram, Proprietor of Primax Logistics has deposed that he did not know what was the items imported by Sri Sai Enterprises, however, signed the documents only based on the documents provided to him and accordingly Bills of Entry were filed and he had no role in the smuggling.

(ii) Ld. Advocate states that in any case penalty of Section 114AA cannot be imposed on the appellant since conditionalities of such imposition as given in the section are not satisfied.

2.1 Ld. Advocate further placed reliance on the 27th Standing Committee Report on Finance (2005-2006) introduced along with Taxation Laws (Amendment) Bill, 2005 whereby the said section 114AA was proposed to be inserted in the Customs Act.

2.2 Ld. Advocate contends that the very intention of insertion of the said Section 114AA was proposed consequent to detection of several cases of fraudulent exports which were shown only on paper and no goods had crossed the Indian border. He further contends that there is requirement of knowledge and intention and actual involvement in the use of suchincorrect materials to attract penal provisions under Section 114AA.

2.3 Ld. Advocate relies on the ratio of the following case laws :

(1) CC (Exports), Chennai Vs I. Sahaya Edin Prabhu 2015 (320) ELT 264 (Mad.)

(2) Marshall Machado Vs CC (Export) Mumbai 2015 (330 ELT 334 (Tri.-Mumbai)

3. On the other hand, Ld.A.R vigorously opposes the appeal and submits that the adjudicating authority has clearly concluded inter alia in para-30 of the order that appellant by their acts of commissions and omissions had actively aided and abetted P. Mathiivanan, DilliBabu in arranging the clearances of the impugned 20 consignments by submitting fabricated invoices of the exporter, hence they are liable for penal action under both section 112 (a) and 114AA of the Customs Act.

4. Heard both sides and perused the records.

5.1 It is seen that the role of Shri R.M.Nagasundaram, proprietor of the appellant has been discussed in para-10 of the SCN at page 41 of the appeal papers wherein summary of his voluntary statement has been encapsulated. In his voluntary statement recorded on 31.07.2015 by Customs Officer only, Shri R.A.Nagasundaram has stated that he was approached by one Shri R. Suresh to function as CHA to his customers M/s.Sri Sai Enterprises for importing wooden doors from Malaysia and that the invoices, packing list, bill of lading etc. were brought by said Mr. Suresh only, and he used to file the documents online; that after this point, the remaining works were handled by Shri Suresh, who was the proprietor of Shri Swasthik Enterprises, a freight forwarding agent; that he had never met Shri Dilli Babu; that he did not know about the concealment of cigarettes etc. and that he had never attended the examination and thatMr.Suresh was taking care of these affairs.

5.2. It is also seen from para-11 of SCN, where statement of Shri Suresh has been summarized, the said person also has deposed that Bills of Entry of Sri Sai Enterprises were filed by him only online in the premises of the appellants and that whenever Shri R.Nagasundaram was not available, he used to sign annexures himself. Shri Suresh also confirmed that he used to attend examination and clearance of the consignment.

5.3 Thus even from the statements which are relied in the notice, recorded under Section 108 of the Customs Act, 1962, the

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proprietor of Premax Logistics has disowned his role in the entire smuggling exercise and his protestations thereof are more or less corroborated in the statement of P.Suresh also relied in the notice.

5.4 Nonetheless, nowhere in the notice or even in the impugned order has there been any attempt made to demolish the depositions of said Shri Nagasundaram or Shri Suresh. Even more interestingly, in the entire impugned order spanning 16 pages in 31 paragraphs, there is just one (para-30), which even refers to the role of the appellant. Even this para which has been relied by Ld. A.R comes to an abrupt conclusion without any discussions or findings, that the appellant has committed acts of "omission and commission" and actively aided and abetted the main player. Having done this, adjudicating authority goes ahead to confirm the proposals made in the notice and inter alia impose the penalties appealed against. There is no reasoned analysis as to what was the part played by appellant and how that has resulted in "acts of omission and commission". I do not find any basis for imposition of the penalty for the *raison d'etre* for the high quantum of the penalty imposed has also not been brought out. Viewed in this context, it is but obvious that the adjudicating authority has been unjudicious and peremptory in imposition of the impugned penalty under section 114AA, since, unless it is proved that the person to be penalized, has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under that section. This requirement has not been satisfactorily met either in the notice or in the impugned order and hence I do not have any hesitation in setting aside the same.

6. However coming to penalty under section 112 (a) ibid, notwithstanding the many protestations of the appellant, in an exercise involving import spanning 20 consignments, appellant as CHA cannot claim that they had no inkling of what was going on. No proof is adduced anywhere that he actively involved in the fabrication of false material, nonetheless the very fact that he was connected with the main player involved will definitely indicate some level of knowledge of the modus operandi, even though it may be to a smaller extent. In the event, penalty under section 112 (a) is therefore imposable in this case. However I am of the considered opinion that the penalty of Rs.10 lakhs imposed is unduly high and disproportionate vis-à-vis the role of the CHA as depicted in the notice and in the impugned order. I am of the opinion that the interests of justice in this case would be adequately served by reduction of penalty under Section 112 (a) of the Customs Act, 1962 to **Rs.5,00,000** (Rupees Five lakhs only). Appeal is therefore allowed in the above terms.

(dictated and pronounced in open court)

05/04/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai

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