IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40860 of 2013

(Arising out of Order-in-Appeal C.Cus. No. 347 to 351/2013 dated 12.03.2013 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 101)

M/s. Master Cargo Services **: Appellant**
23/11, Vepery High Road,
II Floor, Periamet, Chennai – 600 003

VERSUS

The Commissioner of Customs **: Respondent**
Airport and Cargo,
New Custom House, Meenambakkam, Chennai – 600 027

WITH

Customs Appeal No. 40861 of 2013

(Arising out of Order-in-Appeal C.Cus. No. 347 to 351/2013 dated 12.03.2013 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 101)

Shri T.R. Jeyakumar, Managing Partner, **: Appellant**
M/s. Master Cargo Services
23/11, Vepery High Road,
II Floor, Periamet, Chennai – 600 003

VERSUS

The Commissioner of Customs **: Respondent**
Airport and Cargo,
New Custom House, Meenambakkam, Chennai – 600 027

APPEARANCE:

Ms. K. Nancy, Advocate for the Appellants

Shri R. Rajaram, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 42323-42324 / 2021

DATE OF HEARING: 14.09.2021

DATE OF DECISION: **17.09.2021**

Order :

The only issue to be decided in both these appeals is the levy of penalty under Section 114 of the Customs Act, 1962 of Rs.50,000/- and Rs.1,00,000/- on the first and second appellant respectively.

2. Heard Ms. K. Nancy, Learned Advocate appearing on behalf of the appellants and Shri R. Rajaram, Learned Assistant Commissioner (Authorized Representative) appearing on behalf of the Revenue.

3. A Show Cause Notice dated 29.03.2012 was issued on the ground that there was mismatch as regards the consignment in the shipping bill were concerned, the package numbers were found to be overwritten, also with regard to the receipt of the consignment which, as per the CHA staff, was received by him at the Air Cargo Complex as against the statement of the exporter who sated that the cargo was taken over by the CHA from the lorry shed at Periamet, etc. The Show Cause Notice also depicts the examination of the concerned persons whose statements were also recorded; also *inter alia* records the obtaining of the certificate of CLRI, Chennai about the certification of the leather sample; that the truthful declaration as to the contents of the consignment *vis-à-vis* shipping bill was not made, thereby misdeclaring the description in order to evade payment of Export Duty and avail undue benefit of drawback claim; that semi-finished leather would attract a higher rate of Export Duty at 60% of the value, most of the boxes in the cargo were declared as finished leather and that therefore, there was an attempt to export 26 bundles of semi-finished leather without payment of Export Duty by the exporter in collusion with the first appellant, who is the CHA, etc.

4. This, according to the Revenue, would have resulted in loss of Export Duty in addition to the exporter claiming undue benefit of drawback claim. The Show

Cause Notice, which was issued to five persons, therefore proposed, in so far as the present appellants are concerned, to levy penalty under Section 114 of the Customs Act, 1962. The serious allegations in the Show Cause Notice culminated in adjudication and the Adjudicating Authority vide Order-in-Original No.279/2012 dated 31.05.2012 imposed a penalty of Rs.50,000/- and Rs.1,00,000/- on the first and second appellant respectively, after ordering for confiscation of the 31 bundles of leather which was attempted to be exported.

5. It is the case of the appellants *inter alia* that on suspicion, the appellants dismissed one of its employees Shri Thangaraj; that the impugned order does not cite any evidence when it states that Shri Thangaraj may be a puppet in the hands of the appellants; that the impugned order is based on no evidence; that it is based on surmise and conjecture; that the penalty has been levied although there is no evidence against the appellants herein as to their involvement, etc.

6. The Learned Departmental Representative supported the findings of the lower authorities.

7. The Show Cause Notice contains the *modus operandi* as to how the appellants were involved and nowhere is it seen that the appellants have offered any rebuttal nor have they negatived such allegations. Further, it is well known that it is the CHA or its staff, who alone can enter into the examination area, where the alleged overwriting on the packages had occurred, which also has not been rebutted by the CHA. The Show Cause Notice also contains that the ultimate beneficiary would be the exporter and the correction/overwriting of bundle numbers could not have been done by the CHA staff without any benefit/instruction, which throws sufficient suspicion as to the collusion of the CHA with the exporter. There is also no denial by the appellants that out of the

31 bundles, only 5 bundles contained finished leather whereas the remaining 26 bundles contained semi-finished leather, which fact was also confirmed by the CLRI upon testing. Further, it is the appellant's admission that their staff had overwritten the package numbers, who was thereafter terminated by them, which also points to a reasonable suspicion; otherwise there was no need for admitting about their staff involving in overwriting of the package numbers.

8. Penalty under Section 114 of the Customs Act is levied for attempt to export goods improperly, etc., by any person who, in relation to any goods, does or omits to do any act or abets the doing or omission of such an act. Here, the above facts and follow-up investigation has clearly revealed that the appellants being CHA, had involved itself in trying to abet improper exportation of 26 bundles of semi-finished leather, with misleading declaration, which would have caused huge Revenue loss, which had rendered itself for confiscation. Hence, it is a case where the provision of Section 114(ii) ibid. is clearly attracted. The penalty has rightly been levied.

9. Accordingly, I do not see any merit in the contentions of the appellants in these appeals.

10. The appeals are therefore dismissed.

(Order pronounced in the open court on **17.09.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd