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

C/40651/2015

[Arising out of Order-in-Appeal No.156/2014, dated 30.12.2014 passed by the Commissioner of Central Excise (Appeals-II), Tiruchirapalli]

M/s.VILLAVARAYAR & SONS APPELLANT

Versus

COMMISSIONER OF CUSTOMS, TUTICORIN RESPONDENT

Appearance:

For the Appellant Shri G. Derrick Sam, Adv.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

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

Date of hearing/decision **05-07-2017**

FINAL ORDER NO. 41138/2017

Per Archana Wadhwa:

The challenge in the present appeal is to imposition of penalty of Rs.25,000/- on the appellant, who is CHA, in terms of the provisions of section 114AA of the Customs Act, 1962 . As per facts on record, the appellant filed bill of lading for export of paper under draw-back on behalf of their customer. As the paper was of different types attracting two different rates of draw-back i.e., 4.4 % and of 2.4%, the bill of lading was filed under the claim of 4.4% draw-back in respect of all the types of paper. This mistake resulted in excess payment of draw-back to the appellant to the extent of Rs.3,71,703/-. Such mistake was detected by the exporter himself and brought to the notice of the CHA, who was handed over two demand drafts of the

Customs, Excise & Service Tax Appellate Tribunal said excess draw-back received by them and which were deposited with the Revenue by the CHA. It stands recorded in the impugned orders that "*It is a fact that their clients voluntarily paid the excess draw-back amount along with interest even before any adjudication or notice*". In spite of that penalty has been imposed upon the CHA on the sole ground that no *mens rea* is required for imposition of penalty.

2. After hearing the learned departmental representative, I find that the imposition of penalty is on the sole technical ground of the error on the part of the CHA. To err is human and every error whether *bona fide* or *malafide* will not attract penalty. Penalty by itself simplicitor suggests penal action, which is required to be taken against a person with the *malafide* mind or fraudulent action. Such simple mistakes cannot be put to penal liabilities on the part of the person concerned, especially when he himself has detected the mistake and rectified the same. As such, I am of view that such imposition of penalty is unjustified and accordingly, I set aside the same and allow the appeal to this extent.

(Dictated and pronounced in open court)

6/7/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
06-07-2017

प्रमाणित प्रति/Certified True Copy

3/6/17

सहायक पंजीकार/Asst. Registrar
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Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते