

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40782 of 2019

(Arising out of Order-in-Appeal C.Cus. I. No. 112 & 113/2018 dated 31.12.2018 passed by the Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri Jaison James

3/353 (11/83), Valiyakalayil,
Onnukkal, Chenerkara,
Pathanamthitta, Kerala – 689 647

: Appellant

VERSUS

The Commissioner of Customs

Chennai-I Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

: Respondent

WITH

Customs Appeal No. 40783 of 2019

(Arising out of Order-in-Appeal C.Cus. I. No. 112 & 113/2018 dated 31.12.2018 passed by the Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri P.S. Sarath

R/o Parambil House, Kallumkootam,
Thekkumkara P.O., Thrissur, Kerala – 686 608

: Appellant

VERSUS

The Commissioner of Customs

Chennai-I Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

: Respondent

APPEARANCE:

Shri P.A. Augustian, Advocate for the Appellant

Shri R. Rajaraman, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOS. 42453-42454 / 2021

DATE OF HEARING: 22.11.2021

DATE OF DECISION: **26.11.2021**

Order:

These two appeals are filed against the common Order-in-Appeal C.Cus. I. No. 112 & 113/2018 dated 31.12.2018 passed by the Commissioner of Customs (Appeals-I), Chennai, against the penalty imposed on the appellants under 'Section 112' of the Customs Act, 1962.

2. Heard Shri P.A. Augustian, Learned Advocate for the appellants and Shri R. Rajaraman, Learned Departmental Representative for the Revenue.

3. Brief and undisputed facts leading to the present dispute are that on 13.06.2015, a courier parcel had arrived from Dubai by flight no. EK 544 dated 11.06.2015 vide House Airway Bill (HWB) No. 6374497882320 and Master Airway Bill No. 17648909862 dated 10.06.2015 bearing the consignee name and address as "Mr. Jaison James, 29/A2, Petal Munnivenkatappa Layout, Nagawara AC Post, Bangalore 560 045" and the consignor name as "Baton Star Trading LLC, AL, RAS, Dubai, UAE"; that the said Bill-of-Entry was filed by M/s. Fed Ex vide Bill-of-Entry No. 28355 dated 11.06.2015 and invoice no. 31811 dated 10.06.2015; that M/s. Fed Ex in their letter dated 11.06.2015 had informed that the said courier parcel consignment may contain commodity other than the items declared in the invoice accompanying the shipment and hence, the said parcel was taken up for detailed examination in the presence of two independent witnesses and representative of the Custodian and authorized courier M/s. Fed Ex; that on close examination of the consignment, it was found to contain 82 kids panties apart from bed sheets, baby garments, ladies garments and ladies undergarments; that on close examination of the kids panties, it was found to contain metal piece in the form of ring coated in silver colour, concealed inside the outer cover of the button of the panty and thus, totally 492 numbers of gold rings totally

weighing 969 grams and totally valued at Rs.26,28,897/- were recovered; that since there was no valid permit / licence / documents for the licit import of the said gold, since gold is not allowed to be imported through courier mode as per the Courier Imports and Exports (Clearance) Amendment Regulations, 1998 and since the consignee had attempted to smuggle the gold by way of concealment and mis-declaration, the Officers seized the same along with the packing materials under Mahazar proceedings.

4. A Show Cause Notice dated 10.06.2016 was issued to the appellants *inter alia* proposing confiscation of the gold which was smuggled into India, apart from proposing to impose personal penalty on both the appellants under 'Section 112' of the Customs Act, 1962.

5. The appellants, in their reply to the Show Cause Notice, have pleaded innocence and contended that they were not aware of the contents of the parcel, but have never denied having known the person who sent those parcels i.e., one Salman. Penalty under 'Section 112' of the Customs Act, 1962 is attracted for improper importation of goods that ultimately makes the goods liable for confiscation under Section 111 *ibid*. It emerges that any person who does or omits to do any act which would render the goods liable for confiscation or abets the doing or omission of such an act is held liable under 'Section 112' *ibid*. and the consequential penalty as well. The proposals made in the Show Cause Notice were adjudicated vide Order-in-Original No. 267/2018 dated 30.03.2018 wherein the same were confirmed. The findings in the Order-in-Original having been upheld in the impugned Order-in-Appeal, the present appeals are filed impugning the same before this forum.

6. After hearing both sides and after going through the documents placed on record, I find that the following vital doubts have remained unanswered by the Revenue,

before fastening the appellants with the liability of penalty:

- (i) There is an allegation of mis-declaration of goods, but was it the sole responsibility of the consignee or, the consignor who booked the parcel has any responsibility to properly declare in the relevant documents as to the contents of the parcel at the time of booking the courier?
- (ii) The role of the courier agency on whose letter filed on 12.06.2015 the Revenue has apparently acted and consequently detained the parcel for examination, was it not expected at that point itself, to ascertain from the courier agency the details of the consignor who was sitting pretty outside India?
- (iii) Apparently, nothing is placed on record as to any investigation on the role of one Salman to link his alleged smuggling activities with the appellants, to establish their connivance in smuggling gold into India through courier.
- (iv) Nothing is placed on record as to how the appellants are treated as importers, to fit in under the mischief of 'Section 112' of the Customs Act, 1962, like the prior agreements, contracts, etc., to justify the penalty under 'Section 112' *ibid*.
- (v) 'Section 112' *ibid*. has two limbs: either (a) or (b); no specific averment is made as to the role of the appellants to justify the levy of penalty. The two limbs under the above Section are specific and hence, the Revenue has to invariably specify the guilt as to whether the same is under (a) or (b).
- (vi) What is the actual role of Appellant No. 2? Mere providing phone number? It is an offence punishable under 'Section 112' *ibid*.?

7. The Revenue, having alleged one Salman as the mastermind, has not bothered to place anything on record, which has left innumerable doubts and questions unanswered, like the above. Penalty, therefore, cannot be imposed on surmises, assumptions and presumptions and there is not even any circumstantial evidence brought on record against these appellants, to justify penalty under 'Section 112'. The one and only allegation against these appellants is that they knew one Salman, the alleged mastermind. They have not even bothered to make proper investigation, and not even of the courier agency who is responsible for couriering the parcel without proper verification, at its end.

8. In view of the above, the penalty levied under 'Section 112' of the Customs Act, 1962 is arbitrary and unjustifiable and accordingly, the impugned order is liable to be set aside.

9. The impugned order as well as the penalty levied under 'Section 112' *ibid.* stands set aside and the appeals are allowed.

(Order pronounced in the open court on **26.11.2021**)

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

Sdd