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

C/41928 - 41929/2013

(Arising out of Order-in-Appeal C. Cus. No. 827 & 828/2013 dated 17.06.2013 passed by the Commissioner of Customs (Appeals), Chennai).

CC (Port- Export), Chennai — Appellants

Vs.

1. Shri P. Illangovan — Respondents
2. Shri V. Sridharan

Appearance

Shri B. Balamurugan, AC (AR),
for the appellants

Shri S. Janani Rajalaxmi, Adv.,
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing: 28.04.2017

Date of Pronouncement: 16-05-2017

FINAL ORDER Nos. 40694-40695 /2017

Being aggrieved with the orders passed by the Commissioner (Appeals) vide which he has set aside the order of the lower authority imposing penalties upon the respondents, Revenue has filed these present appeals.

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2. As per the facts on record, Shri P. Illangovan is a partner of CHA firm M/s. Sri Shipping Services, Chennai, and Shri V. Sridharan is his employee. The said CHA firm filed export documents under the Shipping Bill No. 3794947 dated 23.06.2010, in the name of M/s. Tirupur Pandit Hosiery Mills Pvt. Ltd., declaring the goods to be "combed yarn; waxed for knitting".

3. The matter was taken by the DRI and it was found that the exporter attempted to export "Red sander logs" in the guise of "combed yarn; waxed for knitting". During investigation, statements of various persons were recorded including the statement of the present respondent. It came to be noticed that one Shri David, employee of the M/s. Tirupur Pandit Hosiery Mills Pvt. Ltd., contacted the respondents over mobile phone and e-mail for undertaking the job of CHA and after verifying IEC code number as also the other particulars, the CHA filed the export documents. On the basis of investigations, proceedings were initiated against, inter-alia, the present respondents. It was alleged in the SCN that the said respondents have failed in their duties and have abetted the exporters in fraudulent export activities. The respondents took categorical stand that they were not aware of the substitution of the export goods with the red sander logs and they have followed the KYC norms as per the Customs House Agent Regulations. They particularly pleaded that in the absence of any evidence to show that they were aware of the export of the prohibited goods, the provisions of Section 114 (i), 114AA, 117 of the Customs Act, 1962 cannot be invoked against them.

4. The original authority did not find favour with the contention of the respondents and imposed penalty of Rs. 5,00,000/- on Shri V. Sridharan, in terms of Section 114 (i) along with a penalty of Rs.5,00,000/- under Section 114AA of the Customs Act 1962. Penalty of Rs. 5,00,000/- was imposed upon Shri P. Illangovan under Section 117 of the said Act. On appeal against the above order, the Commissioner (Appeals) set aside the penalties by observing as under:-

> "5. Neither in the SCN nor in the impugned order there was an allegation that the appellants had the knowledge about the illegal goods. The main allegation was that the appellants failed to verify the genuinity of the exporter. Even for that matter the 2nd appellant had instructed the 1st appellant to verify the credentials of the exporters. Hence, he cannot be blamed. Moreover, penalty imposed on him under Section 117 of the Customs Act, 1962, is not at all correct, when the offence, if at all any, was committed under CHAL Regulations and the maximum penalty that can be imposed under that section is R. 1,00,000/- only. It is the irony of fact that nowhere in the SCN action was proposed against the appellants under Customs House Agents Licensing Regulations. The LAA also could not travel beyond the SCN and hence penalties imposed under the section proposed under the SCN, which is legally not maintainable. I find force in the appellants' arguments in this regard. Though appellants could have been easily implicated under the CHALR, since there was no proposal in the SCN, they could escape the clutches of law. This does not mean that the appellants are free from doubt and for the failure of their responsibilities, if proper proposal would have been made in the SCN, they may some times loose their CHA license itself. Hence, this incident may act as caution for their future conduct".

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The said order is impugned by the Revenue.

5. After hearing both the sides represented by Shri B. Balamurugan AC (AR), for Revenue and represented by Ms. S. Janani Rajalaxmi, Advocate, for the respondents, I find that the allegation against the respondents, as made in the SCN are to the effect that they have not fulfilled their duties properly as per the CHA Regulations Act. The reading of the SCN nowhere refers to any evidence to show that the said respondents were aware of the contents of the container, or the substitution of the declared goods with the red sander logs. In these circumstances, the appellate authority has rightly observed that the provisions of Section 114 or 117 cannot be invoked. If they was any violation of CHALR, action could have been taken under those regulations.

6. Tribunal in the case of *Syndicate Shipping Services Pvt. Ltd. Vs. CC, Chennai* – 2003 (154) ELT 756 (Tri.-Chen) has held, in identical circumstances, that the CHA cannot be penalized under the Customs Act, in the absence of any positive evidence on record to show any malafide intention on his part or to establish him as an abettor. Mere failure in carrying out duties in accordance with law cannot be held to be a sufficient ground for imposition of penalty upon him. To the Similar effect, is another decision of the Tribunal in the case of *Shri Boria Ram and others Vs. CC, New Delhi* reported as 2017 (3) TMI 759 (Cestat-ND). For better appreciation the relevant portion from the said order is reproduced as under:

> "Having gone through the impugned order, we find that the main reason for the adjudicating authority to impose penalty on the said

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CHA is that, he has failed to follow the provisions of CHA Regulations, 2013 and they have not adhered to the requirements and thus, are guilty of filing the shipping bills, in utter disregard to the provisions, placed on them by the Regulations. If that be so, we are of the view that violation of any of the provisions of the Customs Broker Licensing Regulations, 2013 would result in revocation of his license, in terms of the said Regulation and in the absence of any evidence to the contrary, will not call for any penalty on the CHA. Actually, we are informed that the proceedings for revocation of thse license were undertaken, resulting in passing of order against him. On appeal, the said order of revocation was set aside by the Tribunal vide its Final Order No. C/A/55604/2016-CU (DB) dated 05.12.2016."

For arriving at the above finding, the Tribunal had relied upon its earlier decision in the case of *M/s. Shiva Khurana Vs. CC, New Delhi,* Final Order No. 55914/2016 dated 15.12.2016, wherein imposition of penalty of Rs. 50,00,000/- on the assesse for not verifying the credentials of the exporter was set aside. In as much as in the present case also the Revenue has not been able to place any evidence on record to show that the said two respondents were aware of the containers being loaded with red sander logs or was a party to such illegal export or acted as an abettor, I am of the view that the Commissioner (Appeals) conclusion is legal and in accordance with law, thus calling for no interference. Accordingly, Revenue's appeals are rejected.

(Order pronounced in the open Court on 16/5/17)

15/5/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

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