

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

C/41580 and 41581/2016-SM

[Arising out of Order-in-Original No.373/2016-AIR, dated 20.05.2016
passed by the Commissioner of Customs, Chennai-VII]

M/s. THE TRADING CORPORATION PVT. LTD.
SATHEESAN B MENON

APPELLANT/S

Versus

(AIR-CARGO)
COMMISSIONER OF CUSTOMS/CHENNAI-VII

RESPONDENT

Appearance:

For the Appellant Shri S.S. Sayed Shuhaibb, Adv.
For the Respondent Shri K. Veerabhadra Reddy, JC (AR)

CORAM:

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

Date of hearing 17-05-2017
Date of Pronouncement 19-05-2017

FINAL ORDER NO. 40722-40723/2017

Per Archana Wadhwa:

The challenge in the present two appeals is to penalty of Rs.10,00,000/- imposed upon M/s. The Trading Corporation Pvt. Ltd. (CHA) and penalty of Rs.5,00,000/- imposed upon Shri Satheesan B Menon, Branch Manager and authorised signatory of M/s. The Trading Corporation Pvt. Ltd., in terms of the provisions of section 112 (a) of the Customs Act, 1962.





2. As per facts on record, the appellant, M/s. Trading Corporation P. Ltd., who is a CHA and his authorized signatory, Shri Satheesh B. Menon filed bill of entries on behalf of one M/s. D.K. Enterprises for import of various chemicals/drugs. Investigations conducted by the Revenue revealed that the import of drugs by M/s. D.K. Enterprises required Form 10, Import licence/ADC clearances from the authorities in terms of the Drugs and Cosmetics Act, 1940. In most of the cases, such import licences were either not produced by the importer or wherever produced, were found to be fake. During the course of investigations statements of various persons were recorded including the statement of Shri Satheesh B Menon, who admitted that he allowed the representative of the import firm to utilize his office premises and to use CHA licence of M/s. The Trading Corporation Pvt. Ltd. He also deposed that he was aware of the clearances of pharma chemicals/raw materials used for manufacture of drugs and pharmaceuticals, which needed import licence/ADC/NOC as per the Drugs and Cosmetics Act, 1940 and he came to know that such imports made by M/s. D.K. Enterprises were without the cover of such licences and NOC.

3. The Commissioner in his present impugned order, while imposing penalties upon the said two appellants observed that by accepting the request of the importer to use the CHA's name for clearance of imports and by handling bill of entries for clearance of the goods without a valid NOC, the appellants have connived with the importer for illegal clearances. He further observed that by permitting the importer to use the CHA's name, he had violated the provisions of CHALR, 2004. Thus, by their various acts of commissions and

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omissions, they abetted the Importer and as such are liable to penalty under section 112(a) of the Customs Act, 1962.

4. On going through the impugned order of the Commissioner, I find that the main ground for imposition of penalty upon the appellants is that he has committed certain violations under the CHALR, 2004, which acts have resulted in clearance of the goods without a proper NOC from the drug control authorities. Admittedly, the goods were cleared by Customs authorities, who were also aware of the fact that the drugs/chemicals in question required Form-10, import licence/ADC-NOC from the drugs and cosmetics authorities. I really fail to understand as to why in the absence of such import licence and NOC, the goods were allowed to be cleared by Customs authorities. The role of a CHA, and his job is only to file the bill of entries. It is inconceivable that a CHA, whose job is only to file bill of entries, making the proper declarations as per the information given by the importer and to assist an importer for clearances of the goods, would be aware of the technical laws of production of various licences for an import of a particular item, so as to invoke penal action against him. There is no evidence on record to show that the present appellants were aware of the fact that the importer does not have the NOC's or the requisite licences are required to be produced before Customs authorities and as such, has abetted the illegal imports.

5. Otherwise also, I find that the adjudicating authority has mainly relied upon the fact of violations of provisions of CHALR, in which case, action is required to be taken against CHA and his employee under the said regulations. Tribunal in the case of *Syndicate Shipping Services Pvt. Ltd. Vs. CC, Chennai - 2003 (154) ELT 756*

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(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 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 the 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."

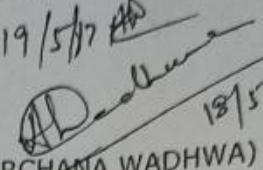
5.1 For arriving at the above finding, the Tribunal had relied upon its earlier decision in the case of *M/s.Shiva Khurana Vs. CC, New Delhi*, Final Order No.55914/2016, dated 15.12.2016, wherein imposition of penalty of Rs.50,00,000/- on the assessee for not verifying the credentials of the exporter was set aside.

6. In as much as, I have already observed that there is no evidence on record to show that the CHA and his employee were aware of the fact of non-production of NOC (in which case, the Customs officers should not have cleared the import consignment),



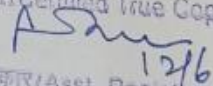
Invocation of the penal provisions of section 112(a) of the Customs Act, 1962 is not justified. Accordingly, the Impugned order, in so far as, the same relates to the present appellants is set aside and both the appeals are allowed with consequential reliefs, if any.

(Pronounced in open court on 19/5/17)


(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
18-05-2017



प्रमाणित प्रति / Certified True Copy

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सहायक रजिस्ट्रार / Asst. Registrar
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अपील अधिकरण / (CESTAT)
चेन्नई / Chennai