IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40019 of 2020

(Arising out of Order-in-Appeal Seaport Cus.II. No. 411/2019 dated 03.10.2019 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri Thirumalai Thiyagarajan **: Appellant**
64/23, Jeevarathinam Salai,
Tondiarpet, Chennai – 600 081

VERSUS

The Commissioner of Customs **: Respondent**
Chennai-II Commissionerate
Custom House, No. 60, Rajaji Salai, Chennai – 600 001

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant

Shri S. Balakumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 40053 / 2022

DATE OF HEARING: 18.01.2022

DATE OF DECISION: **04.02.2022**

Order :

Show Cause Notice dated 22.09.2017 was issued on the grounds of specific intelligence received by the Revenue's Intelligence Unit (DIU) to seven persons / business entities. It is alleged in the Show Cause Notice, *inter alia*, that Bill-of-Entry No. 7994544 dated 28.12.2016 was filed by Customs Broker M/s. Unique Line, Chennai; that on verification of the concerned Bill-of-Lading, it was revealed that the IE Code No. 0415024986 belonged to M/s. J.J. Enterprises, having its registered office, which on verification revealed that M/s. J.J. Enterprises did not function from that premises; that summons issued to the proprietor of M/s. J.J. Enterprises were returned with the postal remark "Left"; that on verification and questioning, the proprietor of M/s. Unique Line (Customs Broker), Mr. A. Prabakaran, is said to have stated that one Mr. Ravichandran, who was known to him, came with another person namely, Mr. Sugumar; that Mr. Sugumar requested him to file the Bills-of-Entry on behalf of M/s. J. J. Enterprises, who also gave him all the necessary documents on behalf of M/s. J.J. Enterprises; that he found that the description of the cargo of the Bill-of-Entry was given as "Furniture" (713 in number of packages); that Mr. Sugumar also told him that he was having business relationship with M/s. J.J. Enterprises; that Mr. Sugumar also revealed that he did not have the Customs Broker licence to file the Bills-of-Entry; that he did not know the proprietor of M/s. J.J. Enterprises; that he came to know about M/s. J.J. Enterprises through Mr. Sugumar, who approached him for filing Bill-of-Entry on behalf of M/s. J.J. Enterprises and also gave him the copy of the IEC certificate and the authorization letter to file the Bill-of-Entry; that he did not even know the contact number of the proprietor of M/s. J.J. Enterprises nor did the proprietor of M/s. J.J. Enterprises contact him. From this, it becomes clear that Mr. Sugumar handed over the IEC in question to M/s. Unique Line, Chennai on the pretext that he knew M/s. J.J. Enterprises, though he is also said to have stated that he did not know anything about M/s. J.J. Enterprises.

2. The Show Cause Notice reveals that upon detailed examination of the goods mentioned in the Bill-of-Entry in question, it appeared that the Revenue had found mismatch in respect of a number of items in respect of some of the serial numbers; that the items in respect of some of the serial numbers were not at all available in the container, which prompted the Revenue to reasonably

believe that the said goods were attempted to be smuggled into India and consequently, all of the relevant documents attached to the said import were seized.

3.1 Thereafter, the Revenue proceeded to examine Mr. Ravichandran who, as indicated by Mr. A. Prabakaran, had introduced Mr. Sugumar. In his statement, Mr. Ravichandran is said to have revealed that it was Mr. Jayakumar, a staff of M/s. Triway Forwarders Pvt. Ltd. (Customs Broker firm), who had introduced Mr. Sugumar to him at Customs House, Chennai; that Mr. Sugumar told him about many import consignments he was having, for which Bill-of-Entry was required to be filed through some Customs Broker and that is how he introduced Mr. Sugumar to Mr. Prabakaran; that he did not ask Mr. Sugumar on whose behalf was he intending to file the Bills-of-Entry; that Mr. Sugumar had told him that he had got few importers for whom he wanted to do clearance work and that he did not know anything about M/s. J.J. Enterprises and nor about its proprietor.

3.2 Based on the above, the Revenue issued summons to Mr. Jayakumar, who *inter alia* is said to have deposed that he knew Mr. Ravichandran for the past five years; that Sugumar had worked with him in M/s. Triway Forwarders Pvt. Ltd. for more than eight years and had left the above firm about two years back; that based on good faith, he had introduced Mr. Sugumar to Mr. Ravichandran and that he did not know anything about M/s. Unique Line, Chennai or M/s. J.J. Enterprises.

3.3 Summons was thereafter issued to Mr. Sugumar, who has *inter alia* stated that he had come in contact with Mr. Hari Prabhu of M/s. Raj Brothers (Customs Broker) whom he had asked for a job; that his brother namely, Mr. Thirumalai Thiyagarajan, who is the appellant herein, gave him about 46 sets of import documents for Customs clearance, out of which he filed Bills-of-Entry for about 40 documents through M/s. Trade Wings (Customs Broker) and 6 documents through M/s. Unique Line; that Mr. Shanmugam, office staff of the appellant, used to give him invoices, packing lists and Bills-of-Lading; that he knew Mr. Ravichandran through Mr. Jayakumar; that Mr. Ravichandran had also introduced him to Mr. Prabakaran; that he did not have any documents relating to the 46 import consignments, which were already handed over; that he did not know any of the importers for whom he did the clearances; that for the above consignments, M/s. Raj Brothers had paid him Rs.20,000/- per Bill-of-Entry and that he did not know the office location of M/s. Raj Brothers.

3.4 Thereafter, the statement of Mr. Hari Prabhu was recorded, wherein he has *inter alia* admitted that he was one of the Directors of M/s. Raj Brothers; that the appellant and their father were the other Directors; that he did not know anything about the importer M/s. J.J. Enterprises; that he and his brother gave Mr. Sugumar 46 import consignments for Customs clearance; that he did not know anything about the Bill-of-Entry in question, which was filed by M/s. Unique Line on behalf of M/s. J.J. Enterprises; that as far as the imports pertaining to M/s. J.J. Enterprises is concerned, his brother, i.e., the appellant, gave the documents to Mr. Sugumar for clearance and he did not know anything about the importer M/s. J.J. Enterprises.

4. Consequently, summons was issued to the appellant, who appeared on 05.09.2017 and has *inter alia* stated that he was a 'F-Card' holder issued by the Chennai Customs Broker Section and was also the Power of Attorney holder for M/s. Raj Brothers Shipping Pvt. Ltd.; that he did not know anything regarding the importer M/s. J.J. Enterprises; that a person named Mr. Simmerjith Singh from Hyderabad gave the documents pertaining to the IEC holder M/s. J.J. Enterprises, on whose instructions he received the documents like Bill-of-Lading No. 958301066 dated 07.12.2016, invoice and

packing list through DHL Courier directly from China; that KYC documents including authorization and IEC number of M/s. J.J. Enterprises were couriered to him by Mr. Simmerjith Singh; that Mr. Simmerjith told him that the consignment imported vide Bill of Lading in question belonged to M/s. J.J. Enterprises, whose proprietor was Mr. Simmerjith's friend, whom he did not even meet; that at the time when he received the KYC documents of M/s. J.J. Enterprises, he was aware of its location, but he did not visit the said firm; that he handed over the said documents to Mr. Sugumar for Customs clearance and that he only acted as an agent between the importer and the Customs Broker as it was the duty of the Customs Broker to fulfil the obligations under the Customs Broker Regulations.

5. The said Show Cause Notice, based on these statements, summarizes that the appellant had received the Bill-of-Lading in question along with packing list and KYC documents from Mr. Simmerjith Singh of Hyderabad, but he did not furnish the complete address of Mr. Simmerjith nor did he reveal the identity of the real importer; that a 'F-Card' holder was expected to know the provisions of the Customs Act, 1962 and the allied acts in addition to all the procedures relating to import / export, but it appeared that the appellant had divulged information selectively to the investigating officers, seeking to exculpate himself in the attempted smuggling and that therefore, the appellant was the mastermind in the attempted smuggling in question. Consequently, it was proposed against the appellant and the co-noticees as to why the impugned goods should not be confiscated under Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962 and as to why penalty under Section 112(a) ibid. should not be imposed on them. Order-in-Original No. 64212/2018 dated 29.06.2018 came to be passed, whereby the Adjudicating Authority confirmed the proposals made in the Show Cause Notice on all the co-

noticees. Thereafter, the appellant herein preferred first appeal before the Commissioner of Customs (Appeals-II), Chennai, and the First Appellate Authority having rejected the same, the appellant has filed the present appeal before this forum.

6. Heard Shri N. Viswanathan, Learned Advocate for the appellant and Shri S. Balakumar, Learned Authorized Representative for the Revenue.

7.1 The contentions of the Learned Advocate for the appellant, *inter alia*, are that the impugned order was *ex facie* illegal and against the settled principles of law; that the First Appellate Authority committed gross injustice by violating the principles of natural justice; that the First Appellate Authority has exhibited clear bias and prejudice apart from exposing his non-application of mind in passing the impugned order in a most unbecoming manner; that the First Appellate Authority has travelled beyond the scope of appeal without considering or analysing the factual and legal submissions made by the appellant; that the First Appellate Authority has erred in confirming the impugned order in as much as it resulted in the confiscation of the goods in question and allowing redemption without naming the importer; that the First Appellate Authority committed gross error and injustice and also exposed his ignorance of law in sustaining the penalty without considering the statutory mandate contained in Section 112(a) of the Customs Act, 1962; that the First Appellate Authority has recorded unreasonable and incorrect findings that the appellant knowingly received documents from Mr. Simmerjith Singh of Hyderabad; that the First Appellate Authority committed gross judicial impropriety in traversing beyond the scope of the Notice to record the finding "otherwise also, from the records, the appellant appears to be a known, repeated offender", without the appellant being a repeated offender; that the First Appellate Authority has erred in sustaining the impugned penalty without considering and understanding that the penalty under Section 112 (a) ibid. was mandated only when a person renders the imported goods liable for confiscation under Section 111 ibid.; and that the Commissioner (Appeals) should have considered the judgement of the Hon'ble High Court of Kerala in *Proprietor, Carmel Exports & Imports v. Commr. of Cus., Cochin* reported in *2012 (276) E.L.T. 505 (Kerala)* and that of the Hon'ble High Court of Bombay in *Hamid Fahim Ansari v. Commr. of Cus. (Import), Nhava Sheva* reported in *2009 (241) E.L.T. 168 (Bom.)* wherein the courts have clearly held that lending of IEC by one to another was not an offence under the FTDR Act.

7.2 He relied on the following decisions/orders:

(i) M/s. R.S. Impex v. Commissioner of Customs, New Delhi [2018 (359) E.L.T. 593 (Tri. – Del.)];

(ii) Ram Lal Kataria v. Collector of Central Excise [1991 (53) E.L.T. 33 (Tribunal)];

(iii) Chandra Shekhar R. Shukla v. Commr. of Cus. (Imports), Nhava Sheva [2019 (370) E.L.T. 1449 (Tri. – Mumbai)].

8. *Per contra*, Learned Authorized Representative for the Revenue supported the findings of the lower authorities.

9. I have considered the rival contentions, have gone through the findings of the lower authorities and have also gone through the decisions/orders referred to during the course of arguments.

10. The only issue to be decided is: whether the penalty under Section 112(a) of the Customs Act, 1962 is rightly levied or not?

11. For the sake of convenience, Section 112(a) ibid. is extracted below:

> *"**Section 112. Penalty for improper importation of goods, etc. —***
>
> *Any person, -*
>
> *(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or …."*

12. By the above, the primary ingredient is that the person need not be an importer; it could be "any person". What is important next is that the person does or omits to do any act, in respect of any goods, by which the goods are made liable for confiscation under Section 111 ibid.; and the third important thing is the act of abetment for doing or omission of such act. The appellant has seriously contended that he is not the person covered under the definition of Section 2(26) ibid. wherein 'importer' is defined. Section 112(a) covers "any person" and hence, this contention of the appellant does not survive. Also, both the authorities below have held that the goods were liable for confiscation for the reasons of misdeclaration and undervaluation.

13.1 When the Bill-of-Entry was filed along with import documents including IEC, suspecting foul play the Revenue chose to investigate, during the course of which statements of the co-noticees were recorded; the first person in the link being Mr. A. Prabakaran of M/s. Unique Line, Chennai (Customs Broker) who identified the second link namely, Mr. Ravichandran, who identified the third link namely, Mr. Sugumar, who identified this appellant as the person who gave him a set of documents of about 46 import consignments. It is worth noting here that Mr. Sugumar is a 'G-Card' holder whereas the appellant herein was possessing 'F-Card'. From the statement of Mr. A. Prabakaran, Proprietor of M/s. Unique Line, it is clear that he was induced by Mr. Sugumar to present necessary papers for Customs clearance in respect of the

Bill-of-Entry in question, by quoting the disputed IEC in question. By the statement of Mr. Sugumar, it becomes quite clear that it was the appellant who induced him to get Customs clearance of the goods in question, including the one covered under the disputed IEC.

13.2 The above shifts the onus on to the appellant to discharge his liability, but the appellant, on the other hand, having named one Mr. Simmerjith Singh of Hyderabad as to the person who gave him the documents pertaining to the IEC holder M/s. J.J. Enterprises and upon whose instructions he received the B/L in question from China, including the KYC documents, has not given any palpable evidence, including the proper address of Mr. Simmerjith Singh.

14. It is worthwhile to mention here that up to this stage, the sequence of events have been correctly vouched by all the co-noticees, in which even the identified persons have accepted their role. The Revenue should have then taken this seriously and should have investigated it further. All the persons alleged to be involved have given somewhat reliable information and hence, a deeper investigation as to the involvement of Mr. Simmerjith Singh was very much essential. It was this Simmerjith Singh who, according to the appellant, gave the IEC of M/s. J.J. Enterprises to him along with the relevant documents and hence, there is no conclusive evidence to term the appellant as the 'mastermind'.

15. The specific case of the Revenue was that there was a mismatch in as much as certain items were missing, the quantity declared was much less than the actual quantity and the undervaluation, which clearly amounts to giving the incorrect figure. When he has admitted to having received invoice and packing list, nothing prevented the appellant from cross-verifying before sending the same for Customs clearance, which was the minimum that was expected of the appellant,

which act amounts to a clear omission, for which penalty under Section 112(a) ibid. appears to be correct. This is also for the reason that similar penalty was imposed on the other co-noticees, who appear to have accepted the same without agitating further.

16. Insofar as the decisions relied on by the Learned Advocate for the appellant are concerned, in the case of *M/s. R.S. Impex (supra)*, the Bill-of-Lading was in the name of the appellant therein and hence, the facts of that case being different from the facts of the case on hand, the said order is distinguishable. In the case of *Ram Lal Kataria (supra)*, it is held that the confession of the co-accused cannot be the sole criterion, but here it is not just the confession, but statement of each person is the link to the whole chain. The same view is taken in *Chandra Shekhar R. Shukla (supra)* and hence, factually, the case on hand stands on a different footing. But however, considering the above facts and circumstances, I am of the view that the quantum of penalty which is normally levied as a deterrent, is very high and hence, the same is directed to be reduced to Rs.10,000/- (Rupees Ten Thousand only).

17. In view of the above, I do not see any reasons to interfere with the findings of the First Appellate Authority, except that the amount of penalty which is ordered to be reduced to Rs.10,000/-.

(Order pronounced in the open court on **04.02.2022**)

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

Sdd