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

C/386 & 387/2008

(Arising out of Orders-in-Original No. 8106/2008 dated 5.9.2008 passed by the Commissioner of Customs, Chennai)

M/s. Vini Exports Pvt. Ltd.
M/s. Navrang Shipping Pvt. Ltd. Appellants

Vs.

Commissioner of Customs, (Import) Chennai Respondent

Appearance

Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **13.09.2017**

Final Order No. 42041-42042/2017

Per B. Ravichandran

These two appeals are against common impugned order dated 5.9.2008 of Commissioner of Customs, Seaport, Chennai.

2. The main appellant (M/s. Vini Exports Pvt. Ltd.) imported woven / knitted fabrics and fled Bills of Entry for clearance without payment of duty in terms of Notification No. 94/2004-Cus. dated 10.9.2004. The second appellant is a licensed

Custom House Agent who processed the clearance of the impugned goods through customs. Based on certain enquiry conducted at the CFS, from where the imported goods were cleared and also based on follow-up investigation, the Revenue proceeded against the main appellant to demand and recover customs duty by disallowing the exemption as above. The allegation against the main appellant is that they have mis-declared the goods which on examination was found to be mainly woven fabrics and not fully knitted fabric. Further, the consignment note recovered from the lorries to transport goods, indicated addresses which are not the authorized address for actual use by the importer in terms of the licence. Follow-up investigation also revealed that the main appellant diverted the imported consignment for other than intended purposes by the other parties and thereby violating the conditions of Notification No. 94/2004 dated 10.9.2004 which clearly stipulates that the exempted materials shall not be disposed of or utilized in any manner except for utilization in discharge of export obligation or for replenishment of such materials and the materials so replenished shall not be sold or transferred to any other person. The notification also stipulates that the details of name and address of the supporting manufacturers are to be clearly mentioned in the licence and the bond executed by the importer should bind themselves for fulfillment of various conditions in the notification. The proceedings initiated against the appellants concluded by the impugned order. The original authority upheld the charge of diversion of imported cargo and demanded the duty forgone amounting to Rs.8,48,867/- apart from ordering confiscation of goods valued at Rs.38,28,532/-. He permitted the redemption of the goods on payment of a fine of Rs.6,00,000/- in terms of Section 125 of Customs Act. A penalty of Rs. 3,00,000/- was imposed on the main appellant under section 112(a) of the Customs Act. The original authority also demanded duty of Rs.40,29,198/- on the past imports on the similar grounds. A penalty of Rs.50,000/- was imposed on the second appellant (CHA) in terms of Section 112(b) of the Customs Act, 1962.

3. When the case is called, none appeared for the appellants. On perusal of the appeal records, we note that these appeals were listed on many occasions and none appeared on behalf of the appellants in spite of notice. The appeals were listed for hearing on 2.3.2017, 24.8.2017 and 6.9.2017. When the matter was listed on 6.9.2017, as a last chance another adjournment was granted to today. We were informed that Registry also informed the counsel on record about the date of hearing. It is learnt that the counsel informed that he has no instruction from the client. Since the matter has been listed many times and adequate opportunity has already been given with due notice to the appellant, we take up these

appeals for disposal based on appeal records with the assistance of ld. AR.

4. The main appellant in their appeal submitted that section 28 will not apply in the present case as there is no short-levy or non-levy of customs duty. It is, further, submitted that there is no need for the importer-manufacture to register with the central excise department. The conditions of Notification No. 94/2004-Cus. have not been violated. It is also submitted that the amendment in the license made by Jt. DGFT in 2006 should be considered retrospectively. Finally, the main appellant submitted that technical breach of any condition could not be held against them. The second appellant (CHA) in their appeal submitted that they are an agent of importer for a limited purpose of clearance through customs and they cannot be fastened with additional burnden regarding conditions for duty-free import of goods. Penalty can be imposed on the person only if he had knowledge or reason to believe that goods are liable for confiscation. No penalty can be imposed for negligence.

5. The ld. AR reiterated the findings of the original authority. He submitted that the evidence gathered by the department like the consignment notes with the lorries loaded with imported goods at CFS, earlier consignments reached unauthorized address, non-existence of facility of own manufacture in the said address, statement by various persons

connected with the import, terms of license clearly will establish that there is a serious case of violation of conditions of notification and import license. It cannot be called as a procedural violation. Any amendment carried out in the license in 2006 will have no implication for cases of past import which were clearly shown to be diverted to other than the intended purpose. Accordingly, he submitted that these appeals are without merit and deserve to be dismissed.

6. On careful consideration of the appeal papers and upon hearing the ld. AR, we note that the main appellant did not at all contest the fact of diversion of these cargo which are imported with the conditional exemption. In fact, what he has mentioned in the grounds of appeal is a plain contest that they have not violated any condition and certain amendments carried out in the license much later. We find that the import consignments were allowed, assessed and cleared without payment of duty based on a due import license issued by DGFT and in terms of exemption Notification No. 94/2004-Cus. The evidence brought out in the impugned order clearly establishes that the import consignments have been mis-declared regarding the contents of the goods. In fact, have been diverted to places other than the ones entered in the license. We find that belated attempt by the main appellant to bring in the address of other companies, as if a supporting manufacturer is not relevant to decide already imported

consignments which were diverted. The evidence examined by the impugned order has not been controverted with any authority. These are corroborated by the drivers, clerk of the CHA and also the jurisdictional officers of the given address who also reported the receipt of the said cargo which were already cleared from Chennai. The overwhelming evidence which is recorded in the impugned order could not be brushed aside. In fact, the main appellant did not bring in any substantial rebuttal on such analysis. Accordingly, we find no reason to interfere with the findings of the original authority.

7. Regarding penalty on the second appellant, we note that ~~as that~~ their knowing ~~the~~ involvement in the violation connected to the impugned goods were clearly brought out in the original order. The original authority recorded that the consignment notes with the address which are not mentioned in the import license were available with the clerk of the CHA who were apparently involved in arranging transportation. The CHA who processed the shipment through customs without payment of duty claiming a particular exemption notification in terms of import license is still aware about the end use of the product. They have knowingly assisted the importer in such diversion of imported cargo. This has been examined and recorded by the original authority in paragraphs 5 and 26 of the impugned order. The manager of the second appellant have in fact confirmed that they are aware of the diversion of the imported

cargo and they were involved in arranging the transport of such diversion. The original authority on careful consideration of the role of the CHA in the above mentioned violations concluded that such action on the part of the second appellant will attract penal consequence. We have no reason to interfere with such finding.

8. In view of the above discussion and analysis, we do not find any merit in the appeals and the same are dismissed.

(Dictated and pronounced in open court)

13.9.17.

(**B. Ravichandran**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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