

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40063 of 2022

(Arising out of Order-in-Appeal Seaport C.Cus.II No.714/2021 dated 23.11.2021 passed by Commissioner of Customs (Appeals-II), Chennai]

M/s.Freight Link Logistics
New No.206, Thambu Chetty Steet,
Chennai-600 001.

Appellant

VERSUS

The Commissioner of Customs
Chennai-II
Custom House, 60, Rajaji Salai,
Chennai 600 001

Respondent

APPEARANCE :

Shri Gokul Raj, Advocate
For the Appellant

Shri S. Balakumar, AC (AR)
For the Respondent

CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

**DATE OF HEARING : 11.04.2022
DATE OF PRONOUNCEMENT: 13.04.2022**

FINAL ORDER No. 40133 / 2022

The appellant, who is a Licensed Customs Broker, has filed the above appeal against the order passed by Commissioner (Appeals) who has confirmed the penalty of Rs.50,000/- imposed by the original authority under Section 112 (a) of the Customs Act, 1962.

2. Brief facts of the case are that the appellant who is the customs broker had filed Bill of Entry dated 03.05.2016 on behalf of the importer namely M/s.Vaaraahi Traders. As per the import documents, the goods were 50 ml. Water Bottles and the weight declared was 8345 Kgs. It was also noted that the importer had claimed the benefit of Notification No.21/2012-Cus. dated 17.03.2012 claiming the exemption from payment of 4% SAD. The Department was of the view that the imported goods did not fulfil the criteria stipulated in the said notification. Based on intelligence gathered by SIIB that the consignment contained undeclared goods as well as the excess quantity, the consignment was subjected to examination. It was found in excess of 9340 Kgs. as against the declared weight of 8345 Kgs. Thus, there was excess weight of 995 Kgs. Further, the consignment contained 'Vacuum Flask' which was not declared as per the import document. The appellant was thus trying to evade customs duty for which proceedings were initiated. Show cause notice was issued against the importer as well as the appellant who is the Customs Broker. It was alleged that the appellant dealt with unauthorized person instead of dealing with the actual IEC holder thereby violated KYC norms. After due process of law, the original authority imposed penalty of Rs.50,000/- against the appellant under Section 112 (a) of the Customs Act, 1962. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of the appellant Ld. Counsel Shri Gokulraj appeared and argued the matter. He submitted that in the course of business the appellant, who is a customs broker, filed Bill of Entry dated 03.05.2016 and 09.05.2016 on behalf of the importer M/s.Vaaraahi Traders, Chennai.

The appellant had filed documents based on the import documents provided by the importer. After examination, it was found that the actual weight of the consignment was different as against the declared weight and also that the cargo contained certain undeclared items such as Vacuum Flask. On the basis of such excess weight and undeclared goods, the consignment was seized. The show cause notice dated 31.01.2019 has been issued against the appellant proposing to impose penalty under Section 112 (a) of the Act.

4. The allegation against the appellant is that they dealt with the unauthorized person other than the IEC holder. The entire case of the department is based on statements. During investigation, Shri S. Raja, husband of the Proprietrix of M/s.Vaaraahi Traders stated that he was fully aware of the import made by Shri A. Govindaraj using the IE Code of M/s.Vaaraahi Traders and also he was aware that clearing works were done by the appellant. Merely based upon these statements, the appellant has been held responsible. The appellant has been charged with violation of various provisions under the Customs Act,1962.

5. In fact, the appellant has exercised due diligence by collecting the IEC, KYC and import documents directly from the importer namely M/s.Vaaraahi Traders. In terms of Circular No.9/2010-Cus. dated 8.4.2010, the responsibility of a Customs Broker is discharged when he collects the KYC documents mentioned in the said circular. The appellant had no knowledge about the excess weight or undeclared goods. The documents have been prepared and filed as per the declaration contained in the import documents. Further allegation of the department is that the

goods were imported by Shri A. Govindaraj using the IEC code of M/s.Vaaraahi Traders. The appellant has absolutely no knowledge about the business dealings between M/s.Vaaraahi Traders and Shri A. Govindaraj. When the IEC code as well as the KYC documents are clear, the appellant cannot be said to have violated any provisions of the Customs Act merely for the reason that the consignment contained goods which are undeclared. He adverted to the statement of Shri S. Raja in para-7 of the show cause notice to argue that the entire allegation is on presumption and assumption.

6. Ld. Counsel pointed out that in paras 24.12 and 24.13 of the OIO, the adjudicating authority has observed that the appellant has not exercised due diligence and has dealt with unauthorized person instead of dealing with the actual IEC holder. In fact, the appellant had obtained the documents from the importer directly and there is no allegation that the IE Code or the import documents are fake. The findings by the adjudicating authority that the goods have been imported for the benefit of Shri A. Govindaraj and therefore the appellant has dealt only with Shri A. Govindaraj is wholly misconceived. He prayed that the appeal may be allowed.

7. Ld. A.R Shri S. Balakumar supported the findings in the impugned order.

8. Heard both sides.

9. The appellant is aggrieved by the penalty of Rs.50,000/- imposed under Section 112 (a) of the Customs Act. The said section reads as under :

“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
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.”

10. The case of the department is that the goods which are imported are intended for use of Shri A. Govindaraj and that not for the benefit of the importer himself. The Customs Act does not say that the goods imported should be used by the importer only and that importer cannot sell the goods to any other person. The findings of the adjudicating authority for imposing penalty on the appellant is as under :

“24.16 I also find that, Shri A. Govindaraj has accepted vide statement given under section 108 of Customs Act, 1962 that he is the importer / purchaser of goods and hence he is the beneficiary of the consignment. Therefore, he being the beneficiary of the said imported goods is liable for penalty under section 112 (a)/ 114A of Customs Act 1962 for deliberate mis-declaration of description and quantity of the goods imported vide the two Bills of Entry No.51333904/03.05.2016 and 520086/09.05.2016.”

11. In the present case, it is not disputed that M/s.Vaaraahi Traders are licensed to import goods and that their IE Code is valid. The case set up by the department is that the goods imported are for the use / purchase of Shri A. Govindaraj and not for the use of M/s.Vaaraahi Traders. There is no law which prohibits the importer to sell the goods to another after importing the same. It is also brought from evidence that the appellant has nothing to do with excess weight or undeclared goods in the consignment. The penalty imposed on the allegation that the goods imported are not for use of the importer but for the use / sale to another person would not attract ingredients of section 112 (a) of the Customs Act, 1962.

12. From the discussions made, I find that the penalty imposed is totally unwarranted. The impugned order to the extent of imposing penalty of Rs.50,000/-under Section 112 (a) of the Customs Act is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court on 13.04.2022)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**

gs