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

COURT HALL No. III

(1) CUSTOMS APPEAL No. 41484 OF 2016

(Arising out of Order-in-Original No.721/2015-AIR dt. 27.08.2015 passed by Commissioner of Customs (Airport & Aircargo), New Custom House, Meenambakkam, Chennai 600 027)

Mr. I.C. Kannan **.... Appellant**
S/o K.V. Chitravel,
No.13, Gopalakrishna Street,
Thiruvallurvar nagar,
Chennai 600 106.

Versus

The Commissioner of Customs **...Respondent**
New Custom House,
Meenambakkam,
Chennai 600 027.

AND

(2) CUSTOMS APPEAL No. 40623 OF 2017

(Arising out of Order-in-Original No.721/2015-AIR dt. 27.08.2015 passed by Commissioner of Customs (Airport & Aircargo), New Custom House, Meenambakkam, Chennai 600 027)

Mr. R. Naveen Kumar **.... Appellant**
No.4/17, Amravathy Nagar,
1st West Cross Street, Arumbakkam,
Chennai 600 106

Versus

The Commissioner of Customs **...Respondent**
New Custom House,
Meenambakkam,
Chennai 600 027.

APPEARANCE :

Mr. E.J. Ayyappan, Advocate (Sl.No.1)
Mr. Hari Radhakrishnan, Advocate (Sl.No.2)
For the Appellant

Mr. Harendra Singh Pal, Assistant Commissioner (A.R)
For the Respondent

<u>CORAM</u> :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 03.08.2023
DATE OF DECISION : 21.08.2023

<u>FINAL ORDER No.40704-40705/2023</u>

ORDER : Per Ms. SULEKHA BEEVI, C.S.

These two appeals arise out of the same impugned order and were heard together and are being disposed of by this common order. The appellants are referred to by their names hereafter.

2. Brief facts are that the Directorate of Revenue Intelligence, Chennai Unit, on receipt of specific intelligence that gold jewellery and other commercial goods are being smuggled from Singapore through Courier parcels booked through M/s.UPS Jet Air Express Pvt. Ltd. and arriving by Flight on 18.01.2013, arranged for surveillance of the clearance of the courier parcels. The officers obtained 58 pieces of courier parcels from the custodian at the Courier Terminal Chennai Airport. Shri Vijay, who is the custodian, submitted a statement showing the courier wise break up of the 58 pieces. It was found that 34 pieces of courier parcels were booked through M/s.UPS Jet Air Express Pvt. Ltd. The parcels were scanned in the presence of Mr. Naveen Kumar, the appellant in appeal No.C/40623/2017. On

detailed examination, it was found that images in the scan did not match with the declarations made. The shipper of two consignments covered by air way bill was found to be M/s.JRG TECH Pte Ltd. Singapore and the consignee in India was shown as Mr. Gauri Nandanam, Tiruvallur Chennai. As per the invoice cum packing list, the cartons were declared to contain 50 nos. of Booklets, 10 nos. of Cables and Accessories and 50 nos. of Printing sheets with a total value of 840 SGD (INR 36800). No specific import documents towards import of the said goods (bill of entry) were filed in respect of the airway bills. On opening and examining the cartons it was fond to contain 10 nos. of Sony High Definition Digital Video Cameras without battery and accessories, 203 nos. of “Titan” branded watches of various models and 10.475 kgs. of 22 carat gold jewellery concealed in one Martine Roland brand audio receiver by removing its inside components. The total value of the impugned goods were arrived at Rs.3,32,51,885/-. Since it appeared that the impugned goods were smuggled into India without any declaration and payment of duty, the officers seized the same under mahazar dt. 18.01.2013. The seized goods were handed over at Customs Airport warehouse for safe custody.

3. On verification of the address of the consignee, Sri Gouri Nandanam, it revealed that no person is available by the such name in the said address. Shri Naveen Kumar Border clearance

officer of M/s.UPS Jet Air Express Pvt. Ltd. was summoned and his statement was recorded under Section 108 of the Customs Act, 1962. He stated *inter alia* that he has a friend by name Shri Kannan (appellant in appeal no.C/41484/2016) whom he knew for the past 8 years; that Shri Kannan used to do customs clearance for M/s.DPEX Courier and he along with Kannan joined M/s.Aviation Star. During January 2013, Shri Kannan approached him and requested to clear courier consignments, which were arriving by M/s.UPS Jet Air Express Pvt. Ltd. Sri Kannan said that the consignment contained cameras meant for his friend. Sri Kannan also stated to him that the said consignments would be declared as booklets. Sri Kannan promised to give Rs.5000/- for each consignment cleared and that he has cleared 7 such consignments for Sri Kannan. It was deposed by Naveen Kumar that Kannan used to inform the details of airway bills of the consignment over phone and was responsible for customs clearance; that he (Naveen Kumar) used to download import manifest of M/s.UPS Jet Air Express Pvt. Ltd. from the server and would remove the airway bills from the manifest. Sri Naveen Kumar would then take the altered manifest to the courier terminal for submission to customs custodian. The packages would be declared as documents and would be cleared as documents so that such packages are not scanned. As per the instructions of Sri Kannan, Shri Naveen Kumar used to give packages to Kannan's friend waiting outside and Sri Kannan used to pay him for such work. It is stated that he used to later update the system at the office of M/s.UPS Jet Air Express Pvt. Ltd. to show that the packages was cleared to an agent; that whenever Sri Kannan's consignment comes, he would go to the terminal personally to clear the consignment. Sri Naveen Kumar was arrested on 28.01.2013 and remanded to judicial custody. Subsequently, he was released on bail.

4. Statement of I.S. Narayanan, General Manager of M/s.UPS Jet Air Express Pvt. Ltd. as well as the statement of Sri Kannan and others were recorded. Sri Kannan appeared before the officers and the statement was recorded on 15.05.2013 and on various other dates where he stated that he joined DPEX Worldwide in 1999 as field staff and was promoted as Operation In-charge and became Manager in the year 2001. He looked after courier clearances and he joined Air Bridge Express in 2004. He stated that the consignment booked in the name of Sri Gauri Nandanam was given to him for clearance by one Sri Ganesh and he met Sri Ganesh in October 2012 when he went to purchase a camera etc. for him through one Sri Durai. It is stated by Kannan that Sri Ganesh is the son-in-law of Sri Durai and he knew Sri Durai for the last 5 years. Sri Durai used to get him electronic goods at cheaper rates and Sri Durai also dealt with second hand cars. Sri Kannan stated that he met Sri Vijay, son of Sri Durai two years back in Singapore for purchase of computers and other

electronic goods through one Sri Kabilan, Singapore and that Sri Kabilan is his childhood friend. During October 2012, Ganesh and Durai asked him whether he can do clearance of courier consignments imported by them from Singapore. Sri Ganesh asked him to arrange for customs clearance without detection of Customs. It is stated that Sri Ganesh informed that one Sri Mahadev of M/Jupiter Import Export Pte Ltd., Singapore would be doing the bookings in Singapore and that the consignments will be of 25-30 Kg. each and would be declared as booklets, manuals, wires etc. Sri Kannan told Ganesh that he had a friend in doing import Courier (Naveen Kumar) who could help him in clearing the consignments. It is explained by Kannan that after the consignments are booked from Singapore, Sri Ganesh and Durai would inform the relevant airway bills to Sri Kannan who in turn would inform the same to Naveen Kumar over phone. After the customs clearance, Sri Ganesh or Durai would send Sri Krishnakumar or Kabilan to collect the said consignments from Kannan outside the courier terminal. Sri Kannan would inform Sri Naveen Kumar over phone as to whom the consignments is to be handed over; that Kannan has arranged such clearances through Naveen Kumar since October 2012. Sri Kannan was arrested on 15.05.2013 and remanded to judicial custody. Subsequently, he was enlarged on bail.

5. Based on the above investigations, present show cause notice dt. 11.07.2013 was issued under Section 124 of the Customs Act, 1962 against the appellant. After due process of law, the original authority imposed a penalty of Rs.10 lakhs on Sri I.C. Kannan under Section 112 (a) of the Customs Act, 1962 and a separate penalty of Rs.25 lakhs under Section 114AA of Customs Act, 1962. So also penalty of Rs.10 lakhs was imposed Sri Naveen Kumar under Section 112 (a) of Customs Act, 1962 and Rs. 25 lakhs under Section 114AA of Customs Act, 1962. Aggrieved, appellants are now before the Tribunal.

6. Ld. Counsel Sri Hari Radhakrishnan appeared and argued for the appellant Sri Naveen Kumar. It is submitted by the Ld. Counsel that the appellant was an employee of M/s.UPS Jet Air Express Ltd. (Authorized Courier Service) from April 2012 onwards and worked as border clearance officer. Sri Naveen Kumar used to draw salary of Rs.23,000/- per month. It is submitted that penalty imposed on him is based only on the statement recorded from him. These statements were forcibly recorded and are not voluntary. In the impugned order, it is alleged that Sri Naveen Kumar had clandestinely cleared high value electronic goods and had smuggled gold jewellery. It is also alleged that Naveen Kumar had entered into a conspiracy arrangement to smuggle gold jewellery and high value electronic

goods in collusion with Sri Durai, Ganesh, Vijay Anand and I.C Kannan. The Ld. Counsel argued that Kannan has only admitted that he knew that some electronic goods were concealed in the consignment. It is submitted that Sri Naveen Kumar and Sri Kannan were under the impression that there were only documents and electronic goods in the consignment and was not aware that gold jewellery was concealed. Sri Kannan and Naveen Kumar did not know the actual description of the imported goods in the consignments. There is no knowledge about the fact that gold was being smuggled and therefore huge penalty imposed is not sustainable. It is argued by the Ld. Counsel that in the case of *Vishnu Kumar Delhi Vs CC* 2010 (260) ELT 365 (Del.) it has been held that to sustain charge of abetment the ingredients of Section 107 Indian Penal Code has to be established. In the present case, there is no intention on the part of Naveen Kumar to abet an offence and therefore the allegations do not stand proved by the department. Sri Naveen Kumar or Sri Kannan did not have any combined plan and therefore cannot be alleged to have abetted the incident.

7. With regard to the penalty imposed under Section 114AA of the Customs Act, 1962, it is submitted by the Ld. Counsel that said section is not attracted in the facts of the case. There is no *mens rea* established on the part of Naveen Kumar to create fraudulent documents. Further, the said section cannot be applied in the case of

imports and is applicable only to exports. That Sri Naveen Kumar has not deliberately or intentionally made any false declaration in any document. There is no evidence that Sri Naveen Kumar fraudulently created documents for import of goods and therefore penalty imposed under Section 114 AA is not warranted. Ld. Counsel prayed that penalties may be set aside.

8. Ld. Counsel Sri E.J. Ayyappan appeared for the appellant, Sri I.C. Kannan and submitted that Sri Kannan did not know Sri Ganesh. So also, Sri Kannan was not aware that gold jewellery was concealed in the consignment. It is submitted by the counsel that Kannan had not introduced Sri Ganesh to Sri Naveen Kumar. He only gave the details of airway bills of parcels to Naveen Kumar for priority clearances. He did not know the contents of the consignment and was under impression that it contained documents. He was not aware that gold jewellery was hidden in the consignments. The penalty under Section 112 (a) cannot sustain for this case. Sri Kannan had never gone to the courier terminal at the airport and had nothing to do with the activities at the terminal. Such activities were handled only by Sri Naveen Kumar. It is submitted that penalty under Section 114AA cannot sustain for the reason that Sri Kannan had not created any fraudulent documents or presented any documents for import of the goods. Ld. Counsel prayed that the penalties imposed may be set aside.

9. Ld. A.R Sri Harendra Singh Pal appeared for the Department and argued the matter. It is submitted by the Ld. A.R that Sri Naveen Kumar and Sri Kannan along with the connivance of Ganesh, Durai, Vijay Kumar etc. have continuously been engaged in clandestine clearance of undeclared goods. The incidence would not have come to light but for the surveillance and interference by the D.R.I officers. Sri Naveen Kumar & Kannan had formed a plan for clearance of undeclared goods in a very clever manner by changing the import manifest in the computer office system of the authorized courier service and thereafter producing the false manifest at the courier terminal for clearance of the goods. It was Naveen Kumar who was in-charge of the clearance of the goods on behalf of the authorized courier at the courier terminal of the airport. The said Naveen Kumar has admitted making changes in the office system so as to make it appear that the consignment contain documents in order to get the goods cleared without being scanned and detected by the customs authorities. So also, it has been admitted by Sri Naveen Kumar that it was Kannan who had introduced him to Sri Ganesh and others. None of the consignees in whose name imports were made were traceable. The appellants have thus fabricated the documents by giving false address of consignees and also importing undeclared goods. Sri Kannan and Sri Naveen Kumar have been operating hand in hand to clear the goods for making illegal gain for themselves, the

penalties imposed are legal and proper. Ld.A.R prayed that the appeals may be dismissed.

10. Heard both sides.

11. The statement recorded from Sri Naveen Kumar under Section 108 of the Customs Act, 1962 has revealed that Sri Kannan used to inform the airway bill details of the arriving consignment over phone or in person. Sri NaveenKumar was responsible for the customs clearance. Sri NaveenKumar used to download the import manifest of M/s.UPS authorized courier from the server and then would remove the particular airwaybills from the manifest. He would then take the altered manifest to the courier terminal for submission before the custodian. The particular packages would have been declared as documents which are excess arrived and would be cleared as documents without being scanned and detected by customs authorities. He would hand over the parcels to the person awaiting as directed by Sri Kannan, and receive cash for this work. Sri Naveen Kumar would later update the system to show that package was cleared to an agent.

12. Apart from the goods covered by the two airway bills seized by D.R.I as per the statement, Sri Naveen Kumar has cleared earlier goods covered by 85 airway bills for Kannan. It is also admitted by Sri Naveen Kumar that he followed the same modus operandi for clearing the above airway bills. From the above, it can be seen that

Sri Naveen Kumar and Sri Kannan were fully involved and acted together in the illegal activity of importing the undeclared goods. The narration of facts itself bring out the *mens rea* and overt act of Sri Naveen Kumar, and Sri I.C. Kannan. The goods which have crossed the barrier of the country without declaration and without payment of duty are liable for confiscation under Section 111 (d) of the Customs Act, 1962. Thereby the act of the appellants attracts imposition of penalty under section 112 (a) of the Customs Act, 1962. However, we find that penalty of Rs.10 lakhs imposed under Section 112 (a) of the Act is on the higher side and requires to be reduced. The penalty imposed under Section 112 (a) on each of the appellant is reduced to Rs.5,00,000/- (Rupees Five lakhs only).

13. The original authority has imposed penalty under section 114AA on both Sri Kannan as well as Sri Naveen Kumar to the tune of Rs.25 lakhs each. The said section reads as under :

> **"SECTION 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

14. As per the said section, if the person knowingly or intentionally makes, signs or uses, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of

any business under the Customs Act is liable for penalty. In the present case, the role of Sri Naveen Kumar in presenting false documents for getting the clearance of the undeclared goods is established beyond doubt. He has admitted that he used to delete the details of the airway bills in the office computer and prepare false import manifest and present the same before the customs authorities for clearance of the consignment. Further, in the present case, the whereabouts of the consignee were not traceable. On investigations, it was revealed that there is no such person in the given address. These are nothing but paper transactions. The imports were made only for the benefit of appellants and their allies. A person who causes to be made, signed or used any declaration or document is also liable under Section 114AA. Sri I.C. Kannan had caused Sri Naveen Kumar to make the false documents. It is Sri I.C. Kannan who had informed Sri Naveen Kumar the details of airway bills so as to manipulate the import manifest. So both appellants are guilty and liable for penalty liable under Section 114AA. On appreciation of facts, we find that penalty of Rs.25 lakhs under Section 114AA is on the higher side and requires to be reduced. The penalty imposed under this section is reduced to Rs.10,00,000/- (Rupees Ten lakhs only) on each of the appellants.

15. In the result, the impugned order is modified to the extent of reducing the penalties as ordered below :

(i) Penalty imposed under Section 112 (a) on Sri Naveen Kumar and Sri I.C. Kannan is reduced from Rs.10 lakhs to **Rs.5 lakhs (Rs.Five lakhs only) each.**

(ii) Penalty imposed on Sri Naveen Kumar and Sri I.C. Kannan under Section 114AA is reduced from Rs.25 lakhs to **Rs.10,00,000/- (Rupees Ten lakhs only) each.**

Appeals are partly allowed in the above terms.

(pronounced in court on 21.08.2023)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(SULEKHA BEEVI C.S.)
Member (Judicial)

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