CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No.42432 of 2014

(Arising out of Order-in-Appeal No.75/2014 dated 13.08.2014 passed by Commissioner of Central Excise (Appeals), Tiruchirappalli)

MKS Shipping Agencies Pvt Ltd ..... **Appellant**
No.26E/7A, Kamaraj Nagar,
Tuticorin – 628 008.

VERSUS

Commissioner of Customs, ... **Respondent**
Custom House,
New Harbour Estate,
Tuticorin – 628004.

APPEARANCE :

Shri K.S. Murugan, Proprietor, for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM :

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

FINAL ORDER No.40685/2024

DATE OF HEARING : 14.06.2024
DATE OF DECISION : 14.06.2024

Per Ms. Sulekha Beevi. C.S

Brief facts are that Shri. K.S. Murugan, who is the Proprietor of appellant firm, which is Custom House Agent, imported goods. The Bill of Entry was filed by the CHA firm for the import of 1976.10 kgs Polyester Nylon Warp Knitted Fabrics and 8511.90 kgs of Nylon Warp Knitted Fabrics. The goods were purchased on High Seas Sales by

M/s. Murugan KS under an agreement dated 15.11.2011. On examination of the cargo, the custom officers found that the container was stuffed with bales of square net fabric bearing slip as "Semi Dull" and "Bright". It was noted that the value declared was very low. The department conducted investigation with regard to misdeclaration of the goods and also under-valuation of the goods. The appellant as well as the main importer were issued show cause notices. After due process of law, the original authority rejected the assessable value and redetermined the assessable value. The goods were ordered to be confiscated and redemption fine was imposed. Penalty was imposed on the importer Shri. K.S. Murugan. Separate penalty of Rs.5,00,000/- was imposed on the appellant (CHA) under Section 112(a) and 114AA of the Customs Act 1962. Aggrieved by the imposition of penalty, the appellant is now before the Tribunal.

2. The appellant in person appeared and argued before us. It is submitted that Shri. KS Murugan, who is the importer, had also filed appeal before the Tribunal as Customs Appeal No.42100/2013. The said appeal was heard and disposed of by Final Order No.40636/2023 dated 03.08.2023. The Tribunal had set aside the enhancement of value, confiscation of goods and also penalties imposed against the importer Shri. KS Murugan. It is submitted that the appellant is only a co-noticee and since the entire proceedings against the main appellant has been set aside, the penalty imposed against this appellant may also be set aside.

3. The Ld. AR. Shri. N. Satyanarayanan supported the findings in the impugned order.

4. Heard both sides.

5. The Miscellaneous application for change of cause title filed by department is allowed.

6. From the facts narrated above, it can be seen that the appeal filed by the main appellant has already been disposed of by the Tribunal setting aside the enhancement of value, confiscation of goods as well as the redemption fine and penalties. The appellant is only a co-noticee being the CHA who has filed the bill of entry. When the penalties against the main appellant has been set aside, the penalty imposed upon the present appellant under Section 112(a) and 114AA cannot sustain.

7. The discussions by the Tribunal vide Final order dated 03.08.2023, while setting aside the proceedings against the main appellant is as under:-

> *22. We find there was no allegation that the importer has mis-declared the description of goods or whether any excess quantity found or whether there is any mis-declaration of brand or country of origin or type or as to any other aspect in relation to imported goods.*
>
> *23. We also find that the appellant has clearly explained the sequence of events in respect of impugned goods as to what rate the manufacturer has sold the goods to M/s. J.S. Fashions (L.L.C), Dubai and at what rate M/s. J.S. Fashions has sold to M/s. Sainath Knitex Pvt. Ltd., Surat and considering the rate at which he has purchased the goods on „high seas sales" from M/s. Sainath Knitex Pvt. Ltd., Surat and considering the fact*

> *that Department"s reliance was mainly on the basis of the values declared by M/s. Star Mint Fields Pvt. Ltd., Surat, we hold that enhancement resorted to is not legally justified and so un-sustainable. We also find that redemption fine and penalty imposed on the appellant are dis-proportionately high when compared to the declared value of the impugned goods at Rs.27,93,043/- which was enhanced to Rs.48,59,847/-.*
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> *24. In view of the above discussion, we order to set aside the impugned order No. 132/2013 dated 28.06.2013 as not sustainable. Consequently, we hold that confiscation of the imported goods, imposition of redemption fine and penalty on the appellant are not legally justified and so set aside. The appeal is allowed with consequential relief, if any, as per law.*

8. In view thereof, we find that the penalty imposed under Section 112(a) and 114AA cannot sustain and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Order dictated and pronounced in the open court)

(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI. C.S)**
Member (Technical)	Member (Judicial)

psd