CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40152 of 2023

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 704/2022 dated 28.11.2022 passed by Commissioner of Customs (Appeals-II), Chennai)

V R Adarsh Proprietor ..... **Appellant**
VR Logistics,
No.8/725-1, Thotapalayam, Chittoor,
Andhra Pradesh – 517 001.

VERSUS

Commissioner of Customs - Sea .... **Respondent**
Chennai – II, No. 60, Rajaji Salai,
Customs House, Chennai – 600 001.

APPEARANCE :

Shri S. Sankaranarayanan, Advocate, for the Appellant
Shri Harendra Singh Pal, Authorised Representative for the Respondent

CORAM :

HON'BLE MR.K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER No.41232/2024

DATE OF HEARING : 20.09.2024
DATE OF DECISION : 20.09.2024

Per K. ANPAZHAKAN,

The Appellant has filed this appeal against the imposition of penalty under section 112 (a) of the Customs Act 1962.

2. The facts of the case are that the appellant is a CHA, entrusted with the work of filing the Bills of Entry by the importer M/s. Kaamdaa Impex. In respect of the Bills of Entry Nos. 4375735 and 4375733, on examination of the consignments, the officers found there was misdeclaration of the goods. Accordingly, notice was issued to the importer as well as the CHA. On adjudication, the learned adjudicating authority ordered confiscation of the goods. The adjudicating authority also imposed a penalty of Rs. 80,000 on

the appellant under section 112(a) of the Customs Act 1962. On appeal, the learned Commissioner (Appeals) has reduced this penalty from Rs. 80,000 to Rs. 40,000. Aggrieved against the confirmation of the penalty, the appellant filed this appeal.

3. The appellant submits that the CHA cannot be held responsible for misdeclaration of the items declared in the bills of entry. In this case, the Manager of the CHA company has misused the digital signature of the authorized representative of the appellant company. For which, separate action has been initiated by the appellant by filing a police complaint. Accordingly, he submits that penalty under Section 112(a) is not warranted in this case as the ingredients mentioned in the said section are not present in this case. In support of his contention, he relied on the decision in the following cases:-

(a) Rajesh Maikhuri Vs Commissioner of Customs, New Delhi reported in 2018 (363) ELT 274, (Tri. Del).

(b) Commissioner of Customs Import Vs. Trinethra Imper Pvt. Ltd., reported in 2020 (372) ELT 332.

By relying on the decisions cited above, the appellant prayed for setting aside the penalty imposed by them in the impugned order.

4. The Ld. AR submits that CHA is responsible for mis-declaration of the goods, for which he is liable for penalty. Accordingly, he supported the impugned order imposing penalty.

5. Heard both sides and appeal documents.

6. I find that the appellant has filed the two bills of entry wherein on examination, the officers noticed misdeclaration of the goods. In the impugned order, the Ld. Commissioner (Appeals) has upheld the penalty of

Rs.40,000 on the appellant for his role in the commission of the offence, as he is vicariously responsible for abetting the offence.

7. I observe that the Manager of the CHA has misused the digital signature of the authorized representative and played a role in the commission of the offence. However, separate action has been initiated against him for his role in the commission of the offence. In the present case, the appellant has been imposed penalty under Section 112 (a) of the Customs Act, 1962. For imposing penalty under Section 112(a) of the Customs Act, there must be a positive act or omission on the part of the appellant which should render the goods liable for confiscation. In the present case, I find that the misdeclaration of the goods is mainly due to the offence committed by the importer for which the CHA cannot be held responsible. Accordingly, I find that the vicarious responsibility cannot be cast on the appellant and hence the penalty imposed on the appellant on this ground is not sustainable.

8. I find that the decision of the Tribunal in the case of Rajesh Maikhuri Vs Commissioner of Customs, New Delhi supports the above view. The relevant para of the said decision is reproduced below: -

> **6.** In paras 31 and 32 of the impugned order, the Original Authority recorded his findings regarding liability of the appellants for penalties. On careful perusal of the said findings, we note that the ingredients of Section 112(a) were not brought with any clarity, so that the penalties can be imposed on the appellants. Section 112(a) stipulates that a person shall be liable to penalty, 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. In the present case, the appellants, being authorized employees of CHA, dealt with the documentation and processing of import consignments. They have acted on the basis of the documents and details provided by the importer. The *bona fide* existence of the importer as per the records of the DGFT is not in doubt. There is

no dispute regarding fulfilment of KYC norms in the present case. Admittedly, the documents provided by the importer to the CHA for clearance of the imported goods did not disclose full and complete details of the import consignments. This was revealed after physical examination of the goods. Apparently, in absence of prior knowledge of possible mismatch of the documents and the goods, the CHA has no way of knowing the violations before hand. We find in the proceedings before the Commissioner, no evidence has been brought out about the prior knowledge of the appellants regarding violation of the provisions of Customs Act. Lack of due diligence and failure to take more precautions cannot, by itself, bring in penal consequences under Section 112(a). For imposition of penalty under Section 112(a), a positive act or omission is to be established. For penalty *mala fide* act/omission is one of the requirements. In the present case, the appellants, being authorized employees of the CHA, are apparently penalized for their act of abetting such violations by the importer. As already noted, we find that the evidences available in this case do not indicate to any such illegal act on the part of the CHA. In this connection, we also refer to the decision of the Tribunal in the case of *Rajan Arora* v. *CC (ICD, TKD)*, *New Delhi* - 2017 (352) E.L.T. 37 (Tribunal-Delhi). The Tribunal after referring to the various decisions dealing with similar set of facts held that penalty on abettor cannot be imposed on assumptions and presumptions. Cogent, tangible and reliable evidence is required for such penal actions.

9. By relying on the decision cited above, I hold that the penalty imposed on the appellant is not sustainable and accordingly, the penalty imposed is set aside. In view of the above, the appeal filed by the appellant is allowed.

(Order dictated and pronounced in the open court)

(K. ANPAZHAKAN)
Member (Technical)

psd