CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 42341 of 2014

(Arising out of Order-in-Original No.39/2014 dated 31.07.2014 with Corrignedum dated 07.08.2014 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628 004.)

C. Nagarajan, **...Appellant**
M/s. Power Link System Pvt. Ltd.,
(Representative of M/s. Murata Machinery Ltd., Japan)
II Floor, Time Square Building,
62, ATT Colony, Dr. Balasundaram Road,
Coimbatore-641 018.

Versus

Commissioner of Customs **...Respondent**
Custom House,
New Harbour Estate,
Tuticorin-628 004.

APPEARANCE:
Shri M. Kannan, Advocate for the appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER(TECHNICAL)

FINAL ORDER No. 40160/2025

DATE OF HEARING: 06.12.2024
DATE OF DECISION: 04.02.2025

Per: Mr. P. Dinesha

Heard Shri M. Kannan, Ld. Advocate for the Appellant and Smt. Anandalakshmi Ganeshram for the Respondent.

2. The only issue in the present appeal is the levy of penalty on the under section 112(b) of the Customs Act, 1962. From the records placed before us, we find that the importer has not filed any appeal, though the impugned order is passed against both the importer namely M/s. L.S. Mills Ltd. and M/s. Power Link Systems P. Ltd. Penalty under the above section has been imposed on the present appellant as he is held to be the representative of exporter namely Murata Machinery Ltd., Japan.

3. The Original Authority has not accepted the plea of the importer that the excess quantity alleged to have been found was the one supplied free of cost by the supplier to the importer, there is also a reference made to the statement of this appellant alleging that the appellant had worked as the agent for the supplier in India, though we do not find any supporting documentary evidence in this regard, on record.

The appellant appears to stated that they got several other orders through the importer and hence instead of paying them commission, they have supplied extra goods free of cost. In this scenario what was required was to bring on record the contemporaneous import/s of similar goods, but in any case, the importer appears to have accepted the order and perhaps has paid the differential duty as well. In any case, what exactly was the role of the appellant who is claimed to be an agent of the exporter, has not been specifically brought on record in the context of the import made by the importer since Section 112 applies to any improper imports made. If the appellant is assumed to be the Agent of the supplier, admittedly, no specific involvement of the foreign supplier insofar as alleged 'improper import' made by the importer is brought on record. So also, is there no specific commission or omission on the part of the appellant brought on record, like the quantity exported by the exporter/supplier or invoicing or that he was in anyway involved in the import, other than his statement that M/s. Power Link was a representative. It is not the case of the Revenue that this appellant was representing the foreign supplier in his individual capacity.

4. In view of the above discussion, we are of the opinion that penalty under Section 112(b) ibid on the appellant is unsustainable. We therefore set aside the impugned order in respect of this appellant and allow the appeal.

(Order pronounced in Open Court on 04.02.2025)

sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

vl