CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 52103 of 2019

(Arising out of order-in-appeal No. CC(A) CUS/D-I/IMP/NCH/218 -219/2019-20 dated 28.05.2019 passed by the Commissioner of Customs (Appeals), New Delhi).

Sanjeev Kumar Singh **Appellant**
CHA 'F' Card Holder
K-385, Street No. 6
Mahipalpur Extension
New Delhi- 110037

VERSUS

Commissioner of Customs (Import) **Respondent**
Air Cargo Complex
New Custom House
Near IGI Airport
New Delhi- 110037.

APPEARANCE:

Ms. Reena Rawat, Advocate for the appellant
Shri Rakesh Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50116/2020

DATE OF HEARING: 10.12.2019
DATE OF DECISION: 23.01.2020

ANIL CHOUDHARY:

The issue in this appeal is whether the appellant, a CHA is liable to penalty under Section 112(1)/(b) of the Customs Act.

2. The brief facts are that specific intelligence was received and an inquiry was conducted in respect of consignment of 'Synthetic Diamond Powder' imported vide Bills of Entry (B/E) No. 4168285 dated

25.07.2011 and 4179621 dated 26.11.2011 filed by M/s Ambika enterprises (IEC No. 1210000679), located at Gate Bhagtan Wala, Near Grain Market, Amritsar, Punjab (hereinafter referred to as the importer). The above said consignments were declared to contain 'Synthetic Diamond Powder' falling under CTH 71051000. During the examination of Bills of Entry No. 4168285 and 4179621, it was observed that the importer had declared the contents as 6,25,000 CTS (carats) (625 kg) and 1,25,000 CTS (125 kg) respectively. On further examination, it was observed that the importer had declared the contents as 1,000 carats per kg. However, it was found that as per the Metric standards, one kilogram of diamond powder contains 5,000 carats. The valuation of Synthetic Diamond Powder is based on the unit of 'carats', thus by declaring less number of carats, the importer had declared only 1/5th of the quantity and thus undervalued the consignment to the extent of 80% of the quantity declared in the aforesaid two Bills of Entry.

3. Statement of Shri Sanjeev Kumar Yadav, CHA was recorded on 11.08.2011 under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that he was F-Card Holder and working as CHA for the last five years; that he came into contact with Shri Mohit Arora, proprietor of M/s Ambika Enterprises through Shri Pankaj Gaba, who was working as Business Development Manager in BLPL Shipping Line and presently working at China and his friend Ashish Ranjan S who was also working in same company, introduced him to Pankaj Gaba; that he was not aware since when Mohit Arora was importing Synthetic

Diamond Powder, that he was doing clearance work for Shri Mohit Arora for last four months and produced the copies of following Bill of entries (i) 4063292 dated 13.07.2011 (ii) 3473760 dated 11.05.2011 (iii) 3683196 dated 02.06.2011 (iv) 3999921 dated 06.07.2011 (v) 3451097 dated 09.05.2011 (vi) 3757294 dated 10.06.2011; that he had the following documents for fulfilling KYC norms (i) Invoice/ packing list (ii) AWB copy (iii) declaration form (iv) Authority letter (v) I cards (vi) IEC code copy; that one Shri Deepak Kumar Sharma, authorised representative of M/s Ambika Enterprises filed the import documents with him; that he charged Rs. 1000/- per Bill of Entry and all other charges like customs duty, D.O. charges, warehouse charges and transport charges were borne by the importer; that after clearance of goods, the same were handed over to Shri Deepak Sharma who as per his knowledge takes them to Amritsar; that he knows that the valuation of Synthetic Powder was done as per carat only; that on how did they convert Kilos into carats, stated that he had received the invoice in carats only; that he had filed the Bill of Entry as per documents given by the importer; that he was not aware whether carats shown in invoice were correct or not; that on being shown the Literature for Synthetic diamond powder, he admitted it was a mistake on his part as CHA, but he did not know about the number of carats in 1 Kg. and bill of entry was filed as per invoice and the same was passed / appraised by the Group as such, and he was never questioned about this earlier; that this mis-declaration is on the importer; that the original copy of invoice, packing list were with the importer.

4. Show cause notice dated 13.02.2012 was issued on the importer M/s Ambika Enterprises and its Prop. Shri Mohit Arora. The appellant and his employee Shri Vinod Rishi, 'G' Card holder were also made co-noticee proposing to impose penalty under Section 112(a)/(b) and 117 of the Customs Act.

5. The show cause notice was adjudicated on contest and import goods were held liable to confiscation. Further, demanding the differential duty from the importer alongwith penalty under Section 112(a) and 114AA of the Act. Penalty on the appellant was imposed under Section 112(a)/(b) of Rs. 2 lakhs and further Rs. 50,000/- on 'G' Card holder Shri Vinod Rishi under the same section.

6. Being aggrieved, the appellant Shri Vinod Rishi and others filed appeals before the Commissioner (Appeals), which was disposed of by a common order-in-appeal. Learned Commissioner was pleased to observe that the allegation against the appellant is that they wilfully misdeclared the number of carats of diamond powder. Further, the appellant and 'G' card holder in their statement under Section 108 categorically admitted the mistake of misdeclaration. Thus, in view of the admission, it does not warrant any further elaboration and accordingly the appeals were dismissed upholding the penalty.

7. Being aggrieved, the appellant is before this Tribunal on the ground that penalty have been imposed mechanically without appreciation of the facts. Further, imposition of penalty is bad as there is no case made out of any connivance with the importer or any

deliberate misdeclaration made in the bill of entry. As per the statement recorded, there is bonafide mistake, as the appellants stated that they have filed bill of entry based on the invoice and other documents received from the importer, wherein the weight/ quantity was mentioned in carats. Further, it is no case of Revenue that the appellant has connived by receiving any extra remuneration other than the normal remuneration for the clearing work. Further, it was not the first bill of entry filed for the item, but appellant also filed seven eight bills of entry earlier and the same was passed by the appraiser without any objection wherein also similar declaration was made. Learned Counsel placed reliance on the decision of the Hon'ble High Court of Delhi in **Kunal Travels (Cargo) vs. CC (I&G), IGI Airport, New Delhi -2017 (354) ELT 447 (Del.)** and also of the coordinate bench of the Tribunal in the case of **D.S. Cargo Service vs. Commissioner of Customs, New Delhi – 2009 (247) ELT 769 (Tri. Del.).**

8. Opposing the contention of the learned Counsel, learned Authorised Representative for the Department relies on the impugned order. Further, he placed reliance on the decision of the Tribunal in the case of **Ankit Mehta vs. Commissioner of Central Excise, Indore – 2018 (362) ELT 320 (Tri. Del.)**.

9. Having considered the rival contentions, we find that there is no allegation of any connivance on the part of the appellant-CHA with the importer. Further, in the statement recorded the appellant-CHA have stated as follows:-

> "*Yes it was mistake on my part but I was not knowing about the no. of carats in 1 Kg., but the Bs/E were filed as per Carats shown in Invoices and same were appraised by the group as such and I was never questioned about this. However, this is mis-declaration on the part of importer*."

10. Accordingly, we hold that the appellant had not committed any act of omission or commission rendering the goods liable to confiscation and consequently no penalty is attracted under Section 112(a)/(b) of the Act. Accordingly, we allow this appeal and set aside the impugned order. The appellant is entitled to consequential benefits.

(Pronounced on 23.01.2020).

(Anil Choudhary)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

Pant