CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

CUSTOMS APPEAL NO. 50883 / 2020

[Arising out of Order-in-Appeal No. 866/2019-20 dated 22.1.2020 /31.01.2020. passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Citibank N A — **APPELLANT**

Vs.

COMMISSIONER OF CUSTOMS
(General) New Courier Terminal,
IGI Airport, New Delhi. — **RESPONDENT**

APPEARANCE:

Shri Kishore Kunal, Shri Mehak Kanwar and Shri Sumit Khedaria, Advocates for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: October 12, 2021

FINAL ORDER No. 51922 /2021

PER RACHNA GUPTA:

Present appeal has been filed to assail the Order-in-Appeal No. 866/2019-20 dated 22.1.2020 /31.01.2020. The relevant factual matrix herein is as follows:

M/s. FedEx Transportation and Supply Chain Services (India) Pvt. Ltd., the authorised courier had filed a courier airway bill No. 785030233958 for import of goods as documents. Vide Show

Cause Notice No. 93/2017-18 dated 3.5.2017 (5792 dated 11.8.2017), it is alleged that the said declaration has been made by the Branch Manager of the appellants. Accordingly, the said consignment was detained by the Shift Custom Officer vide Detention Memo No. 20926 dated 18.12.2016 on the ground that said courier contains Indian currency (demonetised). The seizure of the aforesaid demonetised Indian currency amounting to Rs.14,500/- was affected vide Panchanama dated 26.12.2016. Based on the aforesaid allegations that vide Show cause notice the confiscation of the said parcel under section 111 of Customs Act and penalty under section 112 A of the Customs Act was proposed to be imposed upon the appellant. The said proposal was initially confirmed vide Order-in-Original No. 1285 dated 4.12.2017. The appeal thereof has been rejected vide the order under challenge. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Kishore Kunal, Shri Mehak Kanwar and Shri Sumit Khedaria, learned Counsels for the Appellant and Shri Mahesh Bhardwaj, Authorised Representative for the Department.

3. It is submitted on behalf of the appellant that no declaration was ever given by the appellant for declaring the demonetised currency notes as documents while sending them through courier vide airway bill No. 785030233958. It is mentioned that a query raised was by one Shri Anand Paul about dealing with some Indian currency in his possession which got demonetised vide Notification dated 8.11.2016. He was duly advised by the appellant to get the said currency deposited in the bank through his authorised representative. However, inspite of going upon the said advise, Shri Paul opted to sent said currency notes to the appellant bank by courier declaring the same as documents. Shri Anand Paul was staying abroad, he sent the courier FedEx Express Transportation by impugned airway bill declaring those currency notes as documents. Learned Counsel impressed

upon as required by the Bank that the said airway bill itself clarifies that there is no alleged declaration made by the appellant. No question arises for imposition of penalty upon the appellant under section 112 of the Customs Act. Learned Counsel has also impressed upon section 82 of the Customs Act. Though section is no more existing in the statute with effect from 2017, however, was very much the part of the law at the relevant time. Accordingly, appeal is prayed to be allowed by setting aside the impugned penalty.

4. It is further emphasised that the appellant is not declarant in terms of section 82, question of invoking section 112 against him does not at all arise. Learned Counsel lay emphasis on the following case laws:

i) **Skycom Express (P) Ltd. vs. Principal Commissioner of Customs (Airport), Mumbai** [2017 (357) ELT 996 (Tri-Mumbai];

ii) **UPS Jetair Express Pvt. Ltd. vs. CC, Airport, Mumbai** [2019 (365) ELT 461 (Tri-Mumbai)];

iii) **Aramex India Pvt. Ltd. vs. Commissioner of Customs II, Airport** [2018 (364) ELT 1064 (Tri-Mumbai)]; and

iv) **Uni-Sankyo Ltd**. **vs Commissioner of Customs (Airport) Mumbai** [2004 (169) ELT 195 (Tri-Mumbai)].

Emphasis has also been laid on the decision of Tribunal in the case of **Kuresh Laila vs. Commissioner of Customs, Chennai** reported as [2005 (189) ELT 45 (Tri-Chennai)]. It is mentioned that penalty has wrongly been confirmed by Commissioner (Appeals), therefore order is prayed to be set aside and appeal is prayed to be allowed.

5 Per contra, learned Authorised Representative has impressed upon the reasonableness of order passed by the

Commissioner (Appeals). Impressing upon paragraph 5.2 of the order under challenge, learned Departmental Representative is praying for dismissal of appeal.

6. After hearing the parties and rival contentions thereof and after going through the records of appeal, I observe and hold as follows:

7. The only allegation against the appellant is that of wrong declaration in relation to an Airway Bill due to which demonetised Indian Currency notes got couriered to India under the guise of being called as documents. The relevant provision for the same under section 82 of the Customs Act which was very much the part of the statute at the relevant time i.e. at the time when detention memo was issued in December, 2016.. Section reads as follows:

> **"Section 82. Label or declaration accompanying goods to be treated as entry. -** In the case of goods imported or exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export, as the case may be for the purposes of this Act."

8. The scope of the section and that of declaration accompanying the basic article is discussed by this Tribunal in the case of **Commissioner of Customs, Mumbai vs. M. Vasi** [2003 (151) E.L.T. 312 (Tri.-Mum.)]. Relevant paragraph is extracted below:

> 10. When the goods are imported by land, Sea or Air a Bill of Entry is filed for their clearance in terms of Section 46 of the Customs Act, 1962 where the responsibility of making a truthful declaration is upon the declarant and where any contravention or lapse can render the goods liable for confiscation and the declarant liable to pay penalty. In the case of baggage, as per Section 77 of the Customs Act the declaration is made by the passenger orally. Section 82 which deals with post parcels is entirely different in construction and in coverage. It does not require the importer to make a declaration. The declaration made by the exporter abroad is deemed to be an entry for the goods. This is very important difference. Even if an entry is found to be wrong the responsibility of wrong declaration

cannot be fastened upon the importer. It would appear that Section 111 of the Act cognizance of this situation. Clauses (l) and (m) of Section 111 read as below :

"(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77.

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54".

11. The phrase "entry made under this Act" comes from Section 46. In terms of "Section 82 which reads as below no entry is made by the importer. That is why where as special mention is made of Section 77, there was no mention of Section 82 in the two clauses of Section 111.

"Section 82. Label or declaration accompanying goods to be treated as entry. - In the case of goods imported or exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export, as the case may be for the purposes of this Act."

9. From the facts of the case, it is apparent that the Bank had no role till the said courier was delivered to it by the FedEx courier. It was for the Department to show that the Bank had a knowledge about the declaration given on airway bill that the annexed parcel has demonetized Indian currency goods but has been declared as documents. But apparently there is no such evidence. The initial burden was on the department. Hence finding in sub paragraph 2 of paragraph 5 of the order under challenge is apparently a wrong finding. The same para rather has discussed the precise advise as was given by the appellant to the sender of the impugned courier asking him to send the demonetized currency notes in person during his visit to India or through authorised representative, he being stationed abroad. The said courier is apparently in absolute contravention to the said advise given. There was no duty on the Bank beyond the said advise given.

There is nothing on record to show or indicate that it was appellant who has wilfully or intentionally made the declaration.

10. Infact admittedly, the declaration is not made by the appellant, the question of it to be their wilful and intentional act does not at all arise. This Tribunal in the case of **UPS Jetair Express Pvt. Ltd. vs. CC, Airport, Mumbai** (supra) has held that mere handling in the course of professional engagement does not necessarily imply prior knowledge of liability of the goods to confiscation. That requires an independent and specific finding which is conspicuously absent in the impugned order. The Tribunal in the case of **Aramex India Pvt. Ltd. vs. CC II, Airport, Mumbai II** (supra) has held as follows:

> "7. ....I find that the findings recorded by the adjudicating authority in the impugned order-in-original as to the role played by the appellant herein, does not indicate that they had wilfully or knowingly, made wrong declarations in the courier bills of entry. The only findings which the adjudicating authority relies for imposing penalty, is that the appellant failed to cross-check the declared value, importer's name, IEC and identity of the person who had submitted the documents for the purpose of filing of courier bill of entry. In my considered view this omission of the appellant, at the most, may attract the provisions of Courier Imports and Exports (Clearance) Regulations, 1998 and cannot be considered as violations for imposing penalty under Section 112(a) of the Customs Act, 1962.
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> 8. In view of the foregoing penalty imposed on the appellant under Section 112(a) of the Customs Act, 1962 is set aside."

11. Otherwise also it was for Mr. Paul, the sender of courier to be aware of the provisions of Foreign Exchange Management (Export and Import of currency) Regulations, 2015. The Regulation 3 thereof and the Circular No. 146 dated 19.06.2014 issued thereunder by virtue of which Import or Export of Indian currency upto Rs.25,000/- is allowed only in person. Currency imported through courier mode is not allowed. Currency so received in bank was thus prohibited good liable for confiscation. But that no where proves that recipient of courier i.e. Bank was the importer of said prohibited goods. It also does not prove that Bank made a wrong

declaration on the courier. The declaration was made by the sender of courier and admittedly Bank is the recipient.

12. Hence the findings given in paragraph 5.3 of the Order under challenge alleging the appellant to mis-declare are apparently wrong on the face of facts as well as documents. The order accordingly is hereby set aside. The Appeal stands allowed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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