IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/75/2011-CU(SM)
[Arising out of Order-in-Appeal No. CC(A)CUS/ICD/109/10 dated 29.10.2010, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

Shri Susheel Mohla **....Applicants**

Vs.

C.C. Delhi **....Respondent**

Appearance:

Shri S. Dabas, Advocate for the Appellants
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 07.02.2017

FINAL ORDER NO. 50729/2017-CU(SM)

Per Archana Wadhwa:

The challenge in the present appeal is the imposition of penalty of Rs. 40,000/- imposed in terms of the provisions of section 114 of the Customs Act 1962, on the ground that the appellant's G-Card holder Shri Jag Virender Singh filed shipping bills on behalf of the exporter in respect of the goods which were of nil value showing the same to be of commercial value. The Commissioner (A) has observed that the charge against the appellant is that he did not exercise due diligence as per the responsibility cast upon him in CHA Licensing Regulation 2014.

2. In the final part of the order the appellate authority has observed that "considering the fact that the appellant has no role as such in the case of illegal export and as per the rationale appearing

in the OIO instead of penalty imposed upon him deserves to be scaled down to Rs.40,000/-."

3. Ld. Advocate appearing for the appellants submits that first of all the G-Card holder has nowhere accepted that the shipping bills were filed by him. He has been implicated on the basis of the statement of one Shri Jamuna Prasad, who had actually filed the shipping bills. The affidavit of Shri Jamuna Prasad has been placed on record before the lower authorities accepting that all the shipping bills have been filed by him. Otherwise also, statement of Ld. Advocate that as per the findings of the lower authorities, there is no knowledge on the part of the CHA as so to invite penal action and the only finding is non exercise of due diligence of the CHA Licensing Regulation. He submits on the said basis, provisions of section 114 of the Act cannot be invoked.

4. I find force in the above contention of the Ld. Advocate. As per the finding of the appellate authority himself, there is no role played by the CHA. If that be so, I really fail to understand as to how penalty under section 14 can be imposed on him. As such I find no justification for imposition of penalty. The impugned order is accordingly set aside and appeal is allowed with consequential relief.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu