IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

<u>DATE OF HEARING : 22/02/2017.</u>
<u>DATE OF DECISION: 22/02/2017.</u>

Customs Appeals No. 51010 and 51069 of 2015 (SM)

[Arising out of the Order-in-Original No. 02/COMMR/AD/2014 dated 05/01/2015 passed by The Commissioner of Customs, ICD Tughlakabad, New Delhi.]

M/s Shri Rajan Arora]
M/s Ranabir Enterprises] Appellants

Versus

CC, New Delhi (ICD Tkd) Respondent

<u>Appearance</u>

Shri Somesh Arora, Advocate – for the appellants.

Shri R.K. Mishra, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 51936-51937/2017 Dated : 22/02/2017

<u>Per. B. Ravichandran :-</u>

These two appeals are against common impugned order dated 05/01/2015 of Commissioner of Customs, New Delhi. These appeals are against imposition of penalties on the appellants under Section 112 (a) of the Customs Act, 1962, on the ground that they have abetted an illicit transaction by the importer during the course of import of cargo vide bill of entry

No. 7346736 dated 10/07/2012 of M/s Friends & Company. Briefly stated, the facts of the case are M/s Ranabir Enterprises, a licensed CHA, located in Calcutta have their branch operations in Delhi also. They were using the services of appellant No. 2 (Shri Rajan Arora) to transact business with the customs. The transaction of documents with the customs is through one Form-G holder working under the supervision of Shri Rajan Arora, in New Delhi. The impugned bill of entry was filed by M/s Ranabir Enterprises acting as CHA. Later on an investigation conducted by the customs officers with reference to consignment covered by the said bill of entry, revealed undeclared refrigerant gases which are restricted for import. Investigations were carried out and the case was adjudicated resulting in the impugned order. The goods were absolutely confiscated and penalties were imposed on various persons including the two appellants in the present case.

2. The learned Counsel appearing for the appellants submitted that they have filed the bill of entry on 10/07/2012. On a reference received from their regular customer, Shri Deepak Rishi they received the connected documents and accordingly filed bill of entry with the understanding that full particulars to fulfill the KYC norms of the importer should be submitted to them within two days. Since the particulars were not forthcoming from the importer they wrote a letter to the customs on 12/07/2012 indicating that they are withdrawing from transaction with the said bill of entry in the absence of satisfactory KYC norms supplied by the importer. On 13/07/2012, the containers were

examined and found to contain the said offending goods. The learned Counsel submitted that though they filed the bill of entry, as they have not got satisfactory KYC documents within two days, they withdrew from the transaction by due intimation to the customs as well as to the importer. They are not aware of the nature of cargo or any purported violation by the importer. In the absence of their knowledge, the question of abetting any contravention, either by commission or by omission on their part, does not arise. He relied on decisions of Tribunal in his support.

3. The learned AR reiterated the findings in the impugned order. The appellants cannot escape the liability when they had filed the clearance documents with the customs. The declaration in the bill of entry is not correct with reference to actual cargo. The contravention in the import will necessarily bring the liability of the appellant for penalty.

4. Having heard both the sides and upon perusal of the appeal records, I note that the impugned order imposed penalties on these two appellants under the provisions of Section 112 (a) of the Customs Act, 1962. The said section provides for imposition of penalty on any person who abets the doing or omission, of any act or omission, which will render the goods liable to confiscation. In other words there should be a clear evidence to the conclusion that the appellants by their specific act or omission of any act, abetted the illegal importation of the offending goods. Admittedly, there is no evidence to this effect, recorded in the

impugned order. The reason for imposition of penalty, is the appellants' act of filing the bill of entry. Admittedly, at the time of filing the bill of entry the appellants did not get all the required documents to fulfill the KYC norms of the importer. Such act may attract proceedings, if at all, under the regulations for licensing of a CHA. For penalty under Customs Act, 1962 it is apparent that mere filing of bill of entry, without the knowledge or a role in the importation of cargo, is not sufficient. Even otherwise in the present case it is seen that the appellants withdrew from the transaction before the mis-declaration was detected by the officers in the custom house. The assertion in the impugned order that such withdrawal of the appellants is based on their knowledge of the secret alert with the officers, is not substantiated with any evidence. On consideration of the facts recorded, it is clear that except for filing bill of entry, the role of the appellants with reference to the importer or the offending goods, has not been brought out in the impugned order. The appellants withdrew their connection with the bill of entry, before the investigation started. Non-procurement of documents in support of KYC norms cannot be considered as abetment of an act or omission by the importer, attracting penal consequences under Customs Act. Reference can be made to various decisions of the Tribunal. In **New Amar Goods Carriers vs. CC, News Delhi** reported in **2012 (276) E.L.T. 389 (Tri. – Del.)** it was held that in the absence of evidence regarding knowledge of appellant about the contents of the cargo, penalty cannot be imposed. In **Electronik Lab vs. CC (P), Mumbai** reported in **2005 (187) E.L.T. 362 (Tri. – Mumbai), Joseph Itteyara vs. CC, Mumbai** reported in **2004 (176) E.L.T. 165 (Tri. – Mumbai)** and **Calcutta Ahmedabad Carriers vs. CC, New Delhi** reported in **2004 (164) E.L.T. 367 (Tri. – Del.)** it is held that penalty on abettor cannot be imposed on assumptions and presumptions. Cogent, tangible and reliable evidence is required.

5. Considering the above discussion and analysis, I find that the impugned order did not bring out, with supporting evidence, the liability for penalty on the appellants. Accordingly, the same cannot be sustained. The impugned order with reference to imposition of penalties on these two appellants is set aside. The appeals are allowed.

(Order dictated and pronounced in the open court.)

(B. Ravichandran)
Member (Technical)

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