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

Customs Appeal No. 243, 255-256 of 2010

[Arising out of Order-In-Original No. 13/ 2010 dated 26.02.2010 passed by Commissioner of Customs (ICD), New Delhi]

Deepak Kumar **Appellant**
M/s. P P Dutta
Shri Naveen Kumar Singh

Vs.

Commissioner of Customs **Respondent**
(ICD) New Delhi

Appearance:

Shri R P Singh & Shri R K Ranjan, Advocates for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 16.03.2017

FINAL ORDER NO . 52588-52590 /2017

Per Archana Wadhwa:

Nobody appeared on behalf of the Deepak Kumar son of Shri Om Parkash inspite of notice of hearing having been sent to him well in advance. Our attention stand drawn to the finding of the adjudicating authority wherein Shri Deepak Kumar has admitted his guilt of illegal imports and has already paid the duty. He already accepted that the goods may be confiscated. As such, we are of the view that Shri Deepak Kumar is not interested in pursuing the present appeal, the same is accordingly dismissed for want of non-prosecution.

2. As regards the balance two appeals, we find that M/s. P.P. Dutta is a CHA firm upon whom penalty of Rs. 5 lakhs stand imposed and Shri Naveen Kumar Singh is a G card holder of M/s. P.P. Dutta upon whom the penalty of Rs. One lakh has been imposed under section 112 (b) of the Customs Act, 1962. The present G card holder and CHA filed Bill of Entry on behalf of the importer Shri Deepak Kumar son of Shri Om Prakash declaring certain items. There was an alert on the said Bill of Entry and consignment was taken up for 100% examination, the same was found to be containing cigarettes with soft scrubber, spark plug with a foreign trade mark and undeclared shoes and some telescopic channels along with other items. Shri Deepak Kumar, importer in his statement deposed that he was not having any IEC code No. etc. and the same was provided to him by the G Card holder of the CHA in the name of Shri Deepak Kumar, son of Shri Om Prakash, his name sake. When Shri Naveen Kumar Singh, was confronted with the said statement of importer, he denied providing of any IEC code and deposed that same was given by the importer himself

along with PAN etc. on the basis of which Bill of Entry was filed. On coming to know that there was an alert in respect of said Bill of Entry and the importer was not assisting in 100% examination, the CHA persuade the importer to assist in 100% examination of the goods and filed NOC thereafter.

3. Reasons for imposing penalty on the CHA by the adjudicating authority is that though the NOC was filed by them but the same was filed after a gap of 37 days which the CHA cannot explain. He has also observed that though they filed NOC to the importer but they did not report the matter to the Customs about their doubt regarding consignment that they were required to do so as per the obligation of the Customs House Agent under CHA Licensing Regulation 2004. As such, there was contravention of the provisions of said CHA Licensing Regulations.

4. After going through the impugned order and after appreciating the submissions made by both the sides, we note that penalty primarily stand imposed upon the appellant on the alleged violation of CHA License Regulation. The Hon'ble High Court in the case of ***CCE vs. Buhariwal Logistics [2016 (332) ELT 278 (Del)]*** has observed that a CHA cannot be held liable to penalty for failure to supervise his employees in absence of any evidence to show that he was aware of their acts and if CHA has acted in breach of Regulation, separate

action could be initiated against them under those Regulations but the said fact by itself cannot justify imposition of penalty under section 112 of the Customs Act.

5. Similarly, Tribunal in the case of ***Prime Forwarders vs. Commr of Customs, Kandla [2008 (222) ELT 137 (Tri-Ahmd)]*** has observed that when the CHA acted on the basis of documents given to them and there is nothing to show that he was aware of containers being stuffed with uncalled for material, the penal action cannot be taken against them under section 112 of the Act. Further, the Tribunal in the case of ***Safe C & F Agency P Ltd. vs. CCE [2007 (210) ELT 225 (Tri-Mum)]*** has held that where CHA issued NOC for two containers for customs examination, he cannot be held guilty of any failure to perform his duties as per the regulation.

6. Similarly, Tribunal in the case of ***Parekh & Sons vs. Commissioner of Customs (P), Mumbai, [2002 (150) ELT 1274 (Tri-Mum)]*** has observed to the same effect that merely acting as CHA, in the absence of any reasons to record that he was having knowledge about the illegal activities of the importer is not sufficient ground for imposition of penalty under section 112(d) of the Customs Act.

7. We note that the adjudicating authority in the case of present impugned order has not advanced any reasonable ground for showing that CHA or his employees Shri Naveen Kumar Singh, was having

any knowledge about the contravened goods stuffed in the container for which they filed the Bill of Entry. Admittedly, after having come to know about the alert and after having persuading the importer, CHA filed NOC. Commissioner has objected to such NOC filed with a delay of 37 days for which the CHA has not given any reasonable explanation. The appellant in their reply to the show cause notice had taken a categorical stand that they were trying to persuade the import to assist in 100% examination of the goods and it is only when they were not responding that NOC was filed. We note that such delay in filing NOC cannot be adopted as a ground for imposition of penalty under section 112(b) of the Customs Act. Similarly the fact that appellant did not bring the matter to the Customs about their doubt regarding the consignment also cannot be adopted as a reason for imposition of penalty inasmuch as it was the Customs own alert about the Bill of Entry which created the doubt in mind of the CHA and not vice versa. As such, bringing the matter again to the notice of Customs authority would be an empty formality.

As regards the contention of the learned DR that importer has contended that IEC code of like importer was given by the CHA, we note that when the G card holder was confronted with the said statement, he has denied the same. The statement of importer being a statement of co-noticee, cannot be adopted, without there being independent corroborative evidence, especially when the same has been denied by the G card holder. In the absence of any independent evidence showing any malafide intention on the CHA or his employee, we are of the view that penalty imposed upon them is required to be set aside. We order accordingly and allow both the appeals with consequential relief to the appellants.

9. All the three appeals are disposed of accordingly.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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