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

Customs Appeal No. 49 of 2012

[Arising out of Order-In-Appeal No. RT/ACE/ 162 /2011 dated 22.12.2011 passed by Commissioner of Customs, New Delhi]

M/s. P D Prasad & Sons Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs (Export), New Delhi **Respondent**

Appearance:

Ms Vidushi Shubham, Advocate for the Appellants
Shri Yogesh Agarwal, AR for the Respondent

CORAM:

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

Date of Hearing / Decision: 07.04.2017

FINAL ORDER NO . 52953 /2017

Per Archana Wadhwa:

The challenge in the present appeal is to imposition of penalty of Rs.20 lakhs on the appellants, who is a CHA under section 114 (i) and

114 (iii) of the Customs Act and separate penalty of Rs. One lakh imposed under section 117 of the Customs Act.

2. After hearing both sides duly represented by Ms. Vidushi Shubham, learned advocate appearing for the appellant and Shri Yogesh Agarwal, learned AR appearing for the Revenue, we find that the appellant filed 7 shipping bills for export of readymade garments of manmade fabric, for and on behalf of exporter Shri Chander Shekhar, Proprietor of M/s. Indian Overseas. As per brief facts, the said consignment was taken up by the Intelligence for assessing the value of the same and it was found that the goods were of inferior quality and were highly over-valued with intent to claim and avail erroneous duty draw back. The residential as also business premises of the exporter were searched and it was found that they are not located at the address given in the documents. The statement of the Vice President of the present appellant Shri Sanjay Shrivastava was recorded during the course of investigation wherein he admitted that the said 7 shipping bills in question were filed by him and the invoices, packing list etc. were received by them on their e-mail address from one Shri Rajiv Gagan; that he took copy of the authorization letter, PAN and IEC code of the exporter before filing shipping bills. However, he agreed that documents were not accepted from the person connected with Indian Overseas and the address of the exporter was not physically verified by

him. He however, insisted that they had verified the antecedents of the exporter and correctness of the IEC number from computer data.

3. On the above basis, the proceedings were, inter alia, initiated against the present CHA, who took a stand that all the activities were done by Shri Sanjay Shrivastava who was their salaried employee and the CHA company was not taken into the consultation.

4. The Commissioner vide his impugned order, arrived at a finding that inasmuch as the exporters address which was found to be fictitious and was not verified by Shri Sanjay Shrivastava before filing the shipping bills, who seems to be a key player and harboured certain and unambiguously malicious intents to perpetuate the fraud on Revenue. However, he observed that as he has not been made a noticee in the show cause notice, the penal provision cannot be invoked against him. Accordingly, he imposed penalty on the CHA firm.

5. It is not disputed on record that before filing the shipping bills the appellant took authorization letter as also verified the PAN card and IEC copy of the exporter. As per the Revenue, the only lapse of the CHA is that he did not physically verified address given by the exporter. According to the learned advocate, the said lapse on the part of the employee of the CHA cannot be held to be a strong evidence so as to conclude that appellant aided and abetted the exporter in fraudulent exports. This may, at the best result in contravention of

some provisions of the Regulations 13 of CHALR but cannot be made the basis for invoking the penal provisions of section 114 of the Customs Act.

Tribunal in the case of ***Nirmal Kumar Agarwal vs Commissioner of Customs (Gen) Mumbai [2013 (298) ELT 133 (Tri-Mum)*** observed that in the absence of any evidence showing the involvement of CHA as regards the fraudulent activities, ingredient of section 114 cannot be held to be satisfied so as to impose penalties. Under similar circumstances, the penalty on the CHA was set aside in the case of ***Prime Forwarders vs. Commissioner of Customs, Kandla [2008 (222) ELT 137 (Tri-Ahmd)***], wherein it was observed by the Tribunal that as CHA acted on the basis of documents given to him and there is nothing to show that he was aware of containers being stuffed with the material other than the one declared, it cannot be said, in the absence of any evidence to the contrary, that he was involved and had knowledge about the mis-declaration. Further, in the case of ***Akanksha Enterprises vs. Commissioner of Customs, Mumbai [2006 (203) ELT 125 (Tri- Delhi)]***, it was observed that CHA's role is limited to facilitate the proper filing of the documents as received from the exporter and he is not required to go in to the authenticity of the value of the goods.

6. In the present case also, the appellant filed shipping bills on the basis of documents received by them. If there is any difference in the value of the export consignment, the CHA cannot be held responsible for the same as it is not the duty of the CHA to adjudge the correct value of the goods. There is virtually no evidence on record to show that he was aware of the over-valuation of the export consignment and he simplicitor proceeded by the declaration made by the exporters. In such a scenario, the appellant cannot be held liable for any aiding and abetting and consequently to penalty.

7. In the case of ***Adani Wilmar Ltd. vs. Commissioner of Customs (Prev), Jamnagar [2015 (330) ELT 549 (Tri-Ahmd)]*** wherein it was held that non-following of the KYC norms of CHA License would result in breach of Regulation of CHALR and not under Customs Act, 1962. In the absence of any evidence that CHA was aware of the alleged irregularities by the exporter, imposition of penalty on him is not justified. We find from the present impugned order that apart from the fact that the appellant did not physically verified the correctness of the address given to him by the exporter, whereas all other documents were verified from computer data and found to be correct. This fact by itself cannot lead to

conclusion that he was aware of the over-valuation of the export consignment, thus calling for imposition of penalty upon him.

8. In view of foregoing discussion, we set aside the penalties imposed upon the appellant and allow the appeal with consequential relief.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member (Technical)

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