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

Customs Appeal No. 52913 of 2016

[Arising out of Order-In-Appeal No. DII/ICD/666/2016 dated 14.7.2016 passed by Commissioner of Customs (Appeals) New Delhi]

M/s. Promod Logistic Services **Appellants**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri Prem Ranjan Kr, Advocate for the Appellants
Shri S Nunthuk and Shri R K Manjhi, DRs for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 29.05.2017

FINAL ORDER NO . 53688 /2017

Per S K Mohanty:

Heard both sides and examined the case records.

2. Imposition of penalty under Section 112(a), Section 114AA and Section 117 of the Customs Act, 1962 is the subject matter of present dispute.

3. For confirming imposition of penalties against the appellant, the learned Commissioner (Appeals) has recorded the following observations in the impugned order :-

> *"…….. I also cannot lose sight of the material fact that throughout the investigations proceedings the appellant CHA firm had played an active role in bringing the main accused to interface with the investigating agency. Their positive role has been acknowledged by the investigating agency too. Had the intention been not right, there was no need for them to join the investigations. Absence of due diligence cannot be alleged on him either, because beyond scrutinizing the papers and following the KYC norm, it was not for him to check the consignment physically. Still in the garb of genuine goods restricted items were attempted to be imported of which he was an unwitting partner. He should have been more careful about his client, for this would not have been his first misadventure. "*

4. On perusal of the above finding of the learned Commissioner (Appeals), we find that he has not recorded specific involvement of the CHA in the fraudulent activity undertaken by other persons for importation of the goods. Thus, we are of the view that Section 112 (a) ibid and 114AA ibid cannot be invoked in the facts and circumstances of the present case, justifying imposition of penalties on the CHA appellant. However, we find that the appellant has deviated from the regular course of business and for that purpose, the

provisions of Section 117 ibid can be invoked for imposition of penalty.

5. In view of the above, impugned order is set aside and appeal is allowed to the extent of imposition of penalty under 112 (a) ibid and 114 AA ibid.

(dictated and pronounced in the open court)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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