IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Customs Appeal No. C/50662/2017-CU [DB]

[Arising out of Order-in-Original No.DLI/CUSTOMS/PRE/MKV/PR. COMMR/21/2016 DATED 21.12.2016 passed by the Commissioner (Appeals), Central Excise, Jaipur-I]

M/s.Amexpress Worldwide Logistics …Appellant

Vs.

C.C.(Prev.), New Delhi … Respondent

Present for the Appellant : Mr.G.K. Sarkar, Advocat,
Mr.Prashant Srivastav, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 23/08/2017

FINAL ORDER NO. 56265/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 21.12.2016 of Principal Commissioner, Customs (Preventive), New Custom House, New Delhi. The appellant is a licensed Customs Broker engaged in clearance of import/export consignments through Customs. The present case relates to the Bill of Entry dated 27.01.2015 filed by the appellant on behalf of M/s. Sharaya International, Chattarpur, Delhi for clearance of imported goods, namely, deodorants and perfumes. The imported consignments were subjected to enquiry and investigation with reference to mis-declaration of MRP / RSP for the said goods resulting in possible short payment of customs duty. On conclusion of enquiry proceedings were initiated against the importer as well as the appellant. The original authority vide the above mentioned impugned order, ordered the confiscation of imported items, confirmation of differential duty and imposition of penalties. Rs.1,00,000/- as penalty was imposed on the appellant in terms of Section 112(a) of the Customs Act, 1962. The appellant was held to be liable for such penalty as they had knowingly misdeclared the MRP/RSP of the impugned goods for which Bill of Entry was filed and processed by them.

2. The ld. Counsel contesting the penalty submitted that the determination of MRP and the affixing of such MRP on the impugned goods are the responsibilities of the importer. As per the practice, which is approved by the Board also, when the imported consignments, which are to be assessed under Section 4A of Central Excise Act, 1944 for the purpose of CV duty, if not pre-fixed with MRP labels, the same can be done before actual clearance of goods out of Customs. As such, there is no question of the appellant as Customs Broker attracting any penal action for their role of filing Bill of Entry based on documents made available to them. In any case, on

the very same set of facts proceedings have been initiated against the appellant under CBLR, 2013. The said proceedings concluded by the order dated 19.04.2016 issued by Commissioner of Customs (General), New Delhi. The proceedings were closed as no contravention of the regulation was found against the appellant. As such, the ld. Counsel prayed that the penalty imposed on the appellant may be set aside.

3. The ld. A.R. supported the findings of the lower authorities. He submitted that the role of the CHA has been brought out in the impugned order and these proceedings are under the provisions of Customs Act , 1962 which is independent of proceedings under CBLR, 2013.

4. We have heard both the sides and perused the appeal records. Admittedly, for their role as Customs Broker in clearing the consignments cleared under Bill of Entry dated 27.01.2015, the present proceedings have been initiated. On the same set of facts, proceedings were initiated under CBLR, 2013 also. We note, vide order dated 19.04.2016 Commissioner of Customs (General), New Delhi categorically recorded that no contravention regarding affixing MRP/RSP for either on past cleared consignments or in regard to goods covered under Bill of Entry dated 27.01.2015 are established against the noticee (appellant). We find, in view of categorical finding of the Licensing Authority on the activities of the

appellant, which are on the same set of facts involving the same importation. Penal action under Section 112(a) of the Customs Act is not legally sustainable. Even examining independently, the application of the provisions of Customs Act, we note that para 46 of the impugned order does not justify penal action against the appellant. As already noted, the details of MRP and affixing such MRP on the imported goods are to be done by the importer and this can be done even when the goods were in the custody of the Customs. Regarding the correctness of MRP, there is no evidence that the CHA has made any willful misdeclaration on the part of the import.

5. In view of the clear finding recorded by the Licensing Authority in its order dated 19.04.2016, we find no justification for a penal proceedings against the appellant resulting in penalty under Section 112 (a) of the Customs Act, 1962. Accordingly, the impugned order is set aside, insofar as, it relates to penalty imposed on the appellant. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita