IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:24.08.2017

Customs Appeals nos.52189-52190/2016(DB)

[Arising out of common impugned Order-in-Original No.29/Pr.Commr./Adj./2015 dated 20.01.2016 passed by the Principal Commissioner of Customs (Import), ICD, Tughlakabad, New Delhi]

Rajesh Maikhuri, Custom Broker
Rajesh Kumar Tiwari, Employee Appellants

Vs.

CC, New Delhi Respondent

Appearance:

Rep. by Shri B.L. Garg, Advocate for the appellants.
Rep. by Shri R.K. Manjhi, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.56281-56282/2017

Per B. Ravichandran:

These two appeals are against common impugned order dated 20.01.2016 of Commissioner of Customs (Import), Tughlakabad, New Delhi. Shri Rajesh Maikhuri is Managing Director of CHA company, M/s. R.U. Import Export Pvt. Ltd. Shri Rajesh Kumar Tiwari is an employee of the said CHA company. The present appeals are against imposition of penalties under Section 112 (a) of the Customs Act, 1962, on them.

2. The brief facts of the case are that M/s. M.M. Trading, Bhiwadi, Thane (Maharashtra) imported a consignment of cosmetics and M/s.R.U. Import and Export Pvt. Ltd. filed bill of entry for clearance of the said cosmetics through ICD Tughlakabad. On examination of the imported consignment, various violations of provisions of Customs Act, 1962 were noticed by the Customs authorities. These are with reference to mis-declaration of description of goods, which are branded cosmetics, mis-declaration of value, packing without MRP marking and IPR regulations, etc. After concluding the inquiry, proceedings were initiated against the importer and the CHA along with other individuals. The case was adjudicated resulting in the impugned order. The declared value of about Rs.20 lakhs was enhanced to Rs.3.30 crores. The goods were ordered to be confiscated absolutely. Various penalties were imposed on the importer and other persons connected with the importation. Rs.5 lakh each was imposed on the present two appellants under Section 112 (a) of the Act.

3. Ld. Counsel contested the findings of the Original Authority with reference to said imposition of penalty. He submitted that the appellants acted in their capacity as employee of CHA in processing import consignments. The KYC norms of the importer have been verified and upon satisfactory documentation, they proceeded to file the bill of entry based on the invoice, packing list, etc. made available to them. On examination, the goods were found to have been imported in violation of various provisions. As a CHA, they have no role in such violations. The evidences collected

during investigation, including various statements given by the appellants and others, did not bring out any act or omission on the part of the appellants, which will attract provisions of Section 112 (a) of the Act. They have acted in their capacity as a CHA, bonafidely, with all the available documents. They have no prior knowledge or intention regarding improper importation of these cosmetic items.

4. Ld. AR strongly contested the appeals. He submitted that the importer situated in Maharashtra has chosen to import the sensitive items through ICD Tughalakabad. The CHA having full knowledge of the provisions of Customs Act have not taken adequate and necessary precautions to avoid such imports in violation of various provisions of Customs Act. The CHA acted through third party and did not discharge his duties diligently in proper way resulting in these violations by the importer. The provisions of Section 112(a) are rightly invoked in the present situation and the Original Authority is correct in his conclusion.

5. We have heard both the sides and perused the appeals records.

6. In paras 31 and 32 of the impugned order, the Original Authority recorded his findings regarding liability of the appellants for penalties. On careful perusal of the said findings, we note that the ingredients of Section 112 (a) were not brought with any clarity, so that the penalties can be imposed on the appellants. Section 112(a) stipulates that a person shall be liable to penalty, who, in relation to any goods does or omits to do any act, which act or omission would render such goods liable to confiscation under

Section 111 or abets the doing or omission of such an act. In the present case, the appellants, being authorized employees of CHA, dealt with the documentation and processing of import consignments. They have acted on the basis of the documents and details provided by the importer. The bonafide existence of the importer as per the records of the DGFT is not in doubt. There is no dispute regarding fulfillment of KYC norms in the present case. Admittedly, the documents provided by the importer to the CHA for clearance of the imported goods did not disclose full and complete details of the import consignments. This was revealed after physical examination of the goods. Apparently, in absence of prior knowledge of possible mis-match of the documents and the goods, the CHA has no way of knowing the violations before hand. We find in the proceedings before the Commissioner, no evidence has been brought out about the prior knowledge of the appellants regarding violation of the provisions of Customs Act. Lack of due diligence and failure to take more precautions can not, by itself, bring in penal consequences under Section 112 (a). For imposition of penalty under Section 112 (a), a positive act or omission is to be established. For penalty malafide act/omission is one of the requirements. In the present case, the appellants, being authorized employees of the CHA, are apparently penalized for their act of abetting such violations by the importer. As already noted, we find that the evidences available in this case do not indicate to any such illegal act on the part of the CHA. In this connection, we also refer to the decision of the

Tribunal in the case of **Rajan Arora Vs. CC (ICD, TKD), New Delhi – 2017 (352) ELT 37 (Tribunal-Delhi).** The Tribunal after referring to the various decisions dealing with similar set of facts held that penalty on abettor can not be imposed on assumptions and presumptions. Cogent, tangible and reliable evidence is required for such penal actions.

7. In view of the above analysis, we find that the impugned order, in sofar as it imposes penalties on the appellants, is not sustainable. Accordingly, we set aside the impugned order, limited to that extent. The appeals are allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.