CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 24.08. 2017

Customs Appeal Nos. 51785 & 51800 of 2016 – SM

(Arising out of order-in-original No. 06 PR.COMMR/ADJ/2016 dated 29.02.2016 passed by the Commissioner of Customs, Delhi).

Anoop Mithas Appellant
M/s Eminence Container Lines

Vs.

CC, New Delhi Respondent

Appearance:

Sh. Siddharth Yadav & Ms. Ishita, Advocates for the appellant

Sh. K. Poddar, AR for the respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order Nos. 56321 – 56322/2017

Per: **Ashok Jindal**:

The appellants are in appeal against the impugned orders wherein penalty on both the appellants are imposed under Section 112A of the Customs Act, 1962.

2. Brief facts of the case are that a specific information, the DRI on 02.04.2014 that cigarettes of foreign origin in huge quantities were being smuggled into the country by concealing them in container No. TGHU 8067219 by mis-declaring them as containing car seat cushions. Acting on the said intelligence, the said container was investigated by DRI. On 17.04.2014, the

said container was examined but till 07.05.2014, no bill of entry was filed for clearance of the said goods. On 07.05.2014, Bill of Lading, delivery order, bond copy, KYC detail on consignee letter head, consignee's IEC copy, pan card copy and voter ID card copy, IGM etc. were obtained by DRI from M/s Sea Marine Shipping Agencies. Scrutiny of the documents related to the said container revealed that the consignment was covered vide Bill of Lading issued at Bangkok and IGM was issued by M/s Carbokorn Thailand Co. Ltd. and consigned to M/s Shri Balaji Trading Co., New Delhi. Bill of Entry was not filed till 09.05.2014, the said container was examined by the DRI in the presence of two independent witnesses, representative of the CONCOR and Customs officers resulting in recovery of total of 33,92,000 cigarettes. No one came forward to produce documents in support of legal importation of the cigarettes, the alongwith case seat cushions. For concealing and smuggling of contraband goods the same were placed under the retention under the provisions of the Customs Act, 1962. Scrutiny of the documents obtained from M/s Sea Marine Shipping Agencies revealed that one Sh. Jagjeet was the IEC holder and Prop. of M/s Shri Balaji Trading Company who was examined under Section 108 of the Customs Act, 1962 and his statement was recorded, he stated that he had neither started any firm in his name or in any other name or in partnership nor started any business. On being shown the copies of papers provided by the shipping line in which delivery orders dated 17.04.14 and 24.04.14 and the agreement dt. 08.04.14 between M/s Shri Balaji Trading Co. and M/s Sea Marine Shipping Agency and other papers, he stated that photograph affixed on the IEC from DGFT was his own photograph and address & PAN no. written on the same pertained to him but he did not knew M/s Shri Balaji Trading Co. and he has not opened any company, he had never applied for IEC No. that with regard to copy of PAN card, he stated that the same is his PAN card's copy but the signature on the same is not his signature, regarding copy of election card, he stated that the same is his election card, except the above he did not know anything about other papers. Thereafter, the statement of appellant namely, Sh. Anoop Mithas were also recorded who stated that he is engaged in handling of NBOCC containers movement as sub agent of Eminence Container Line, Port Trade Shipping Agencies Pvt. Ltd. Sea Port Line India Pvt. Ltd., Sea Express Shipping Agencies, Pvt. Ltd. and Rashi Shipping Services Pvt. Ltd. that major job as sub agent of shipping line was to provide delivery order, container monitoring, re-export of containers etc. They do not have any clients of import and providing only services as sub agent in import, they have many clients for export, that they were not providing any clearance facility to any client; that they were mainly in touch with forwarding agencies for export of consignments. He further submitted that he has submitted related papers to the import consignment of M/s Shri Balaji Trading Co. on 07.05.2014 and further correspondence on 21.05.2014 that these papers i.e. copy of delivery order, copy of bill of lading, surrender letter of shipping line against bill of lading, original bond copy, KYC detail on consignee letter head, consignee's IEC copy, PAN card copy and voter ID card copy, IGM and SMTP copy and shipping line invoice were related to the import consignment imported in question. He further stated that container was taken from M/s Eminence Container and sent the same through M/s Alpine Shipping that they were the sub agent and contact person is Mr. Shad; that they normally take only papers as per KYC norms to complete the KYC formalities but they do not visit to the place of the consignee for verification. He also stated that no identity proof was taken at the time of handing over delivery order to the person related to the said import consignment as per practice. That the said order was handed over to

Sh. Rajesh on 17.04.2014 which was again issued to him on 24.04.14 as the previous one was valid upto 21.04.14 as they could not clear the said container before the said date. He also stated that Sh. Sanjay come to take the delivery order of the said consignment. He also provided mobile number of Sh. Sanjay. In these set of facts, the show cause notice was issued to the appellant to impose penalty under Section 112 of the Customs Act. Aggrieved from the orders of imposition of penalties, the appellants are before me.

3. Ld. Counsel for the appellant submits that the penalty has been proposed against M/s Eminence Container Lines on the ground that they are the agent of M/s Alpine Shipping and on behalf of the principal and issued delivery order of the same to the consignee as mentioned in the Bill of Lading sent by their principal. Since they do not have their office in Tuglakabad they have appointed sub-agent to issue and collect all charges of the documents from the consignee as per customs guidelines. The adjudicating authority in the impugned order held that M/s Eminence Container Lines had active role in mis-declaration as has been alleged in the show cause notice in order to facilitate the importer to avail undue benefit and to evade payment of duty. Therefore, penalty was imposed under Section 112(b) of the Customs Act, 1962. But the job of M/s Eminence Container Lines is a pure agent of M/s Alpine Shipping. Therefore, there was no role of the appellant for mis-declaration of the goods. Moreover, the Revenue has not come with any evidence that the appellant were acted or evaded in preparing the false and incorrect Bill of Lading particulars of the goods. As appellant never issued Bill of Lading, therefore, the penalty on the appellant is not imposable.

4. With regard to the appeal filed by Sh. Anoop Mithas, he submitted that the appellant has obtained all the relevant documents of the importer in form KYC and all those documents were submitted to the customs authorities during the course of investigation. The sole allegation for imposing penalty on the appellant is that they have not obtained photo ID of the person to whom the delivery order was issued. Therefore, the penalty was imposed. In fact, the appellant has obtained all the necessary documents relating to the importer in question. The appellant has given delivery order and a person representing the importer has come to receive the documents should furnish all the documents for the importer. In that circumstances, the appellant has taken due diligence while issuing delivery order, therefore, no penalty can be imposed on the appellant. To support his contention, he relied on the Hon'ble Delhi High Court decision in the case of ***CC (Import & General), New Delhi vs. Buhariwal Logistics – 2016 (332) ELT 278 (Del)*** to say that the penalty on the appellant is not imposable.

5. On the other hand, ld. AR for the Revenue opposed the contention of the ld. Advocate and submits that in this case Bill of Lading has been issued by the appellant namely M/s Eminence Container Lines who has given wrong description of the goods therefore, they are liable for penalty. Moreover, in the case of Sh. Anoop Mithas, no voter ID or identification of person to whom documents were handed over were obtained therefore, the actual importer of the goods escaped from the customs. Therefore, he is liable to penalised.

6. Heard the parties considered the submissions.

7. On careful consideration and submissions made by both the sides, I find that the sole ground for imposition of penalty on M/s Eminence is that they have

given wrong description of the goods in the Bill of Lading. In fact, Bill of Lading has not been issued by the appellant and they were pure agent of M/s Alpine Shipping who has issued the Bill of Lading. As no role has been explained by the authorities below alleging the appellant for the act of omission and commission which resulted leading to mis-declaration, therefore, the penalty on the appellant is not imposable. As Revenue has failed to produce any evidence on record that the appellant was in collusion for mis-declaration and description of the goods in question, therefore penalty on the appellant is not imposable.

8. Further, I find that in the case of Sh. Anoop Mithas penalty imposed on the appellant mainly on the ground that appellant has not obtained identity of the person to whom documents has been delivered.

9. In the case of ***Buhariwal Logistics*** (supra) wherein the High Court observed as under-

> "*.....,.... The Court finds that in the said order as far as respondent No. 1 is concerned, one reason for justifying the penalty is that respondent No. 1 had failed to verify the antecedents of the importer diligently so as to inform the Department in case of any adverse observation. The other reason is that it had failed to "supervise its employees so as to thwart the illegal import of the impugned car". There was no finding, based on the evidence on record, that respondent No. 1 was aware of the illegal import in which the G-card holder was involved. Considering that it was a question of penalty, there ought to have been some tangible material to show that respondent No. 1 was aware of the acts of its employee/ agent, Mr. Prince. As rightly pointed out, if respondent No. 1 was found to have acted in breach of Regulation 19(8) of CHALR, 2004, that might call for a separate action to be initiated under those regulations. However, that by itself will not justify the imposition of penalty under Sections 112 and 114AA of the Act unless knowledge of the illegal acts of the agent/ employee is able to be attributed to his employer/ principal*".

10. Admittedly, in this case, it was not in the knowledge of the appellant that they were having knowledge of illegal import made by the importer. In that circumstances, relying on the case of ***Buhariwala Logistics*** (supra), the penalty on the appellant are not imposable.

11. With these terms penalty is not imposable on the appellants. Consequently, the impugned order for imposing penalties on the appellants is set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant