

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/52003/2014-CU [DB]

[Arising out of Order-in-Original No.49/NLB/Commr./2013 dated 31.10.2013 passed by the Commissioner of Customs (Import & General), New Customs House, New Delhi]

M/s.Rajendra P. Kapur

...Appellant

Vs.

C.C., New Delhi

... Respondent

Present for the Appellant : Ms. Prabhjyoti Chadha, 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 : 29/08/2017

FINAL ORDER NO. 56616/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 31.10.2013 of Commissioner of Customs (Import and General), New Delhi. The appellant is a licensed Customs House Agent involved in processing of import and export through Customs. In the

present case, based on certain intelligence, the Customs Officers intercepted an import consignment covered by Bill of Entry dated 16.11.2010. On Examination, the consignment was found to contain micro S.D. Memory Cards in place of 'Herald Frames' (spare parts of weaving machines) as declared in the document. On completion of enquiry, proceedings were initiated against various persons including the appellant. In the impugned order, the Commissioner ordered the confiscation of seized goods with re-determined value of Rs.67,29,000/- with permission to redeem the same on payment of fine of Rs.10,00,000/-. Various penalties were imposed under Section 112 and 114AA on various connected persons. A penalty of Rs.1,00,000/- each was imposed on the appellant under Section 112 and 114AA of the Customs Act, 1962. Aggrieved, the appellant is in appeal.

2. The Id. Counsel for the appellant submitted that the appellant is an authorized CHA. They never filed the Bill of Entry in the present case and their name has been misused. The Bill of Entry was filed through service centre managed by CMC in the Customs House. The role of the appellant in the whole case has been indicated in para 7 of the impugned order. From the findings of the original authority, it is clear that the only allegation against the appellant is that he gave

authorization for Pass to Shri Biplav Kumar who is their employee and 'H' Card holder.

3. The original authority concluded that the appellant did not exercise his responsibility in getting 'H' Card of Shri Biplav Kumar renewed in time and could not have permitted him to work for the company. His act of issuing a letter dated 20.10.2010 to the Security Manager of Cargo Complex, Airport for the grant of permanent Pass will attract penal consequence. On this ground the penalties under both Section 112 as well as 114 AA have been imposed on the appellant. The Id. Counsel submitted that the ingredient for penal action is not at all established in the present case.

4. The Id. A.R. opposed the appeal. He submitted that as a CHA, the appellant should not have issued a letter to the Security Manager for the Pass of his employee Shri Biplav Kumar, as at that relevant time, Shri Biplav Kumar did not have a renewed 'H' Card which expired in 2008 itself. This action of the appellant will attract penal provisions under Section 112 & 114AA. Reliance was placed on the decision of the Tribunal in the case of Nandu Raghunath Shinde - 2015 (317) E.L.T. 525 (Tri.-Mum.).

5. We have heard both the sides and perused the appeal records. The appellant is a CHA. Admittedly, he did not file Bill of Entry in the present case, though, his name figures in the said document. The Bill of Entry has been filed through service centre of CMC. The original authority found that proper procedure has not been followed while admitting bill of entry by the service centre of CMC. However, no penalty was imposed on CMC. Appeals against the present impugned order by other noticees have been heard and decided by this Tribunal vide Final Order No. 55820-55821/2017 dated 07.08.2017. In the present case, the findings of the original authority is to the effect that by issuing a letter dated 20.10.2010 for a Pass in favour of Shri Biplav Kumar whose 'H' Card expired in 2008, the appellant attracted penalty under Section 112 & 114 AA. We note, penalty under these provisions are imposable for an act or omission, which will render the goods liable for confiscation or for an act of intentionally making signing any document or declaration knowingly being false or incorrect in any material particulars. On careful consideration of both the penal provisions, we find that in the present case, the original authority did not bring out the reason for penal liability of the appellant for his act or omission. The appellant did issue a letter dated 20.10.2010 addressing Security Manager, Cargo Complex for a permanent Pass for Shri Biplav Kumar. The Bill of entry for the present consignment was falsely filed in the

name of the appellant, by others on 16.11.2010. Even if, it is held that the act of the appellant in issuing a letter dated 20.10.2010 is an infringement, it is not tenable to hold that such act made the goods imported on 16.11.2010 liable for confiscation. There is no link between these two acts. Further, the appellant is not liable for penalty under Section 114 AA as the said penalty relates to act of a person knowingly signing any declaration or documents, which he knows, as false or incorrect in the transaction of any business under the Customs Act. The penalty imposable is with reference to value of goods. As already noted, there is no link between confiscability of impugned goods and the letter dated 20.10.2010 of the appellant to the Security Manager. Regarding the reliance placed by the Revenue on the decision of Nandu Raghunath Shinde (supra), we note that the material facts mentioned therein are not applicable to the facts of the present case. Various mis-declaration of the appellant are listed in para 6 of the said order. There was apparently linkage between the attempted smuggling of the particular consignment with the CHA and employee. In the present case, the impugned consignment cannot be linked to the appellant. The same was not the case of the Revenue as discussed in the impugned order.

6. In view of the above discussion and analysis, we find that the penalties imposed on the appellants are not sustainable. Accordingly, the impugned order to that extent is set aside. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita