IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 28/08/2017.
DATE OF DECISION : 11/10/2017.

Customs Appeals No. 50263, 50415-50416 of 2017

[Arising out of the Order-in-Original No. DLI/CUSTOM/PRE/MKV/ PR. COMMR/17/2016 dated 25/10/2016 passed by The Principal Commissioner of Customs (Preventive), New Custom House, New Delhi.]

Shri Vikas Yadav]
Shri Anil Chand] Appellants
Shri Ravinder Singh]

Versus

CC, New Delhi Respondent

Appearance

Shri Piyush Kumar and Ms. Reena Rawat, Advocates – for the appellants.

S/Shri S. Nunthuk and R.K. Manjhi, Authorized Representative (DRs) – for the Respondent.

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

Final Order No. 57102-57104/2017 Dated : 11/10/2017

Per. B. Ravichandran :-

These three appeals are against order dated 25/10/2016 of Principal Commissioner (Preventive), New Custom House, New Delhi. The impugned order impose penalties of Rs. 10 lakhs each on the appellants under Section 112 (a) of the Customs Act, 1962 for their role in the import of synthetic diamond powder, watch movements, watch parts and chatons covered under bill of entry dated 21/07/2014. The said goods valued at Rs. 2.16 crores were purported to have been imported in the name of M/s Bharat Medical Devices Pvt. Ltd., New Delhi. The said company categorically stated that they are not involved in any such import. The investigation conducted by the Customs officers revealed that various persons acted in consultation to import the said consignment which was in violation the provisions of Customs Act, 1962. The impugned order recorded the following findings in respect of the present three appellants :-

> "43.4 In respect of Mr. Vikas Yadav, S/o Shri Shivraj Singh Yadav, R/o K-385A, Gali No. 6, Mahipalpur, New Delhi, Noticee No. 3, it is found that he had been actively associated with Mr. Deepak Sharma in the act of filing of Bill of Entry for clearance of mis-declared goods. He provided facilitation to Mr. Deepak Sharma in his unlawful and fraudulent work and made his task of cheating and evasion of customs duty easy in greed of money. Mr. Vikas Yadav also paid Customs Duty for past three consignments imported by Mr. Deepak Sharma which is admitted by him vide his statement dated 01/08/2014 recorded under Section 108 of the Customs Act, 1962. He did not merely introduce Mr. Deepak Sharma to Mr. Ravinder Singh rather he actively associated in all the clearances to be made on fraudulently forged documents. Mr. Anil Arora, Director of M/s Bharat Medical Devices Pvt. Ltd. while tendering his voluntarily statement dated 27/08/2014 under Section 108 of the Customs Act, 1962 also doubted Mr. Vikas Yadav's

involvement in the matter of forging, cheating and other offences when he recognized his signatures with Mobile No. 9810068864 and informed that he was employee of their authorized CHA Mr. Sanjeev Yadav. Thus Mr. Vikas Yadav is also found actively involved in the knowledge of mis-declaration of imported seized goods, done by Mr. Deepak Sharma and accordingly committed offence under Customs Act, 1962 and is liable for penal action under Section 114A of the Customs Act, 1962. Citations quoted by Mr. Vikas Yadav vide his written submissions made on 26/08/2016 on the question of imposition of penalty upon him are not relevant in the instant case once his active involvement is proved, hence are not discussed further.

…..

43.6 In respect of Mr. Ravinder Singh S/o Trilok Singh, Age-42 years R/o G-1/29, Gali No. 32, Rajapuri, Uttam Nagar, New Delhi, holder of G Card No. 277/98 from CHA M/s Chand International, New Delhi, it is found that he being a qualified person having experience of Customs Clearance work he has also indulged knowingly in fraudulent work of Mr. Deepak Sharma. Mr. Ravinder Singh, vide his written submissions dated 21/07/2016 as discussed above in para 36 and its sub-paras above, expressed his innocence and said he was discharging his duties as an employee of the CHA, whereas, the statements of other co-noticees and other evidences discussed here and above leads to the conclusion that he extended all help and assistance for filing of bill of entry in the name of M/s Bharat Medical Devices Pvt. Ltd., New Delhi without conducting necessary verification of antecedent of the importer and particulars mentioned in KYC. He did not follow the procedure as laid down in CBLR an dnot used due diligence in getting clearance of mis-declared goods.

Thus he is also found to have assisted/associated with Mr. Deepak Sharma in submission of false documents and getting clearance of mis-declared goods with intention to evade of Customs duty and rendered himself for penal action under Section 112 (a) of the Customs Act, 1962. Citations quoted by Mr. Vikas Yadav in his written submissions on the question of imposition of penalty upon him are not relevant in the instant case once his active involvement is proved, hence are not discussed further.

43.7 In respect of Mr. Anil Chand, owner of M/s Chand International, New Delhi it is found that he vide his statement dated 08/08/2014 had admitted all facts of the statements tendered by Mr. Ravinder Singh and admitted his mistake not to verify KYC and attempted clearance of seized goods without following safeguard procedure as per regulation 11 of the CBLR 2013. The said CHA had contravened the provisions of regulations 11 of the Customs Brokers Licensing Regulations, 2013 and failed to follow the procedure for clearance of goods as laid down under Customs Act, 1962, accordingly he is also liable for penal action under Section 112 (a) of the Customs Act, 1962 as well as deserves action as warranted under regulation 18, 19 and 22 of the Customs Brokers Licensing Regulations, 2013, which has been dealt separately by the Commissioner of Customs (General), New Customs House, New Delhi".

2. With the above finding, the Original Authority imposed penalties on each one of the appellant.

3. The learned Counsel, elaborating the grounds of appeals on behalf of the appellants, submitted that the bill of entry in the present case was filed on the basis of documents provided by the

importer's representative Shri Deepak Sharma. The appellants have no prior knowledge of any possible mis-declaration of imported goods. Shri Vikas Yadav (appellant) had remitted Customs duty using his bank account for the past imports only as a facility for online payment. This by itself will not show that he is involved in the duty evasion.

4. All the appellants submitted that the provision of Section 112 (a) will not apply to their case. When the bill of entry was filed by the CHA based on the particulars provided by the representative of the importer, the appellants cannot be held liable for any act or omission which will render the goods liable for confiscation. The charge of abetting any offence is not established as the appellants did not do or omit to do anything with the prior knowledge. The learned Counsel also submitted that even otherwise a penalty of Rs. 10 lakhs imposed on the appellants is highly excessive and not commensurate with offence, if any. A penalty can be imposed only for failure to perform a statutory obligation and it is a matter of discretion by the Adjudicating Authority to quantify of any penalty.

5. On behalf of Shri Anil Chand proprietor of M/s Chand International, CHA, it is submitted that he is not aware of the possible mis-declaration in the imported consignment and he cannot be penaltised for the Act of the importer. He had acted based on the instruction of Shri Sharma and that should be sufficient as implied authorization. When the Original Authority

concluded that Shri Deepak Sharma is the importer and he had appointed the appellant/assessee as CHA then, the requirement of obtaining authorization is fulfilled.

6. The learned AR reiterated the findings of the Original Authority. He further submitted that the role of the appellants in the fraudulent import of mis-declared cargo has been clearly brought out by the investigation. The various aspects brought out during the investigation alongwith evidence have been duly examined by the Original Authority. The CHA had failed to act with the due deligence expected as per law and filed bill of entry without any proper authorization and without verifying the existence and genuineness of the importer. No proper authorization was given by M/s Bharat Medical Devices Pvt. Ltd. for filing this bill of entry in their name. The appellants cannot plead ignorance when the evidence clearly bring out their role in abetting an improper import which has been established. The learned AR also relied on various decided cases to support the imposition of penalties on the appellants.

7. We have heard both the sides and perused the appeal records. We note that in the present case, the name of M/s Bharat Medical Devices Pvt. Ltd., New Delhi has been improperly used by other persons in order to import high value consignments, which were grossly mis-declared in description and value. Detailed investigations were carried out by the Revenue to bring out the role of multiple persons in such illegal

import. We also note that all the appellants in the present appeal had definite role. The role of all connected persons had been brought out in their statements given before the Customs officers. Shri Vikas Yadav categorically stated that he provided the invoice, airway bill, GATT authorization etc. to Shri Ravinder Singh for filing the impugned bill of entry. The same were received by him through Shri Deepak Sharma. It is admitted that no authority letter was sought for before filing the bill of entry. Shri Deepak Sharma who played the main role in the case admitted that the documents were passed on by him to Shri Vikas Yadav for filing the bill of entry. The same were received through fax from his friend Shri Jai Kishan living in Hong Kong. The method of procuring power of attorney was also elaborated by him in his statement. Shri Deepak Sharma admitted his responsibility in the transaction including the mis-declaration of the imported goods.

8. Shri Anil Kumar Chand, Proprietor of M/s Chand International, New Delhi who acted as CHA in filing the bill of entry admitted that his employee, a G Card holder, Shri Ravinder Singh, got the work for clearing this consignment from Shri Vikas Yadav who is known to Shri Deepak Sharma. He admitted that he did not verify the existence of the importing firm. Admittedly, the KYC norms required to be complied before taking customs clearance work has not been fulfilled by the CHA.

9. Shri Ravinder Singh, G Card holder of M/s Chand International, New Delhi CHA, had sufficient knowledge in customs clearance work. He is aware of the activities of Shri Deepak Sharma. His role in the present import as examined by the impugned order is with reference to extending all help and assistance in filing the bill of entry in the name of M/s Bharat Medical Devices Pvt. Ltd., New Delhi without conducting any necessary verification about the importer or the documents. He is associated with Shri Deepak Sharma in submitting the false document and getting the clearance of mis-declared goods.

10. A careful consideration of the narration recorded in the impugned order clearly brings out the role of each one of the appellant in the mis-declaration and improper import of the impugned goods in the name of M/s Bharat Medical Devices Pvt. Ltd. who upon investigation were established to be not connected to the import at all. We note that the appellants contested the penalty imposed on them in terms of Section 112 (a). Section 112 (a) states that any person 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 shall be liable to penalty of specified quantum mentioned therein. In the present case, the evidences analyzed in the impugned order clearly bring out the role of each one of the appellant in the importation of impugned consignments which is rightly held to be liable for confiscation. Accordingly we find no merit in the appeals filed by them.

Regarding excessive penalty as pleaded by the appellants, we note that the duty involved as determined by the Original Authority is Rs. 46,76,174/-. While the appellants roles in the case were established, considering the fact that there is no evidence that they have gained substantially through these impugned acts/omissions, we find it fit and proper to reduce the penalty to Rs. 5 lakhs each on the appellants.

11. Except for this modification, the appeals are dismissed.

(Order pronounced in open court on 11/10/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

PK