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

Date of Hearing : 13.6.2017
Date of Pronouncement:12.10.2017

Appeal No. C/50475-50478/2014-SM

(Arising out of Order-in-Original No. RT/ACE/60/2013 dated 8.10.2013 passed by the Commissioner of, Air Cargo (Export), New Delhi)

Budget Logistics Pvt. Ltd.
Manoj Kumar
Satadev Kataria
Sanjay Chauhan ... Appellant

Vs.

CC, Air Cargo (Export), New Delhi …..Respondent

<u>Appearance</u>

Shri B.K. Singh, Advocate - for the Appellant
Ms. Vandana Singh, Advocate

Shri K. Poddar, D.R. - for the Respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 57499-57502/2017

Per S.K. Mohanty:

The brief facts of the case are that an Intelligence developed in the Directorate of Revenue Intelligence (DRI), New Delhi indicated that memory cards, RAMs and gold bars would be smuggled into India from Hong Kong in concealing the same in scientific speed pumps, coming through courier bags of M/s Linehaul Express (India) Pvt. Ltd., an "On Board Courier", by Flight No. CX-695 on 10/11.5.2012. Intelligence further indicated that one Shri Manoj Kumar is actively associated in smuggling of contraband goods. On arrival of the goods at the port of import, the DRI officers examined 7 packages contained in three bags in the form of 1,15,597 pcs. of memory cards, 3 gold bars of 1,000 gms. each, 710 pcs. of RAMs of 512 MB. Thereafter, the department conducted search at the residential premises of Shri Manoj Kumar, Director of Budget Logistics on 11.5.2012 and also searched the office premises of Budget Couriers Pvt. Ltd. on 12.5.2012. The department also visited the office of M/s Abee Logistics and the residence of Shri Anil Kumar, its proprietor. Upon recording of statements of different persons, the department initiated show cause proceedings against the appellants on the ground that Shri Manoj Kumar and Shri Satadev Kataria, Directors of Budget Logistics perpetuated fraud by showing imports of goods in the names of various non-existing/fictitious consignees. It was further alleged that above named persons were the actual importers under the guise of M/s. Abee Logistics, which was non-existent and controlled by them. Accordingly, the show cause notice proposed confiscation of the imported goods under Section 111 (d), (f), (i), (l), (m) and (o) of the Customs Act, 1962. Further, the Show Cause Notice dated 3.5.2013 also proposed for imposition of penalty under Section 112 and 114AA ibid on Shri Manoj Kumar, Shri Satadev Kataria, Shri Sanjay Chauhan and M/s. Budget Logistics. The matter was adjudicated vide the impugned order dated 8.10.2013, wherein penalties proposed in the Show Cause Notice against the appellants were confirmed by the adjudicating authority. Feeling aggrieved with the adjudication order, the appellants have preferred these appeals before the Tribunal.

2. Ld. Advocate appearing for the appellant submitted that though the Show Cause Notice had proposed confiscation of goods under various sub-section of Section 111 *ibid*, but the adjudication order has only recorded the reasons for confiscation of goods under sub-section 111(d) and 111 (m) *ibid*. Thus, the ld. Advocate submitted that confiscation of goods under any other sub-sections of Section 111 *ibid*, as proposed in the Show Cause Notice, cannot be acted upon in absence of any discussions on those aspects in the adjudication order. He further submitted that in respect of imposition of penalties on the appellants, the adjudicating authority has not specifically discussed the role/acts and deeds of the appellants for invocation of the provisions of Section 112 and 114AA *ibid*. Thus, he submitted that in absence of any specific findings recorded in the impugned order regarding the role and act of the appellants, imposition of penalty cannot be sustained.

3. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

4. Heard both the sides and perused the case records.

5. The short question involved in this appeal for consideration by the Tribunal is, whether the provisions of Section 111(d) and 111 (m) can be invoked under the circumstances of the present case for confiscation of the goods, resulting in imposition of penalties under Section 112 and Section 114AA *ibid* on the appellants.

6. In this case, the ld. Adjudicating authority has invoked the provisions of Section 111 (d) and 111(m) *ibid* for confiscation of the imported goods. The said statutory provisions are extracted herein below for ease of reference:-

Section 111. Confiscation of improperly imported goods, etc.

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];

It is an admitted fact on record that the DRI officers intercepted the goods before filing any document in respect of the imported goods by the concerned persons. Since none of the appellants had signed any document for the purpose of obtaining a licence or for the purpose of importing the goods, it cannot be said that any fraudulent practice was adopted by the appellants for illegal importation of goods, which were liable for confiscation. Thus, it is obvious that the provisions of sub-section (d) of Section 111 ibid do not get attracted for confiscation of the goods. For goods being liable to confiscation under Section 111(m) ibid, those must be mis-declared in the entry made by the importer in the Bill of Entry. Since, the goods were intercepted by the Officers of DRI from the Linehaul Express/ the Airlines Courier, and admittedly, no bill of entry was filed or any entry was made by any of the appellants, I am of the view that the provisions of Section 111(m) cannot be invoked for confiscation of goods.

7. The facts are also not under dispute that the impugned goods were never cleared or given out of charge by the Customs authorities. Therefore, there was no occasion for the appellants to deal with the goods in any manner as envisaged under various provisions of Section 111 ibid. Further, the documents seized by the DRI officers, prove the fact that the goods were sent from Hong Kong in the name of M/s Abee Logistics, who were responsible for making the declaration in bill of entry. Since the appellants are no

way concerned with the goods or making any declaration in respect of the imported goods, the provisions of Section 112(a) and 114AA ibid cannot be invoked against them for imposition of penalties.

8. In view of above, I do not find any merits in the impugned order, so far as, it imposed penalties on the appellants. Accordingly, after setting aside the same, the appeals are allowed in favour of the appellants.

(Pronounced in Court on 12.10.2017)

(S.K. Mohanty)
Member (Judicial)

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