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

Date of Hearing/Decision:26.10.2017

Customs Appeal No.52869/2015

[Arising out of Order-in-Appeal No.CC(A)CUS/Prev/508/2015 dated 12.05.2015 of the Commissioner of Customs (Appeals), New Delhi

Mr. Dharampal Appellant

Vs.

CC, New Delhi Respondent

Appearance:
Rep. by Shri Vaibhav Singh, Advocate for the appellant.
Rep. by Shri Govind Dixit, DR for the respondent.

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

Final Order No.57595/2017

Per B.Ravichandran:

The appeal is against order dated 12.05.2015 of Commissioner of Customs (Appeals), New Delhi. The appellant is a G Card Holder working with M/s.Ramesh Chander Dewan, licensed customs broker. The present appeal is against imposition of penalty on the appellant under Section 114 AA of the Customs Act, 1962. The brief facts of the case are that based on certain intelligence, the officers of Customs, Tughlakabad conducted certain investigations with reference to shipping bills filed on 3.12.2012 in the name of M/s.Amir Hossain Mir Trading. The investigation resulted in the proceedings against various notices including the present appellant. The Original Authority vide his order dated 31.03.2014 rejected the FOB value of the leather goods covering in the shipping bill and redetermined the same to a much lower value. He also disallowed a draw back of Rs.26,00,352/-. A penalty of Rs.3 lakh was imposed on the appellant for his role in the filing and clearance of these shipping bills. The case of the Revenue is that the goods were declared with highly inflated value in order to claim ineligible draw back and the appellant's role, attracted penal provisions. The Original Authority's order of penalty was upheld by the impugned order. The impugned order in its brief finding recorded that the appellant has been associated with the offence of fraudulent attempt of filing ineligible draw back and he had a role in the transaction.

2. Ld. Counsel for the appellant submitted that neither the original order nor the first appellate order justify the imposition of penalty under Section 114 AA of the Act. The shipping bills were not filed by the appellant. The person, who filed the shipping bill, has been identified as Shri Jamuna Prasad, who misused the identity of the appellant. Regarding mis-use of the name of CHA and the appellant's name, the CHA has filed an intimation to the Customs on 17.12.12. He submitted that the appellant has known Shri Jamuna Prasad, who used to provide business and as far as the present case is concerned, the appellant did not involve in any offence attracting penal provisions under Section 114 AA of the Act.

3. Ld. AR for the respondent strongly contested the appeal. He submitted that records will show that the appellants were in regular touch with Shri Jamuna Prasad. In fact, the detail of G card was given to Shri Jamuna Prasad by the appellant. The appellant cannot escape liability if someone else uses his identity for fraudulent transactions.

4. Ld. AR also submitted that the appellant was in regular touch with Shri Jamuna Prasad before filing of this shipping bill. He submitted that Shri Jamuna Prasad categorically brought out the role of the appellant in the fraudulent transaction and his last statement made on 17.05.2013 should be considered, not the earlier statement.

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

6. The impugned order in four lines findings upheld the original order. No examination and discussion on the role of the appellant as well as the applicability of Section 114 AA of the Customs At, 1962 was recorded. Hence, we perused the original order. The original order records as below:-

> **"iii Mr. Dharampal:**
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> The revenue alleged that Mr. Dharampal was also associated in the offence of fraudulently attempt at availment of inadmissible drawback. Mr.Dharampal had stated that he did not file any of the subject Shipping Bills and his signature as appeared on customs documents were forged by someone else and he did not know that person. However, Mr. Jamuna Prasad has admitted in his statement that before filing the subject Shipping Bills he talked to Mr. Dharampal and he demanded Rs.500/- per Shipping Bills and on the direction of Mr. Dharampal only he produced himself as representative of exporter before the officers of Customs (Preventive) for examination of the said consignments. On the other hand Mr. Dharampal has stated in his statement dated 20.05.2013 that he agreed to present himself for the examination of the consignment on the request of Mr. Jamuna Prasad. In fact after getting knowledge of misusing of his G-Card and CHA name by Mr. Jamuna Prasad he did not file any complaint about the misuse of CHA before any authority either to customs or police

department. He further misstated that he had made contact to Mr. Jamuna Prasad on phone about 6-7 months ago but on scrutiny of call details of him and Mr. Jamuna Prasad it was revealed that they were in regular touch with each other during the relevant period. From the above it is established that Mr. Dharampal was also associated in the crime of fraudulently availment of inadmissible drawback . Mr. Dharampal, the G-card holder of M/s.Ramesh Chander Dewan has equally connived in facilitating the export clearance of M/s. Amir Hossain Mir. The arguments putforth by defence counsel Shri G.P.Singh cannot be accepted. In view of this Mr. Dharampal Singh is liable for penalty under the provisions of section 114 AA of the Customs Act, 1962."

8. We note that the provisions of Section 114 AA of the Act are as below:-

> "Section 114 AA. Penalty for use of false and incorrect material – if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

9. Finding, as recorded by the Original Authority, is that Shri Jamuna Prasad was in regular contact with the appellant and they had been in association with reference to shipments, which was facilitated by the appellant. The point, which comes out from the findings of the lower authority is that the shipping bills have been forged using the name of the appellant. Shri Jamuna Prasad in his earlier statement admitted that he was illicitly involved in fraudulent transactions and used Shri Dharampal identity for this. In respect of the present transaction, he requested Dharampal to assist him during the examination of the consignment by the officers. The only reason for imposing penalty under Section 114 AA of the

Act as could be seen from the original order is that the appellant was in regular contact with Shri Jamuna Prasad and in fact provided him G. Card details. This by itself will not establish the role of abetting in the shipment of consignment in question. The shipping bills were not filed by the appellant and hence, there is no evidence to show that he is part of shipment, which was apparently initiated and processed by Shri Jamuna Prasad. Considering the facts as recorded above by the original order and applying the provisions of Section 114 AA of the Act, we find no justification to impose penalty in absence of substantive evidence of abetting in shipment of improper consignment. Accordingly, we set aside the impugned order and allow the appeal.

[Order dictated and pronounced in open court]

(S.K. Mohanty)
Member(Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.