IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Customs Appeal No.C/51641/2016 [SM]

[Arising out of Order-in-Appeal No.CC(A) CUS/D-II/Prev./62 & 63/2016 dated 22.02.2016 passed by the Commissioner (Appeals) of Customs, New Delhi]

M/s.Jeevan Jain **...Appellant**

Vs.

C.C., New Delhi (Prev.) **... Respondent**

Present for the Appellant : Mr.Sourabh Kapoor, Advocate
Present for the Respondent: Mr.K. Poddar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 23/11/2017

FINAL ORDER NO. 58091/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 22.02.2016 passed by the Commissioner of Customs (Appeals), New Delhi. Imposition of penalty under Section 114AA of the Customs Act, 1962 is the subject matter of present dispute.

2. Brief facts of the case are that during the search conducted by Revenue, certain petroleum products were found, which were sent for testing to CRCL, New Delhi. Based on the report furnished by CRCL, the Revenue contended that the

goods were of hazardous waste and attracted the provisions of Hazardous Waste (Management Handling and Trans-boundary Movement) Rules, 2008. Accordingly, such goods were confiscated under Section 111 (d) and 111(m) of the Customs Act, 1962. The Department initiated show cause proceedings against the appellants seeking for confiscation of 104 Drums of rubber processed oil, Grease. Further, penalties were sought to be levied on Shri Sahib Chand Singhal of M/s. ESS ESS Traders and the appellant herein. The matter was adjudicated against the appellant wherein penalty of Rs.2,00,000/- was imposed by the adjudicating authority. In this case, the petroleum products were imported by M/s.Om Udyog and the same were sold on high sea sales basis to M/s. Amar Chand & Sons, who filed the Bill of Entry No.8623008 dated 29.11.2012 for clearance of such imported goods. The Department has merely proceeded against the appellant for imposition of penalty on the ground that the GR No. 2852 dated 07.12.2012 resumed from the premises of the appellant showed that the goods were clandestinely diverted by him to M/s. ESS ESS Traders, which were imported under the cover of Bill of Entry dated 29.11.2012.

3. Heard both sides.

4. It is not a case for the Revenue that the appellant has made any statement or declaration or filed any documents in context with import of the goods, which were proved to be false or incorrect. In this case, since the Bill of Entry was filed by one M/s. Amar Chand & Sons and based on the declaration

furnished by him, the Bill of Entry was assessed and Customs out of charge was given on 06.12.2012, it cannot be said that the appellant had provided certain false or incorrect material in relation to such import. Further, the Department was also in doubt as to the persons, who were actually filed the Bill of Entry for assessment purpose. Since contradictory stand has been taken by the Department at page 13 and at page 16 in the adjudication order, it cannot be said that the appellant is the importer of the goods and has made false declaration in context with the subject import. I also find that this Tribunal in the case of the appellant itself, in respect of the common investigation, has held that the appellant cannot be made liable for imposition of penalty under Section 114 AA ibid. The relevant paragraph in the Final Order No. 55906/2017 dated 14.08.2017 of this Tribunal is extracted here in below:-

> *"5. After having carefully considered the facts of the case and submissions of both the sides, it appears that the Revenue has failed to discharge its responsibility to prove charge of illegal import against the appellant. There is no clear cut finding that the appellant, Shri Jeevan Jain imported these goods contravening the relevant provisions of Customs Act. The original adjudicating authority makes a mention that "despite their being no direct inquiry from Shri Jeevan Jain as regards his role, in this case, his culpability is speaking out for itself". However this finding of the adjudicating authority in the face of facts on record is not sustainable. This finding is more in the nature of mere statement, which is without sufficient evidence to sustain the same."*

5. In view of above, I do not find any merits in the impugned order, so far as it imposed penalty on the appellant. Accordingly, after setting aside the same, the appeal filed by the appellant is allowed.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita