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

Date of Hearing/Decision:13.03.2018

Customs Appeal No.51895/2017

[Arising out of Order-in-Original No.13/2017 dated 6.9.2017 passed by the Commissioner of Customs (Export), Tughlakabad, New Delhi]

M/s.Triways Transportation Pvt. Ltd. Appellant

Vs.

CC, New Delhi Respondent

Appearance:
Shri Abhas Mishra, Advocate for the appellant.
Shri R.K. Majhi, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.50998/2018

Per B. Ravichandran:

The appeal is against order dated 6.9.2017 of Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi. By the said impugned order, the Original Authority imposed a penalty of Rs.5 lakh under Section 112 (a) of the Customs Act, 1962 on the appellant. The appeal is against the said penalty.

2. Briefly stated the facts of the case are that the appellant acting as Customs House Agent, filed bill of entry dated 3.10.2012 for clearance of goods imported by M/s.Creative International. The officers of Customs examined the container and found mis-declaration of goods. After detailed inquiry, proceedings were initiated against the importer as well as the appellant for various violations of

the provisions of Customs Act, 1962. The present appeal is restricted to penalty imposed on the appellant for his role as CHA. The Original Authority held that the appellant failed to discharge the obligations of provisions of Section 13 (d)(e) Custom House Agent Licensing Regulations, 2004.

3. Contesting the imposition of penalty, ld. Counsel for the appellant submitted that the act of the appellant as CHA in filing bill of entry cannot be penalized under Section 112(a) of the Customs Act, 1962. No action of the appellant has been identified as violative of any of the provisions of the Customs Act. The Original Authority only quoted Regulations 13 of the CHALR 2004 for imposing penalty.

4. We have heard both the sides and perused the appeal record.

5. When the case came up on earlier occasion, we specifically asked the appellant to inform whether any proceedings under CHALR 2004 /CBLR 2013 were initiated for their violation of these Regulations. Today, the appellant filed a written undertaking categorically stating with reference to their action of filing this bill of entry no action has been taken under CHALR, 2004/CBLR, 2013 by the Department.

6. We have perused the impugned order carefully.

7. The penalty under Section 112 (a) can be imposed ***"on person in relation to any goods on any person, who 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."***

8. In the present case, the impugned order examined the role of the appellant as CHA in terms of Regulation 13 of CHALR. However, no proceedings at all have been initiated under CHALR as could be seen from the appeal records. The CHALR covered the obligations of the appellant. For failure of fulfilling certain obligation, penalty under Section 112 (a) has been imposed in the present case. However, under the Regulation itself, no action has been initiated. The penal provisions under Section 112(a) are much more comprehensive and serious compared to violation of obligations of CHA under the Regulation. The violation of abetting an offence has to be established by evidence of deliberate act or omission by the CHA. The basis of penalty under Section 112 (a) has not been brought out in the impugned proceedings with any clarity. We find no justification in the proceedings under Customs Act for penalty when no action has been taken for violation of Regulation under CHALR 2004. Accordingly, the impugned order to this extent is not sustainable. The penalty imposed on the appellant is set aside. The appeal is allowed.

[order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.