**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**REGIONAL BENCH AT HYDERABAD**
Division Bench
Court – I

**Appeal No. C/77 & 78/2009**

(Arising out of Order-in-Original No. 11/2008-Adjn- Cus dated 16.10.2008 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

**M/s Tass Clearing Services (P) Ltd.,** …..**Appellant(s)**
**M.V.H. Siddiqui, Executive Director**

**Vs.**

…..**Respondent(s)**
**Commissioner of Customs,**
**Hyderabad - Customs**

**Appearance**
Shri Ram Sharma Chunduru, Advocate for the Appellant.
Shri Gnaneshwar, (AR) for the Respondent.

**Coram:**
**Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)**
**Hon'ble Mr. C.J. MATHEW, MEMBER (TECHNICAL)**

**Date of Hearing: 21/02/2018**
**Date of Decision: 21/02/2018**

**FINAL ORDER No. A/30459-30460/2018**

**[Order per: M.V. Ravindran]**

These two appeals are directed against Order-in-Original No. 11/2008-Adjn- Cus dated 16.10.2008.

2. Heard both sides and perused the records.

3. On perusal of records, we find that the appellants herein are contesting the penalties imposed on them by the Adjudicating Authority under provisions of Section 114 and 114AA of the Customs Act, 1962.

4. The Adjudicating Authority in the impugned order has come to a conclusion that the appellant herein i.e. Tass Clearing Services Pvt. Ltd., had through their wilful acts of omission and commission had abetted the offence of attempted fraudulent export of Cotton and polyester garments, wherein the value was inflated in order to get higher drawback from the Government of India. We find appellant M/s Tass Clearing Services Pvt. Ltd., is CHA has filed the Bills of Entry for export of goods as has been handed over by Seema Enterprises. It is seen from the impugned order that the Adjudicating Authority has not recorded any explicit findings as to how Tass Clearing Service Pvt. Ltd., and its Executive Director had is abetted wilful acts of omission and commission of misdeclaration of the value. The findings are reproduced:

> ***54.*** *On the backdrop of the above, I find that M/s Tass Clearing Services and Shri M.V.H. Siddiqui, its Executive Director, had failed to obtain authorization from the exporter, and failed to get the work relating to customs transacted either personally or through authorized representative and failed to bring to the notice of department this case of non-compliance of the provisions of the Act by the exporter and deliberately and consciously failed to exercise due diligence to ascertain the correctness of information and also failed to discharge the obligations cast on them in terms of Customs House Agents Licensing Regulations, 2004. Shri M.V.H. Siddiqui, had taken up on himself, the responsibility of transacting the business*

*relating to customs work, with the implied consent of the Exporter and deliberately signed Blanks Annexure 'C' forms and never bothered to verify the authenticity of the information furnished thereafter and thus paved the way for the exporter to indulge in fraudulent exports.*

***55.*** *Therefore, I hold that M/s Tass Clearing Services and Shri M.V.H. Siddiqui, its Executive Director, had through their wilful acts of omission and commission had abetted the offence of attempted fraudulent export of "Cotton and Polyester Garments", in the manner as described above by way of misdeclaring the quantity an value in order to get higher amounts of draw back; which rendered the impugned goods liable to seizure and also for confiscation under the provisions of Sections 113(d) and (i) of the Customs Act, 1962. In view of the above, I hold that M/s Tass Clearing Services Pvt. Ltd., and Shri M.V.H. Siddiqui, Executive Director, had contravened the provisions contained in regulation No. 13 of the Customs House Agents Licensing Regulation, 2004, read with the provisions of Section 146, 147 and 157 of the Customs Act, 1962 ibid and hence are liable for penal action under Section 114 & 114AA of the Customs Act, 1962.*

From the above findings it can be noticed that the Adjudicating Authority has not been able to pinpoint specifically the role attributable to appellants herein to hold them on charge of abetment of misdeclaration. Similar issue had come up before the Tribunal in the case of *Somaiya Shipping Clearing Pvt. Ltd.,* [2006 (197) ELT (552)], wherein the Tribunal held that penalty under Customs Act cannot be imposed on CHA and its directors in case of misdeclaration of value and description if no role is found in such contravention. The ratio is in paragraph No. 11 which we reproduced.

***11.*** *As regards the CHA and its Director, there is no ground for imposition of penalty, as CHA has filed Bill of Entry (sic) showing the description and value on the basis of the records made available by the exporter and there is no evidence of knowledge on the part of the CHA that there was misdeclaration of description and value of the goods. Although the Ld. SDR seeks to justify the penalty on the CHA on the ground that they did not produce authorization letter from the exporter to clear the goods and therefore, penal action on CHA is required to be sustained, I find that the penalty has been imposed on CHA only for the failure in their obligation to file the documents with correct description and value of the goods. Further, penalty under Section 114 cannot be imposed on the ground that CHA failed to file authorization letter. I therefore, concur with view expressed by the Ld. Member (Judicial) that penal action against the CHA and its Director is not sustainable.*

5. In view of the foregoing, the ratio of the decision of the Tribunal, we hold that the impugned order imposing penalties on these two appellants is unsustainable and liable to be set aside and we do so, the penalties are set aside and the appeals are allowed.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

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| **C.J. MATHEW**<br>**MEMBER (TECHNICAL)** | **M.V. RAVINDRAN**<br>**MEMBER (JUDICIAL)** |

Lakshmi….