# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Single Member Bench

Court – I

## Customs Appeal No. 31287 of 2018

(Arising out of Order-in-Appeal No. VJD-CUSTM-PRV-APP-036-18-19 dt.29.06.2018 passed by CC & CT (Appeals), Guntur)

**Shakelly Venkat Chand**
Business Partner, M/s Nanda International,
No.67, Moore Street, Chennai,
Tamil Nadu – 600 001

**......Appellant**

*VERSUS*

**Commissioner of Customs, Vijayawada**
Road No.2, Industrial Estate,
Vijayawada, AP – 520 007

**......Respondent**

**Appearance**
Shri S. Venkat Chand, Representative for the Appellant.
Shri P. Amaresh, DR for the Respondent.

**Coram:**
**HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**

## FINAL ORDER No. A/30110/2023

**Date of Hearing: 22.05.2023**
**Date of Decision: 25.05.2023**

**[Order per: A.K. JYOTISHI]**

The Appellant has filed for setting aside the Order of Commissioner (Appeals) whereby the Commissioner (Appeals) had upheld the Order of the Original Authority, imposing a penalty of Rs.1,00,000/- on the Appellant under Section 114AA of the Customs Act, 1962 for use of false and incorrect material.

2. The facts of the case, in brief, are that one M/s Rupesh Xerox imported a consignment of goods declared as photocopy machine spares. However, on opening of the container in the presence of Shri B. Sudhakar, employee of Customs Broker and Importer Shri R. Saravanan, they found certain discrepancies in respect of description of the goods mentioned in IGM and the description given in invoice and packing list. On further examination of goods in the container, in the presence of, inter alia, the Customs Broker, they found inter alia 43 copying machines.

3. The Original Authority adjudicating came to the conclusion that it was a clear case of import of used Xerox/ photocopy machines under the cover of spare parts and accordingly, inter alia, penalty was imposed on Shri K. Saravanan, the actual Importer and Shri Shakelly Venkat Chand, Business Partner of M/s Rupesh Xerox under Section 112 & 114AA of the Customs Act respectively. With regard to the role of Customs Broker, the Original Authority held that the Appellant Shri Shakelly Venkat Chand, Business Partner of Customs Broker firm, has not carried out the required due diligence and in fact, despite not having seen or meet the importer, accepted and proceeded with the documents given by one Shri Bhaskaran, who later on turned out to be a person impersonating the actual importer. In this case, a person impersonating as actual importer was not pointed out by the Customs Broker or their employee even though they were aware of his not coming out clean with regards to his actual identity. The Original Authority upheld that this tantamounted to Appellant giving false information and therefore, liable for penalty under Section 114AA of the Customs Act.

4. Heard both the sides and perused the records.

5. The Appellant is relying on certain case laws in support of their claim that facts of the case does not warrant a levy of penalty under Section 114AA against him as there is no evidence that he was aware of mis-declaration on the part of the importer. They further pointed out that they had obtained KYC documents and then only based on import documents, filed the Bill of Entry and they had no reason, prima facie, for any suspicion in that situation.

6. On the other hand, the learned Departmental Representative has reiterated the Orders passed by the Commissioner (Appeals). He specifically invited the attention to Para 5.2 of the Order-in-Appeal in which, inter alia, the Commissioner (Appeals) has observed that the Appellant had agreed in his statement recorded under Customs Act that he knew that the person who signed the document was Mr. Bhaskaran but signed with the name of Mr. Saravanan and that he did not inform the Department about the same. Therefore, his plea that he was not aware about admitted mis-declaration or attempted smuggling by the importer in respect of the consignment, for which they were acting as a Customs Broker, is not correct.

7. The moot question for deciding in this Appeal is whether in the facts of the case, the Appellant viz., Shri Shakelly Venkat Chand was acting in good

faith, exercising due diligence or there was any malafide intent in tacitly helping the importer to clear the consignment, which was found to be grossly mis-declared. The role of the Customs Broker is very crucial in the process of clearance of goods as they are required to do due diligence before facilitating filing of relevant documents for clearance of goods. As a regular Customs Broker, it is not expected that he would accept any document including KYC in a mechanical manner. He is expected to exercise due diligence to satisfy about the bonafide of the importer and the documents submitted by him. The employee of the Customs Broker in the instant case has in fact noted and admitted that there was some kind of impersonation and that should have alerted him and he should have brought to the notice of the Customs Authority immediately, instead he remained silent. This is the admitted position in the statement given by the Appellant and the Appellant is also not denying this fact nor giving any substantive reason about him being silent about the impersonation in the first place. He is responsible for the act of his employee also who is misrepresenting the CHB before the Customs Authorities.

8. Thus, there is not much merit as regard to argument of his being not aware about mis-declaration. The relied upon judgments in support of his being not liable to the penalty under Section 114AA have been perused. For the reasons discussed in foregoing paras, these judgments cannot be relied upon in as much as in the instant case, there is clear and positive act of concealing the real identity of importer by the Customs Broker with malafide intent. Thus, in the facts of the case on record, there is enough material to substantiate the allegation of malafide against the Appellant and therefore, Section 114AA has been rightly invoked by the Department and upheld by the Commissioner (Appeals). However, it is further seen that the Original Authority has imposed redemption fine of Rs.1,00,000/- each on used Xerox/ photocopy machines and spare parts. He has also imposed penalty of Rs.3,00,000/- on importer and Managing Partner of M/s Rupesh Xerox for their act of improper import. It is also noted that a penalty of Rs.1,00,000/- each has been imposed on Shri B. Sudhakar, employee of Nanda International, Shri Ashok and Shri Bhaskaran alias R. Saravanan also. Considering the roles played by each one of them, the penalty of Rs.1,00,000/- on the Appellant does not appear to be proportionate to his role in the attempted clearance of undeclared/ restricted goods. It is also informed by both the sides that no action was taken by the Department for revocation or suspension of CHA license for the aforesaid acts of Shri Chand and Shri Sudhakar, under the applicable law and regulation.

9. Therefore, having regard to facts and in the interest of justice, the penalty of Rs.1,00,000/- imposed on the Appellant is reduced to Rs.25,000/- only. Except for the modification in the penalty amount as above, the Appeal filed by the Appellant is dismissed.

(Pronounced in the Open Court on 25.05.2023)

**(A.K. JYOTISHI)**
**MEMBER (TECHNICAL)**

Veda