

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

Division Bench  
Court – I

**Customs Appeal No. 30162 of 2016**

(Arising out of OIO No. HYD-EXCUS-000-COM-007-15-16 dt.30.11.2015 passed by Principal  
Commissioner of Customs, Hyderabad)

**Mohammed Azmatullah**

Reliance Tyres, Tilak Road, Ramkoti,  
Hyderabad, Telangana – 500 001

**.....Appellant**

*VERSUS*

**Commissioner of Customs**

**Hyderabad - Customs**

LB Stadium Road, Basheerbagh,  
Hyderabad, Telangana – 500 004

**.....Respondent**

**Appearance**

Shri G. Vidyadhar Reddy, Advocate for the Appellant.

Shri A.V.L.N. Chary, AR for the Respondent.

**Coram:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

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

**FINAL ORDER No. A/30305/2023**

**Date of Hearing: 11.07.2023**

**Date of Decision: 05.10.2023**

**[Order per: ANIL CHOUDHARY]**

The issue involved in this Appeal is whether penalty of Rs. 5,00,000/- under Sec 112(a) and further Rs. 5,00,000/- under Sec 114AA has been rightly imposed.

2. The brief facts are that one Mr. MA Mujahid, Proprietor of M/s. Great Overseas ("Importer"), was an employee of M/s. Reliance Tyres till February, 2013. The Appellant herein is the proprietor of M/s Reliance Tyres. The Appellant herein later came to know that his past employee - MA Mujahid became Proprietor of M/s. Great Overseas when he was still Appellant's employee and effected some imports. Mujahid's firm allegedly imported goods in container No.TGHU-7700699 wherein the IGM description showed the goods as 'assorted chappals'. The said container/ goods were lying uncleared for nearly six months in the ICD, and the Custodian CONCOR issued an auction notice, as goods were unclaimed and uncleared. After Six months of lying uncleared in ICD, Customs have examined the goods and made an inventory of

the goods in the container, which were found to be not only 'Assorted Chappals' as shown in IGM, but container also consisted of 'Glass Chatons, mobile phone batteries, Facial tissues, etc.'. Importer approached the Customs Department seeking the goods and in his statement to the Department, inter alia, stated that he filed for amendment of number of packages and weight, in the gateway Port, which was granted, and that he also filed amendment of IGM, to file Bill of entry in ICD, but amendment could not be done. Upon investigation, Importer in his statement dated 13.12.2013 stated that during his employment with the Appellant, he used the Appellant's firm email ID and firm phone number for correspondence for his import business, and that the Appellant was not aware of the email correspondence or his personal import business/transactions. However, since the address of the Importer's PAN was showing the address of M/s. Reliance Tyres, the Appellant was alleged as an abettor and that Appellant helped the importer in importing mis-declared and under-valued goods, to evade the payment of customs duty.

3. SCN dated 18.07.2014 was issued on M/s Great Overseas proposing to confiscate the goods imported vide IGM No.20536059 dated 29.01.2013 and local IGM No. 2272912 dated 31.01.2013 vide BL No. AEJEAINHYD573216 dated 26.01.2013, in the container No.TGHU-7700699, under Sec 111(f) & (m) of the Act. It was further proposed to reject the declared description and value and to revalue the goods. Further penalty was proposed on the Proprietor of M/s Great Overseas – Mr. M.A. Mujahid under Sec 114AA of the Act. This Appellant was made co-noticee on the allegation of abetment with proposal to impose penalty under Sec 112(a) and under Sec 114AA of the Act. Penalty was also proposed on Mr. Anwarullah, Manager of M/s RS Travels and also on M/s Caravel Logistics. The SCN was adjudicated on contest vide OIO dated 30.11.2015 and the following operative Order was passed:

- (i) Declared value of Rs. 1,72,99,953/- was rejected and the value was re-determined at Rs.4,58,25,512/- under Sec 14(1) of the Act read with Valuation Rules.
- (ii) The goods under Bill of Entry No. 4235021 dated 31.12.2013 and Gateway IGM No. 20536059 dated 29.01.2013 in container No.TGHU-7700699 valued at Rs.4,58,25,512/- were confiscated under Sec 111(f) & (m) of the Act with option to redeem on payment of fine of Rs.45,00,000/-.

- (iii) Penalty of Rs.5,00,000/- each was imposed on the Proprietor of M/s Great Overseas – Mr. M.A. Mujahid under Sec 112(a) and under Sec 114AA of the Act.
- (iv) Penalty of Rs.5,00,000/- was also imposed on this Appellant under Sec 112(a) and under Sec 114AA of the Act.
- (v) Penalty of Rs.2,00,000/- was imposed on M/s Caravel Logistics under Sec 112(b) and under Sec 114AA of the Act. Penalty on Mr. Anwarullah, Manager of M/s RS Travels was dropped. Being aggrieved, the Appellant is before this Tribunal.

4. Assailing the Impugned Order, learned Counsel for the Appellant urges that the penalty has been imposed on this Appellant on the following findings and observations:

- i) That Analysis of the evidence reveals that M/s Caravel Logistics, the liner, have produced copies of two mails received from mail ids(i) reliance\_tyres@hotmail.com (mail sent by Mr. Azim/Azmatullah reliance tyres) and (ii) greatovearseas@hotmail.com (mail sent by Qadeer Mohammed mentioning the name as Mujahid in the mail content).Further PAN AMEPM1294N was issued to Mr. Mujahid and the address is mentioned as C/o M/s Reliance Tyres, 4-17/A1/6/1&2, Ramkote, Tilak Road, Hyderabad;
- ii) That Mr. Mujahid was not solely responsible for the import. Mr.Azmatullah is complicit in as much as the import details were sent to his e-mail id directly by the exporter and not only that the import particulars were then sent to the liner from his email id. The liner in his statement under Section 108 of the Customs Act 1962 has identified Mr. Azmatullah and his telephone Number, as the persons following up on the import;
- iii) That Mr. Mujahid has submitted the address of M/s. Reliance Tyres to the Income Tax Department to obtain PAN card. Unless the employer, i.e., M/s. Reliance Tyres Certifies the address proof, it is not possible for Mr. Mujahid to submit the same. Thus, it is clear that the address of M/s. Reliance Tyres was given by Mr.Mujahid after getting the same approved/endorsed by Mr.Azmatullah;
- iv) M/s. Great Overseas was floated with Mr. Mujahid, an ex-employee of Reliance Tyres, as the Proprietor and the address in the PAN card was that of M/s. Reliance Tyres where Mr.Azmatullah was the Proprietor. Mr. Azmatullah's role in the import of the goods by M/s Great Overseas would not have been exposed, but for the investigation.Hence, he is liable for penal action under Section 112(a) of the Customs Act 1962; that Mr. Azmatullah has caused the mis declaration of the goods and under valuation of the same. Hence, he is liable for penal action under Section 114AA.

5. Assailing the findings, learned Counsel urges the following grounds:

- (a) OIO is not a speaking order, and the submissions made the Appellant in the Reply to SCN and Personal Hearing were not considered; that OIO was passed solely on assumptions and with preconceived notions against the Appellant;
- (b) OIO relied heavily on the statements of other Noticees in the SCN, who were acting purely in their self-interest;
- (c) Importer having access to Appellant's email and phone and using address of M/s. Reliance Tyres for his PAN, cannot be conclusive proof of the Appellant's involvement in the import of mis-declared and under-valued goods;
- (d) The assertion that email can be sent only by the account holder and no one else is not tenable; that in a small business like the Appellant's, all the employees could access the office email and office phone number; without proving Appellant's complicity in a scientific and legal manner, it was concluded that Appellant actively connived and abetted the Importer based on a printout copy of the email and imposed penalty on the Appellant;
- (e) In the case of *Skoda Auto India Pvt. Ltd. Vs. CC (Import), JNCH, Nhava Sheva* [2014 (313) ELT 600 (Tri.-Mumbai)], it was held that in the absence of their knowledge of imports made and under-valuation of imports, the penalty is not imposable under Sec 112 of Customs Act. Penal Proceedings under Customs Act are quasi criminal and there should be positive, tangible evidence produced by the Revenue before penalty is imposed. In absence of concrete positive evidence, penalty must be set aside.
- (f) In the case of *SP Bahl Vs Commissioner of Customs (Import), Mumbai* [2015 (319) ELT 157 (Tri.-Mumbai)], it was held that no penalty under Sec 114AA can be imposed merely basing on the statements recorded under Sec 108 of the Act, without corroborative evidence.
- (g) Appellant did not transact any business in relation to the goods imported by the Importer, nor signed or caused any document or statement due to which Sec 114AA cannot be invoked; that no cogent basis or evidence as to how Appellant caused a wrong declaration about the nature and value of the imported goods was brought out in the OIO; that the OIO was confirmed merely on presumptions and on a suspicion because the Importer was a former employee of the Appellant.

6. Opposing the Appeal, learned AR for Revenue urges that it is an admitted case of mis-declaration. Mr. V. Kameswara Rao, Manager of M/s Caravel Logistics (liner for the consignment) was recorded, who, inter alia, stated that with regard to the concerned consignment/container, two persons viz., Mr. Anwarullah, having Cell No. 9246582851 and Mr. Azim, having Cell No. 9246368100 had been interacting with him over phone. He also stated that the

said person Mr. Azim appears to be related to the Appellant Mr. Azmatullah. He further urges that for about three four years period up to February, 2013, Mr. M.A. Mujahid was the employee of M/s Reliance Tyres, the Proprietor – which is this Appellant.

7. On being confronted with this Appellant, he stated that he had never called Mr. Kameswara Rao of M/s Caravel Logistics in connection with the import of goods, in container No.TGHU-7700699, nor he has ever made any import viz., M/s Great Overseas, M/s Nuzen Impex or M/s Tristar Exims. He further urges that even after Mr. M.A. Mujahid left M/s Reliance Tyres in February, 2013, still emails were being sent to the email ID of M/s Reliance Tyres with respect to the consignment in question. Further in the Bill of Lading, indicated contact No. 9908853566 which belongs to Mr. Syed Khadeer, who is driver working with Mr. M.A. Mujahid. Further urges that the PAN Number issued in the name of Mr. M.A. Mujahid, Proprietor of M/s Great Overseas, showing the address of M/s Reliance Tyres, that there is sufficient evidence on record which indicates that this Appellant is involved in smuggling/mis-declaration of goods which was imported from Dubai in container No.TGHU-7700699.

8. Learned AR also refers to a case of previous mis-declaration on the part of this Appellant wherein in the year 2014, in the guise of import of diapers, a case of smuggling of cigarettes was booked. The said dispute is still pending in the Appellate stage.

9. Rebutting the submissions/arguments of Revenue, learned Counsel for the Appellant urges that the container in question had arrived initially at Gateway Port, Nhava Sheva, in January, 2013. Admittedly, as per SCN, the importer – M.A. Mujahid requested the shipping company to approach the Gateway Port for amendment of IGM as regards description. As there was mismatch in description in IGM and description in invoice and packing list, the importer's Bill of Entry did not get noted in the EDI System. The Application for amendment was made in April, 2013 itself at the Gateway Port requiring only minor modification/amendment in the number of cartons and weight as well as the description of the goods. As the officers at the Gateway Port felt that the amendment prayed amounts to major amendment, they were of the opinion that the goods need to be examined, but by the time, the container had moved from Gateway Port to ICD Hyderabad. Thus, no allegation of mis-declaration is attributable. Thus, in the circumstances, the said importer could not file the Bill

of Entry due to mismatch. Thus, Revenue has erred in booking a case on the allegation of mis-declaration in absence of any Bill of Entry by the importer – M.A. Mujahid. Admittedly, subsequently, on being so advised Mr. M.A. Mujahid filed Bill of Entry in December, 2013 along with invoices and packing list seeking 'first check examination' of the goods. Thus, in view of the admitted fact on record, there is no hide and seek by the said importer from the Customs Department as the Bill of Entry was filed on first check basis. Thus, there is no basis of either of the allegations of mis-declarations and/or undervaluation. During the adjudication proceedings, the noticees had prayed before the Adjudicating Authority to call for the records of amendment File No. S/3/Gen71/13/Import(N) from Nhava Sheva Customs. However the same was not called for, for the reasons best known to the Adjudicating Authority. Further there are several employees working in the office of the Appellant and they all have access to the email ID and password of the Proprietorship concern of the Appellant being M/s Reliance Tyres. Thus, due to misuse of the email ID of the Appellant without knowledge of the Appellant, no malafide is attributable nor any case of abetment is made out. The said importer – M.A. Mujahid has categorically stated that it is he and only him who is involved in the whole transaction of import and have not made any allegation against this Appellant (his ex-employer). The said mobile number belonging to Mr. Azim, another employee, 9246368100 was being used as a general phone in the Appellant's concern and was being used by almost all the employees to receive and make calls on behalf of the Appellant's firm. Hence, the allegation of abetment is not sustainable under such facts and circumstances against the Appellant. Admittedly, the Appellant, Proprietor of M/s Reliance Tyres was managing his business with the help of his employees and if some employee has used the address of the firm and its email ID or phone number behind his back or without his knowledge, the same does not amount to abetment on the part of this Appellant. It is further urged that learned AR for Revenue has erred in going beyond the pleadings in the SCN by making frivolous allegations and insinuations against this Appellant with reference to M/s Star Impex. In the matter of M/s Star Impex, this Appellant was wrongly implicated and his statement was recorded by the DRI subjecting him to coercion and undue influence. The said statements were immediately retracted and this Appellant had also approached Hon'ble High Court of Telangana in WP No. 30793/2016 and vide Order dated 13.12.2016, the Hon'ble High Court set aside the demand with respect to past clearances and limited the Adjudication Order to live

consignment. Thus, learned AR is only speaking half the facts to the prejudice of the Appellant.

10. Having considered the rival contentions, we find that admittedly, the said importer – Mr. M.A. Mujahid, Proprietor of M/s Great Overseas, has used the email ID and address of this Appellant behind his back and without his permission. We further find that the said mobile number 9246368100 was being used as a common telephone of the concern of the Appellant, wherein, all the staff were using it for making and receiving calls in connection with the business of the Appellant as well as for personal purposes. Thus, Mr. M.A. Mujahid had used the said phone which was also available to him as an employee. We further find that statement of M.A. Mujahid was recorded on different occasions and he has never uttered a word or stated anything implicating this Appellant or pointing out any abetment on his part. We further find that the said importer – M.A. Mujahid, having come to know of the error in the shipping documents had approached the Customs Department at the Gateway Port for amendment of their IGM. However, as the officers at the Gateway Port felt that the amendment amounts to major change or alteration, wanted to examine the goods, but by that time the container had moved to ICD at Hyderabad. We further find that under the facts and circumstances, on being so advised, the said importer had filed Bill of Entry on 'first check basis'. Thus, under such admitted facts, no case of mis-declaration or undervaluation is made out. We find that the whole case of Revenue is based on assumptions and presumptions which have no legs to stand.

11. In view of the aforementioned findings and observations, we allow the Appeal of the Appellant and set aside the Impugned Order, so far this Appellant is concerned. The Appellant shall be entitled to consequential benefits, in accordance with law.

(Pronounced in the Open Court on 05.10.2023)

**(ANIL CHOUDHARY)**  
**MEMBER (JUDICIAL)**

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