IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal Nos. C/53/2009 & C/94/2009

Arising out of Order-in-Original No. 28/Cus/CC(P)/WB/2008 dated 15.12.2008 passed by the Commissioner of Customs (Prev.), W.B., Kolkata.

Shri Achintya Sarkar
Shri Dipankar Sen

…APPELLANT(S)

VERSUS

Commissioner of Customs (Prev.), Kolkata

…RESPONDENT (S)

APPEARANCE
Shri R. N. Bandhyopadhyay, Consultant & Ms. Debi Parbat, Advocate for the Appellant (s)
Shri S. Guha, A.C. (AR) for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI C. L. MAHAR, HON'BLE TECHNICAL MEMBER

DATE OF HEARING & DECISION ;-21.06.2018

ORDER NO..FO/A/76371-76372/2018

Per Shri C. L. Mahar :

The present appeals have been filed by the Appellant against the impugned Order-in-Original No. 28/Cus/CC(P)/WB/2008 dated 15.12.2008 passed by the Commissioner of Customs (Prev.), W.B., Kolkata.

2. Brief facts of the matter are that the M/s Tumpa Enterprise, Kolkata, has imported a consignment of

readymade garments vide Bill of Entry No. 1032/2007 dated 09.09.2007. The consignment was filed for clearance by M/s India Mercantile Agency, a CHA Firm. On physical 100% examination of the imported cargo, it transpired that the quantity as well as description of the imported consignment of garments had been was mis-decleared. It is appropriate to mention that in the Bill of Entry, it has been declared that the consignment comprises of 39782 pcs of readymade garments and 1936 kg. of head-gears but on physical examination, it was detected that the consignment was having 45604 pcs. of readymade garments and 2177 kg. head-gears. The consignment was seized and a Show Cause Notice for confiscation of goods under Section 111 (l) and 111 (m) of the Customs Act, 1962 was issued in the Show Cause Notice, penalty on different persons including the appellants under Section 112 of the Customs Act, 1962 was also proposed for imposition.

The Show Cause Notice came to be adjudicated by Ld. Commissioner vide his order dated 15.12.2018 wherein apart from confiscation of the consignment involved under the above-mentioned Bill of Entry, penalty under Section 112 of the Customs Act, was imposed on the appellant namely, Shri Dipankar Sen of Rs. 5 lakhs and Shri Achintya Sarkar of Rs.1 lakh.

3. The appellant are before us against the above-mentioned Order-in-Original under which the penalties under Section 112 of Customs Act, 1962 have been imposed on the appellant. It is a matter of record that Shri Dipankar Sen is a partner in the CHA Firm under whose eagies the impugned Bill of Entry was filed before the Customs Authorities for clearance of the imported cargo. Shri Achintya Sarkar being the employee of the above CHA Firm and generally concerned with clearance work of the imported consignment on behalf of this CHA Firm.

4. The Ld. Advocate appearing on behalf of the above-mentioned appellants have argued that from the investigations as well as the various statements recorded, there is nothing which can make the appellant liable for penalty under Section 112 of the Customs Act, 1962. It has been vehemently argued that Section 112 is invocable only in the circumstances, whereas a person is involved in abetting of smuggling or mis-declaration or evasion of Customs duty or in cases where he deals with any prohibited or otherwise offensive goods in any way. It is the contention of the Ld. Advocate that it can be seen that the appellants were never involved in any way about the mis-declaration of the impugned imported cargo and both the appellants came to know about the mis-declaration of quantities in the imported consignment only while the whole consignment was put for 100% examination by Customs Officers. It has also been pointed out that

initial examination of 20% of the cargo did not result in detection of any mis-declaration of quantities or description of imported cargo. It has also been pointed out that in the statements of the concerned person, it has not come out that the appellants in any way connived, conspires with the importer in mis-declaring the quantity or description of the impugned imported cargo. It has been stressed that they had accepted the cost of clearance of the subject import consignment in normal course and were not at all aware that the importer has mis-declared the quantities of the imported garments.

5. We have heard both sides and also perused the records of the appeal.

6. It is a matter of record that in all the statements which have been recorded during the course of investigation, it has not come out that the appellants were any way connived, compires with the importer or abated the mis-declaration of the seized imported

consignment. We also note that the provisions of Section 112 of the Customs Act, 1962 are invokable only wherein the person concerned are involved in following act :-

> (i) Doing something that would render the imported goods liable for confiscation under Section 111 of the Customs Act, 1962;
>
> (ii) Abets in doing certain act or omit to do certain acts which will render the impugned goods liable for confiscation;
>
> (iii) Acquiring possession of or is in any way concerned in carrying, removing, depositing concealing etc. with any goods which he knows or has reason to believe that same are liable for confiscation under Section 111 of Customs Act, 1962.

7. As discussed in the preceding paras, we have not found any evidences which indicate in any way, about willful involvement of the appellant in mis-

declaration of impugned import consignment. The appellant has handled the consignment in normal course without any conscious knowledge or connivance etc. regarding mis-declaration of quantities etc. In view of above, we do not find any merit in the order-in-original in imposing the penalty on both the appellants. Accordingly, the appeals are allowed with consequential benefit to the appellant, of any.

(Operative part of the order already pronounced in the court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

T.K.