IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Date of Hearing & Decision: 14/06/2018

Customs Appeal No. C/593 & 594/2009

(Arising out of Order-in-Original No.KOL/CUS/PORT/53/09 dated 16.10.2009 passed by the Commissioner of Customs (Port. Customs House, Kolkata)

Gee Pee International
Prabhat Mannar. **Applicant (s)/Appellant (s)**

vs.

CC(Port)Kolkata. **Respondent (s)**

Appearance:

Shri K.P.Dey,Adv. for the Appellant (s)

Shri S.K.Naskar, AC(AR) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Hon'ble Shri Bijay Kumar, Member (Technical)

Final Order No. FO/A/76844-76845/2018

Per Shri Bijay Kumar

1. The present appeal is against the two appellants, namely, Prabhat Manna, and Gee Pec International filed by the appellants against the common Order-in-Original issued from F. No. S121-84/2008-SIB and S2-19/2009-SIB dated 16/10/2009. Vide the impugned order the appellants have been imposed a fine of Rs. 10 lakhs respectively.

2. The brief fact of the case is that the one M/s Universal Enterprises, 2012-B, Plot No. 16, Pitampura, Sagar Plaza-1, New Delhi-110034, having the ICE Code No. 0506006255, had mis-declared the description and value of the imported consignment covered under the Bill of Entry No. 406066 dated

28/04/2008. The said Bill of Entry was filed by the appellant, Gee Pec International, one who is the Custom House Agent Registered with the Kolkata Customs House. It was alleged that the appellants have connived with the importer in the aforesaid mis-declaration of the imported consignment, and therefore, they have not fulfilled the obligation as required by them under Customs House Agent (CHLR), 2004. Investigations were taken up by the Special Investigation Branch of Kolkata Customs House and a Show Cause Notice was issued to them along with the importer for the aforesaid mis-declaration of the imported consignment. The show Cause Notice was adjudicated by the Adjudicating Authority and the appellants were fined under the provisions of Section 112(a) of Customs Act, 1962 for their alleged role in the matter of clearance of the goods from the custom where the evasion of the duty has taken place. It was held that they have connived with the importer for the aforesaid Act.

3. The Ld. Advocate, on behalf of the appellants, has submitted that they are CHA company and its director and performing their functions as contained in the Custom Act. They received the order/assignment for clearance of the imported goods lying with the Kolkata Customs and for which they have been given necessary documents as such exporter invoice, Bill of Entry, necessary declaration etc by the importer to be filed before the Customs Authority for the assessment of duty as required under Section 46 of the Customs Act, 1962. After the receipt of the said information, the appellant, Gee Pec International, filed the Bill of Entry declaring the goods as Zinc

Sulphate, agricultural grade Valued at Rs. 1,48,710.38/-. After the examination of the goods by the Custom officer the samples were drawn and the same was sent to the Custom House laboratory for test of the description and composition of filed by importer through appellant. The samples were also tested through IIT, Kharakpur and the same was found to be other than the declared goods, namely, Zinc Sulphate. The imported goods were found to be Zinc Sulphate as declared by the importer along with other banned insecticides, namely, 'Imidaclopird'. It was also found that the assessable value of the imported goods declared by the importer were much lower than that of the contemporaneous import price the and hence value of the goods was proposed to be arrived under Rule 11(a) (a) the Custom Valuation (Determination of the value of imported goods), 2007. It was the duty of the appellants, under the provisions of the CHLR, 2004, that they could have guided the appellant to declare the correct description of the goods and the price of the goods thereof as per the allegation in the SCN.

4. In this case, the importer has also filed a writ petition before the Hon'ble High Court of Kolkata for provisional release of the imported goods. The High Court directed the Department to give a personal hearing before provisional release. Accordingly the Additional Commissioner of Customs (SIB) granted personal hearing on 25/08/2008 and the copy of the same was handed over to the appellant's representative to inform the importer for the same. The appellant, Gee Pec International office premises, was

searched by the Department, but nothing incriminating was found when a case was adjudicated by the Commissioner Court and the appellant was imposed penalty as above.

5. It is submitted by the Ld. Advocate that they have conducted the professional work as Customs House Agent and filed Bills of Entry as per the information supplied to them, by the importer of the goods. In the ordinary course of their business the appellants were required to give the declaration as per the direction of the importer, which they have done in this case. Their obligation is specified in Rule 13 of the Custom House Agent Licencing Regulation CHLR, 2004 and they have taken all the necessary precautions required therein for the compliance. It was not expected to know the nature of the imported goods other than what was told to him and value thereof independently, therefore, they have gone by the information provided by the appellant for effecting clearance of importer goods in accordance with the Section 46 of the Act. In this case the nature of the imported goods were not even arrived by the Customs House Laboratory in full and the appropriate nature of the goods were only known after the IIT, Kharakpur conducted the test on the samples provided to them. In that situation, it cannot be alleged that the appellants have anyway suppressed the fact about the description and valuation of the goods for seeking the clearance from the Custom in connivance with the importer. Under such circumstances, it is a settled law that no malafide can be attributed to the appellants, as the Custom House Agent and no penalty

is imposable on them. Further, the Adjudicating Authority has not disclosed as to what kind of omissions were conducted by the appellants so as to be visited with penalty on them under Section 112 (a) of the Act. Accordingly, the order deserved to be set aside as per the provisions of the Customs Act.

6. On the other hand Ld. AR has supported the impugned order and stated that the appellants have connived with the importer while effecting clearance the consignment of imported goods which were mis-declared for their description and value.

7. We have gone through the rival contentions and also perused the case records.

8. The issue involved in this case is regarding the classification of the goods which were imported by the M/s Universal Enterprises. It is not on records as whether M/s universal, has filed any appeal against the impugned order. The appellants have only filed the Bill of Entry on behalf of the importer as per the composition and value of the imported goods provided to them. This fact is not disputed by the Revenue. After going through the impugned order and show cause notice, we find that the Adjudicating Authority has not clearly defined the omissions and commissions made by the appellant while filing documents for clearance of goods from the Customs as CHA. In this case the appellant have declared the imported goods to be the Zinc Sulphate and classified the goods accordingly. After the information that the goods were mis-declared the samples were drawn and sent for test so

as to arrived at the chemical nature and composition thereof. The CRCL also could not be give the exact description of the goods and it was reported that the goods are other than the Zinc Sulphate. Thereafter, the samples were drawn and forwarded test and expert opinion to IIT Kharakpur, who after test informed that all the goods are 'imidaclopirid' and which is other than the Zinc sulphate. The import of 'Imidacloprid' is not permitted under the export-import policy, and therefore, the Adjudicating Authority has absolutely confiscated 'imidacloprid' after enhancing the value and allowed the release of Zinc Sulphate. It has been held by the Adjudicating Authority that the appellants were fully aware of the irregularities resorted by the importer and also colluded with them. Not only that, it was also held that the appellants have abetted with the importer in attempting evasion of the Customs duty and getting the banned item placed therein clandestinely. But from the record of the case it is not clear as to how the appellants were have colluded and attempted to evade the Custom duty as the same has not been specifically brought out in the adjudication order. On the other hand, we find that the premises of the appellant were search by the Customs Department and it is also on record that nothing incriminating were found. If the fact is so that even after the search of the premises of the appellant also, no incriminating evidence were found regarding the collision on their part, it cannot be said that the appellant for seeking the clearance of the imported consignment has acted contrary to provisions of the Customs and Allied Act. It is on record that the appellants have cooperated with the Department, while it conducted the investigations against the importer by providing the necessary information available with them such as, their declared premises, their declared office, telephone number etc.

9. In view of the above, appellants have not acted in any manner so as to make themselves liable for Penal action under Section 112 (a) of the Customs Act. Accordingly we set aside the impugned order and allowed the appeal.

(Operative part of the order already *Pronounced in the Court*)

Sd/ Sd/

(P.K.Choudhary) **(Bijay Kumar)**
MEMBER(JUDICIAL) **MEMBER(TECHNICAL)**

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