

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Customs Appeal No. 75988 of 2016

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/18/2016 dated 11.03.2016 passed by Commissioner of Customs (Port), Kolkata.)

M/s Krishna Shipping Agency,
135A, BRB. Basu Road, Canning Street, 1st Floor, Kolkata-700001.

...Appellant (s)

VERSUS

Commissioner of Customs (Port), Kolkata.
Customs House, 15/1, Strand Road, Kolkata-700001.

..Respondent(s)

With

Customs Appeal No. 75989 of 2016

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/18/2016 dated 11.03.2016 passed by Commissioner of Customs (Port), Kolkata.)

M/s Vivek Banka,
M/s Krishna Shipping Agency, 135A, BRB Basu Road,
Canning Street, 1st Floor, Kolkata-700001.

...Appellant (s)

VERSUS

Commissioner of Customs (Port), Kolkata.
Customs House, 15/1, Strand Road, Kolkata-700001.

..Respondent (s)

APPEARANCE :

Shri Arnab Chakraborty, Advocate for the Appellant
Shri S. Chakraborty, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

FINAL ORDER No...75840-75841/2023

DATE OF HEARING : 16.06.2023

DATE OF PRONOUNCEMENT: 22.06.2023

PER : K.ANPAZHAKAN

The Appellant 1, M/s Krishna Shipping Agency is a partnership Firm engaged in rendering service of a Custom House Agent in terms of the provisions of the Custom House Agent Licensing Regulations (CHALR), 2004. Vivek Banka ,the Appellant 2 was a Partner of the

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Appellant 1 Firm. A penalty of Rs.5,00,000/- under section 112(a) of Customs Act, 1962, was imposed on Appellants 1 and 2, vide Impugned order dated 11.03.2016, passed by the Commissioner of Customs (Port), on the allegation that they have aided and abetted the importer M/s Prince International in the importation of three consignments of misdeclared goods including shoes, alkaline batteries and wooden strips/beads.

2. The Custom House Agent, M/s Krishna Shipping Agency (Appellant 1) filed the Bills of Entry in this case. Accordingly, their License was initially suspended vide order dated 16.09.2011 and later revoked by an order dated 23.04.2014, for failure to verify the antecedents and identity of the client under Regulation 13(a), (d), and (o) of the CHALR, 2004. On appeal the order of revocation was set aside by the Tribunal, Kolkata vide Order dated 15.09.2016. However, the penalty imposed on them in the impugned order dated 11.03.2016 was not set aside. Accordingly both the Appellants 1 and 2 are before us against imposition of penalty on them under Section 112(a) of the Customs Act, 1962.

3. In their submission, the Appellant 1 stated that the adjudicating authority has imposed penalty on them on the ground that they have violated the provisions of Regulation 13 of CHALR, 2004. However, the Tribunal Order dated 15.09.2016, while setting aside the order revoking their license, has categorically held that they have not violated any of the provisions of Regulation 13, of CHALR, 2004. Accordingly, they prayed for setting aside the penalty imposed on them under Section 112(a) of the Customs Act, 1962, in the impugned order.

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Appellant 2 submitted that a partnership firm is not an independent legal entity and it is inseparable from its constituent partners. It is a settled proposition of law that once a Partnership Firm is penalized, its partners cannot be penalized separately for the same offence. As the partnership has been exonerated from the charges levelled against them for the violation of the Regulation 13, no penalty under Section 112(a) can be imposed either on him as a partner or on the Firm.

4. The Appellants stated that the adjudicating authority has imposed penalty on them on the misconceived notion that they have deliberately dealt with the fraudulent documents on behalf of the importer. Accordingly, it has been alleged that the Appellants have violated Regulation 13 of the CHALR, 2004. They stated that charges against them regarding violation of the provisions of Regulation 13 has not been established as held by the Tribunal, Kolkata in the order dated 15.09.2016. Hence, they contended that the penalty imposed on them under Section 112(a) of the Customs Act, 1962, is not sustainable.

5. The Ld. A.R stated that the Appellants have colluded with the importer in the importation of the misdeclared goods. Hence, he contended that penalty has been rightly imposed on the Appellants under Section 112(a) of the Customs Act, 1962.

6. Heard both sides and perused the appeal records.

7. We observe that the present appeal is on a narrow compass of imposition of penalty on the CHA and its Partner Vivek Banka under section 112(a) of the Customs Act, 1962, in the impugned order dated 11.03.2016. The Appellants stated that the adjudicating authority has

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imposed penalty on them under Section 112(a) of the Customs Act, 1962 on the misconceived notion that they have deliberately dealt with the fraudulent documents on behalf of the importer. The findings of the adjudicating authority against the Appellants in the impugned order is reproduced below:

12. Shri Vivek Kumar Banka, Partner of the CHA firm M/s Krishna Shipping Agency was examined on 11.03.2011 and 25.08.2011 under Section 108 of the Customs Act, 1962 where he interalia stated that he procured the Customs clearing job for the three import consignment under investigation from Sri Sunil Kumar, Proprietor of M/s Prince International, that he negotiated the business deal with Sri Sunil Kumar of M/s Prince international; that he received two set of documents from M/s Prince International in respect of the said three consignments, one set of scanned copy through e-mail and the original set through courier, that earlier he had handled two consignments of wooden strips and Wooden Beading' of the said M/s Prince International; that out of the three consignments, he had filed the Bills of Entry with the Customs Authority for two consignments on the basis of scanned copy of documents received through E-mail.

12.1 In response to a specific question as to whether he had verified the documents forwarded by M/s Prince International before filing with the Customs, he stated that he did not verify the documents before filing Bills of Entry before the Customs on the plea that the importer was pressurizing to file the shipment paper

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urgently and hence he filed the unsigned invoices and packing lists to Customs without noticing the shortcomings”

8. We find that the Commissioner has given a findings in the impugned order regarding the role of the CHA firm and its partner Vivek Banka for the purpose of imposition of penalty, which is reproduced below:

52.3 I also hold that M/s Krishna Shipping Agency, the CHA firm, being the representative of the importer submitted the improper and fraudulent documents such as unsigned Invoices and Packing lists defecting apparently wrong & misleading information in relation to import of the above three import consignments. I observed that being a CHA, it is their obligation under Regulation 13 of the Customs House Agents Licensing Regulations 2004 to advise his client to comply with the provisions of the Act and in case of non-compliance, to bring the matter to the notice of the Deputy / Assistant Commissioner of Customs, but I find that on receiving the fraudulent documents, they neither ensured that their client i.e. M/s Prince International complied with the provisions of the Act nor did they bring the facts to the notice of the Customs authorities and instead, on the basis of the said documents filed Bills of Entry for two containers. Thus, I hold that they acted in a manner, which is contrary to the provisions of the CHALR '04 and their acts of omissions and commissions has abetted M/s Prince International in the proper importation of mis-declared goods in the said three containers, therefore, for their acts of omissions and commissions, they are liable to penalty under Section 112 (a) of the Act.

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52.4. I also find that Shri Vivek Kumar Banka, as the Partner of M/s Krishna Shipping Agency, had negotiated with Sri Sunil Kumar, Proprietor of M/s Prince International. As Sri Banka dealt with the transaction with the importer, I find that he was required to verify the authenticity of the documents sent by Sri Sunil Kumar before presenting them to the Customs authorities. I also find that Sri Banka stated that they had received two sets of documents, one by courier & other by e-mail and filed Bills of Entry on the basis of electronically received scanned copies of the unsigned documents and not the original ones through courier. I also find that all three bills of entry were filed on strength of such fraudulent unsigned documents; therefore, I hold that Sri Banka as the partner of the CHA firm had deliberately dealt with the said fraudulent documents on behalf of the importer and has thus colluded with him in entire exercise to evade Customs duty. I also hold that he has violated the relevant provisions of (Regulation-13) of the CHALR 04 and for their acts of omissions, and commission; he is liable to penalty under Section 112 (a) of the C/A'62.

9. From the findings of the adjudicating authority we observe that the CHA partnership firm and its Partner, both have been penalized for the alleged offence committed. We observe that the Tribunal Order dated 15.09.2016, while setting aside the order revocating their license of the CHA has categorically held that they have not violated any of the provisions of Regulation 13, of CHALR, 2004. The relevant portion of the order is reproduced below:

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"5. Heard both sides and perused the case records. The issue involved in these proceedings is whether adjudicating authority is justified in revoking the CHA license of the appellant under Regulation 20(1) for not discharging the obligations under Regulations 13(a), (d) and (o) of CHALR. The said Regulation are reproduced below:-

"REGULATION 13. Obligations of Customs House Agent. -
A Customs House Agent shall -

(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(o) verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data of information."

5.1 *As per the above regulation appellant is required to verify the antecedents of his clients and suitably advise them. It is observed that at no stage appellant had the knowledge that there is any irregularity in the export/import consignments. The goods imported were put to first check examination and the importer very well exists. Similarly the export consignment was received in a sealed container duly examined and certified by the jurisdictional Central Excise authorities. The exporter is also existing. Bills of entry and shipping bill were filed by the appellants based on the documents furnished by the importer/exporter. If there was any irregularity in the documents then the same was also available before the assessing officers and the Customs examining officer. If the same could not be detected by the appellant the same also could not be detected by departmental assessing/examining officers. There is no evidence on record that appellant came to know of any irregularity before*

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the same were detected by the department or that he did not advise the concerned clients. Appellant was also exonerated by the departmental inquiry officer. It is also observed that the points of difference from the Inquiry report are not so glaring to justify revocation of CHA license as held by the adjudicating authority. The whole spirit of obligation of the CHA under the CHALR is to establish the indentity of the importer/exporter and appropriately advise his clients which in the present proceedings are existing and reasonable steps were taken by the appellant to comply with Regulations 13(a), (d) and (o) of CHALR. Accordingly appeal filed by the appellant is allowed by setting aside OIO dated 21-1-2015 passed by the adjudicating authority”.

In view of the findings in the Tribunal order dated 15.09.2016, we hold that penalty cannot be imposed on the CHA Firm as well as its Partner under Section 112(a) of the Customs Act, 1962.

10. The Appellant 2 specifically contended that the adjudicating authority imposed separate penalty against the partner in addition to imposing penalty on the firm. He stated that a partnership firm is not an independent legal entity and it is inseparable from its constituent partners. It is a settled proposition of law that once a partnership is penalized, its partners cannot be penalized separately for the same offence. We agree with the Appellants contention. Once a partnership Firm is penalized, then the Partner cannot be penalized again for the same offence. Accordingly, we hold that the penalty imposed on the Appellant 2 is not sustainable and liable to be set aside.

11. The Appellant 2 cited the decision of the Gujarat High Court in the case of Pravin.N.Shah Vs CESTAT, 2014(305)ELT 480(Guj), wherein it has been held as under:

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“3. It is not disputed that penalty has been imposed on the firm. The Tribunal [[2010 \(261\) E.L.T. 515](#) (Tri. - Ahmd.)] has imposed penalty on the partner only on the ground that total amount of duty involved was approximately Rs. 88 lacs and equal amount of penalty has been imposed on the appellant firm. Therefore, penalty imposed on Mr. P.N. Shah, partner of the firm was on the higher side and it has reduced it to Rs. 10 lacs. Penalty of Rs. 87,96,398/- has been imposed on the firm under Section 11AC of the Central Excise Rules, 1944. It has been held by the Division Bench of Gujarat High Court in *Commissioner of Central Excise v. Jai Prakash Motwani*, [2010 \(258\) E.L.T. 204](#) (Guj.) that where no specific Rule is attributed to the partner in the firm, then once firm has already been penalised, separate penalty cannot be imposed upon the partner because a partner is not a separate legal entity and cannot be equated with employee of a firm. From the order of the Tribunal or other orders on record, we do not find that any specific role has been assigned as provided by Rule 26 of Central Excise Rules. The Division Bench of this Court in *Commissioner of Central Excise* (supra) has held that where penalty has been imposed on the firm, no separate penalty can be imposed on its partner. We agree with the view taken by the Division Bench. Therefore, we find force in the submission of the learned counsel for the appellant and the question is answered in the negative, in favour of the assessee and against the department. The appeal is allowed. Penalty imposed on the appellant is set aside”.

12. We observe that the above decision of the Hon'ble Gujarat High court clearly states that once a Firm is penalized, separate penalty not imposable on the partner.

13. Following the above decision of the Hon'ble Gujarat High Court , we hold that the penalty imposed on the partner Vivek Banka is not

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sustainable, since separate penalty has already been imposed on the Partnership Firm, in the impugned order. There is no penalty imposable on the Appellant 1 CHA firm in view of the findings of the Tribunal in the order dated 15.09.2016. Accordingly, we hold that the penalties imposed on the CHA Firm as well as its Partner Vivek Banka, under Section 112(a) of the Customs Act, 1962, not sustainable.

14. In view of the above discussion, we allow the appeals filed by both the Appellants 1 and 2.

(Pronounced in the open court on...22.06.2023...)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar