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

**Customs Appeal No. 75573 of 2016**

(Arising out of the Order-in-Original No. 52/CUS/CC(P)/WB/2015 dated 12.01.2016 passed by Commissioner of Customs (Prev.), W.B, Kolkata.)

**M/s United Customs House Agency (P) Ltd.,**
P11, Clive Row, 1st Floor, Kolkata-700001.

**...Appellant (s)**

*VERSUS*

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

. ...**Respondent(s)**

**With**
**Customs Appeal No. 75574 of 2016**

(Arising out of the Order-in-Original No. 52/CUS/CC(P)/WB/2015 dated 12.01.2016 passed by Commissioner of Customs (Prev.), W.B, Kolkata.)

**M/s Prakash Ghosh Alias Pintu,**
M/s Overseas Shipping Agency, P-41, Princep Street,
5th Floor, Room No. 507, Kolkata-700072.

**...Appellant (s)**

*VERSUS*

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

. ...**Respondent(s)**

**APPERANCE :**
Shri H. K. Pandey, Advocate for the Appellant
Shri Tariq Suliaman, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)**
**HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

**FINAL ORDER No. 77230-77231/2023**

DATE OF HEARING : 06.10.2023
DATE OF DECISION : 06.10.2023

**PER K. ANPAZHAKAN :**

The present appeals have been filed against the common Order-in Original dated 12.01.2016 passed by Commissioner of Customs (Prev), wherein he has imposed a penalty of Rs. 10.00,000/-each on the CHA, M/s United Custom House Agency (P) Ltd (Appellant1) and Shri. Prakash Ghosh, Proprietor of M/s. Overseas Shipping Agency, for their role in the improper export.

2. Briefly stated facts of the case are that the exporter M/s Mahabir Metal has placed two consignments of steel made Kitchen Tableware for export to Bangladesh vide Bills of Export Nos.4691 and 4692 both dated 02.08.2010. Investigation was initiated against the exporter on the allegation that that they have resorted to overvaluation for getting excess draw back. On completion of the investigation, Show Cause Notice dated 31.03.2013 was issued to the exporter along with both the Appellants, as co-noticees. The Notice was adjudicated by the Commissioner vide Order-in-Original dated 12.01.2016, wherein a penalty of Rs.10,00,000/- each was imposed on the Appellants under Section 114(iii) of the Customs Act, 1962, for abetting the improper export. Aggrieved against the penalty imposed on them, both the Appellants have filed appeals before this Tribunal.

3. In their submissions, the CHA stated that they their role is only filing of the documents. They have filed the documents before customs authorities as provided by the exporter. There is no allegation in the impugned order that they have committed any irregularity in the documents filed by them. On examination of the seized consignments, it tallied with the invoices and other documents. They cannot be held responsible for overvaluation, if any, done by the exporter for getting excess draw back.

4. The Appellant 2 stated that he is a G-Card holder and not having any valid CHA license to operate on his own. He only assisted the CHA

in filing of the documents before the customs authorities. He fully cooperated with the authorities for the investigation. He has no role in the alleged over invoicing, if any, done by the exporter.

5. The Appellants stated that the department has initiated similar investigation against some other exporters also, wherein they were included as co-noticees. In case of two such exporters, this Tribunal has already set aside the orders passed by the Lower Authorities vide Final Order Nos. 75525-75527/dated 16/09/2020 and 76353-76356/2023 dated 18/08/2020. The ratios of the said decisions are squarely applicable to them accordingly, they prayed for setting aside the penalties imposed on them.

6. The Ld. A.R. submitted that the Appellants abetted the over invoicing of the exports accordingly penalty has been rightly imposed on them.

7. Heard both sides and perused the appeal documents.

8. We observe that the Appellants acted as CHA and Clearing and forwarding agents in the export consignments. Their role is restricted to filing of the documents. We also find that there is no allegation in the impugned order that they have violated any of the provisions of the CHA Regulations. We agree with the contention of the Appellants that they cannot be held responsible for over invoicing if any, done by the exporter for the purpose of getting excess drawback. We also find that this Tribunal has already decided similar issues vide Final Order Nos. 75525-75527/dated 16/09/2020 and 76353-76356/2023 dated 18/08/2020, wherein the orders passed by the Lower Authorities were set aside. Following the ratio of the said decisions, we hold that no

penalty is imposable on the Appellants, as they have no role in the alleged offence. Accordingly, we set aside the penalties imposed on the Appellants in the impugned order.

9. In view of the above discussion, we allow the appeals filed by the Appellants, with consequential relief, if any, as per law

(Dictated and pronounced in the open Court)

Sd/-

**(R. Muralidhar)**
**Member (Judicial)**

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

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