IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. C/87632,88021-88033,88035,88037-88039,88041,88043-88065/2017

(Arising out of Order-in-Original No. COMMR/AKG/22/2016-17-ADJ-ACC-X dated 21.3.2017 passed by Commissioner of Customs (IV), ACC(X), Mumbai)

Commissioner of Customs (Air Cargo Export), Mumbai	**Appellant**

Vs.

Firoz Usman Memon	**Respondents**

Shubhra Traders
Garnier Creation
Aramex Enterprises
DL Muthe
Abdul Wahid Fakir Mohammed
Citi Impex
Saraswati Traders
Deep Enterprises
Giftorium
Zuber Peerzade
Jasmin Traders
Aarah Enterprises
Zahid Impex
Sunil Shipping Agency
Kalyani Impex
Alali Impex
Akkis Enterprises
Salroni India Exim
Tarpan Traders
Sanjay Waghmare
Maya Traders
Rishica Traders
ND Bahadure
PDS International Pvt. Ltd.
Mokashi Enterprises
Amkette Impex
Rakibo Enterprises
Sonic Traders
Atat Traders
Akkis Enterprises
Aakash Enterprises
Anushka Enterprises
Simar Enterprises

Trupti Enterprises
Soflon Enterprises
Mohammed Umar Ansari
Nitin Jadhav
Prakash Shankar Agnihotri

Appearance:

Ms P.V. Shekhar, Joint Commissioner (AR), for appellant
Shri Sayyad Kaisar Nagvi, Advocate, for respondent in C/88063/2017

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 23.3.2018
Date of Decision: 23.3.2018

ORDER NO. **A/85770-85808/2018**

Per: Ramesh Nair

These appeals were filed by the Revenue seeking imposition of penalty under Section 114AA which was not imposed by the adjudicating authority on the ground that Section 114AA was inserted in the Customs Act, 1962 as per Taxation Amendment Laws, 2006 that came into force only on 13.7.2006.

2. Ms. P.V. Shekhar, learned Joint Commissioner (AR) appearing on behalf of the Revenue, reiterating the grounds of appeal, submits that the shipping bills involved in the overall case were issued prior to 13.7.2006 as well as thereafter. Therefore, the finding of the Commissioner inasmuch as that the penalty is not imposable since the provision of Section 114AA was inserted only on 13.7.2006, is not correct. She

further submits that in cases where the shipping bills are pertaining to the period post 13.7.2006, the Commissioner has not given independent finding about the role and offence of the respondents. Therefore, the order to this extent is incorrect and illegal.

3. Shri Sayyad Kaisar Nagvi, learned counsel appearing on behalf of the respondent in case of appeal No. C/88063/2017 wherein the respondent is Mohammad Umar Ansari, reiterates the finding of the impugned order. In respect of all other appeals, none appeared on behalf of the respondents.

4. On careful consideration of the submissions made by both the sides, we find that as per the annexure to the show cause notice in the list of shipping bills, it is observed that some of the shipping bills pertain to the period prior to 13.7.2006 and some of them were issued after 13.7.2006. The finding in regard to the penalty under Section 114AA given by the Commissioner reads as under:-

> *"4.11. Further, I find that the proposal for imposition of penalty under section 114AA, on the ground that the notices submitted fake/bogus export documents lacked legal support as the said section was inserted in the Customs Act, 1962 as per the Taxation Amendment Laws, 2006 that came into force only on the 13th July 2006. I find that the said section 114AA had no application as the cause of action in the instant case occurred much before the enactment and as such, the said section cannot be applied unless specifically made effective retrospectively."*

On perusal of the above finding, we find that the learned Commissioner did not impose penalty only on the ground that the statutory provision of Section 114AA came into force only on 13.7.2006. Even if this finding is accepted, the same will be relevant to only those cases where the shipping bills were issued prior to 13.7.2006, but the said finding is not applicable to the cases where shipping bills were issued on or after 13.7.2006. If this is so, then the learned Commissioner should decide on the basis of role and offence, if any, committed on the part of the respondents. We make it clear that in all those cases where the shipping bills were issued prior to 13.7.2006, no penalty can be imposed on the respondents under Section 114AA as the provision of this section was not existing prior to 13.7.2006.

5. As per our above discussion, we dispose of all the appeals by way of remand to the adjudicating authority for passing a fresh order only on the aspect of penalty under Section 114AA in respect of all the respondents in the present appeals.

(Pronounced in court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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