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

Appeal No. C/85684 & 85685/2018

(Arising out of Order-in-Original No. 20/2017-18 dated 28.11.2017 passed by the Commissioner of Customs (Import), Mumbai).

Sameer Santosh Kumar Jaiswal M/s Friends Timber Pvt. Ltd.	Appellant

Vs.

Commissioner of Customs (Import-II), Mumbai	Respondent

Appearance:

Shri C.M. Sharma, Consultant	for Appellant

Shri S.R. Nair, E.O. (AR) Shri M.K. Mall, AC (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)

Date of Hearing: 02.05.2018

Date of Decision: 16.05.2018

ORDER NO. **A/86380-86381/2018**

Per: Ramesh Nair

The facts of the case are that the appellant imported Teak round logs and filed the Bills of Entry No. 965149 dated 3.9.2010 and declared the value of Rs.1,58,32,569/-. Customs authority at the time of assessment of Bills of Entry disputed the value and on the basis of contemporaneous import proposed enhancement of the value to Rs.2,90,92,343/-, which the appellant have admitted subject to condition that no show-cause notice shall be issued. Accordingly, they have cleared the goods on re-assessed value and payment of duty thereon. The appellant thereafter challenged the assessment of Bills of Entry before the Commissioner (Appeals), who upheld the assessment and rejected the appeal. Against the Order-in-Appeal, the appellant filed appeal before the Tribunal with a delay of 607 days. The Tribunal on the ground of delay denied the condonation and consequently appeal was dismissed for delay. Thereafter, a show-cause notice was issued to the appellant proposing confiscation of the goods and imposition of penalty under Section 114A. The penalty under section 114AA was also proposed on Shri Sameer Santosh Kumar Jaiswal. The show-cause notice was adjudicated. The goods were held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. However, the adjudicating authority did not impose redemption fine for the reason that the goods were not available for confiscation. However, a penalty of Rs.12,45,585/- was imposed under Section 114A of the Customs Act, 1962 on the appellant company. A penalty of Rs.5 lakhs has also been imposed on Shri Sameer Santosh Kumar Jaiswal, Director of M/s Friends Timber Pvt. Ltd. under Section 114AA. Therefore, the appellants are before me.

2. Shri C.M. Sharma, learned Counsel appearing on behalf of the appellant submits that the adjudicating authority has taken the cognizance of the rejection of appellant's appeal by the Tribunal on the issue of enhancement of the value. He submits that since the Tribunal has dismissed the appeal only for delay and no order on merit was passed, therefore, there is no meaning of taking of cognizance of the Tribunal's order dismissing the appeal of the appellant. He further submits that the goods were

neither seized nor released provisionally, therefore, there was no question of confiscation of the goods. There is no evidence that the appellants have mis-declared the value. The enhancement of the value was made only on the basis of contemporaneous import. Therefore, in absence of any evidence that the appellants have suppressed the value, no penalty can be imposed. He also submits that the demand was not determined under Section 28. Therefore, penalty under Section 114A was illegal and incorrect. The enhancement was proposed by the Department and the appellants have accepted and paid the duty. Therefore, once the assessment has been finalized, there is no scope for Department to issue the show-cause notice. The show-cause notice can be issued only if there is short payment or non-payment of customs duty. In that case the duty on the value determined by the Department was paid, therefore, it is not a case of non-payment or short payment of customs duty. Hence, no show-cause notice should have been issued.

2.1 As regards penalty of Rs.5 lakhs on the Director of the appellant company under Section 114AA, he submits that invocation of Section 114AA is not sustained in the present case, therefore no penalty under Section 114AA can be imposed on the Director of the appellant company.

3. Shri S.R. Nair, E.O. (AR) and Shri M.K. Mall, Asstt. Commissioner (AR) appearing on behalf of the Revenue. Shri M.K. Mall reiterates the findings of the impugned order. He further submits that there is a clear case of mis-declaration of value which was enhanced and the same was admitted by the

appellant, therefore, the penalties under Sections 114A and 114AA were rightly imposed.

4. I have carefully considered the submissions made by both sides and perused the records. I find that the declared value of the appellant was disputed by the Customs authority at the time of assessment of Bills of Entry on basis of contemporaneous import. The appellant agreed to pay the duty on the enhanced value subject to the condition that no show-cause notice shall be issued. The show-cause notice was issued in September, 2015 by enhancing the value and demanding duty on the enhanced value. The assessment attained finality; thereafter there was no reason to issue any show-cause notice. The enhancement of value was also made on the basis of contemporaneous import. No evidence was found that the appellants have suppressed the value and additional consideration was paid by some other means. Since the assessment was finalized in the Bills of Entry itself and duty was paid on the enhanced value, therefore, there was no reason to issue the show-cause notice. The show-cause notice was issued only for imposition of penalty under Section 114A. It is observed that the demand was neither raised nor confirmed under Section 28(1) of the Customs Act, 1962. Therefore, in absence of any determination of duty under Section 28(1), penalty under Section 114A cannot be imposed. Therefore, I set aside the penalty imposed under Section 114A.

4.1 As regards penalty imposed on Shri Sameer Santosh Kumar Jaiswal, Director of the appellant company under Section 114AA, which reads as under: -

> *"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

From the reading of the above Section 114AA, it is observed that if the person knowingly makes the false declaration or signs any such document then only he will be liable to penalty under Section 114AA. In the present case, there is no case that the Director of company has done any act which specified under Section 114AA. Even the enhancement of value was done on the basis of contemporaneous import, it cannot be said that the Director has done anything to mis-declare the value. Moreover, as discussed above, since there is no case of short payment or non-payment of customs duty, the show-cause notice itself was not warranted. Consequently, neither the penalty on the appellant company nor on the Director was imposable.

5. As per my above discussions, I am of the considered view that the penalty is not imposable either on the appellant company or on the Director. Therefore, the penalties imposed upon the appellants are set aside.

6. The appeals are allowed.

(Pronounced in the Court on 16.05.2018)

(Ramesh Nair)
Member (Judicial)

Sinha