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

Appeal No. C/1260/09

(Arising out of Order-in-Original No. 154/2009 dated 22.10.2009 passed by the Commissioner of Customs (General), NCH, Mumbai).

M/s Maa Krupa Forwarders Pvt. Ltd.	Appellant

Vs.

Commissioner of Customs (General), Mumbai	Respondent

Appearance:

Shri S.P. Joshi, Advcoate	for Appellant
Mrs. P. Vinitha Sekhar, JC (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 04.04.2018

Date of Decision: 25.05.2018

ORDER NO. **A/86525 / 2018**

Per: Raju

This appeal has been filed by M/s Maa Krupa Forwarders Pvt. Ltd. against order forfeiting the security amount deposited by the said CHA under CHALR, 2004.

2. Learned Counsel for the appellant pointed out that they are CHA and vide the impugned order the Commissioner (General) had forfeited the entire security amount deposited to the Department under the provisions of CHALR, 2004 for not fulfilling the obligation

as CHA. In a case involving import of "parts and accessories of Motor Cycle/Cycle/Carriage for disable person" by M/s Bhavana Overseas, the documents were submitted by the appellant before Customs authorities in capacity of CHA. The goods were examined by the Customs Officer, who opined that the said goods consisting complete Motor Cycle in knock-down condition. The importer had claimed the classification under CTH 8714, whereas the assessing officer were of the opinion that the correct classification was CTH 8711. A show-cause notice was issued to the importer and the appellant was also made a party. In the proceedings against the importer, a penalty of Rs.50,000/- was also imposed on the appellant. The appellant challenged the said order before Commissioner (Appeals), who vide Order-in-Appeal dated 01.10.2008 set aside the penalty imposed on CHA after observing that the original authority had reached the conclusion without any evidence. The penalty against the appellant was set aside in those proceedings. He argued that in these circumstances, the penalty imposed under CHALR, 2004 cannot be sustained.

3. Learned AR relies on the impugned order.

4. We have gone through the rival submissions.

4.1 The first charge against the appellant relates to mis-declaration in respect of description, incorrect mentioning of Country of Origin and value of the goods. The said charge sheet admits that the appellant had filed Bills of Entry based on import invoice received from importer. The declaration made in the Bills of Entry was found incorrect inasmuch as instead of parts of complete

Motor Cycle in knock-down condition was found. We find no case against CHA can be made out on these facts as CHA can only operate on the basis of documents given to him by the importer. They cannot be expected to be aware of the exact nature of the goods being imported if the documents show otherwise. The article of charge is therefore not proved.

4.2 The Article of Charge 2 relates to the appellant's failure in detecting that the documents given by the appellants are false or manipulated. The entire case was detected on examination of the goods and not on detection of manipulated or fabricated invoice. In these circumstances, it cannot be expected that the CHA could have detected any flaw in the invoices when the entire investigation was not based on any defect in the document, but on the physical examination of the goods. In view of the above, Article of Charge 2 is also not proved.

4.3 The Article of Charge 3 relates to failure of the appellant for verifying the correct address of the importer. The defence of the appellant is that the address of the importer was avilable in the IEC documents, thus, there was no need to verify it again. It has been argued that they had come to contact with importer through a common friend. We find that the verification of importer's antecedents is part of CHA's duty. The address of the importer is part of antecedents that need to be verified by CHA. In the instant case, it was found that importer not only has fictitious address but has also the fictitious Mobile Number. This charge against the CHA for failure of diligently verifying the antecedents of the importer is proved.

5. In these circumstances, we do not find any reason to interfere in the impugned order. The appeal is therefore dismissed.

(Pronounced in Court on 25.05.2018)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Sinha