IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/87487/2016

[Arising out of Order-in-Appeal No: MUM-CUSTM-PAX-APP-50&51/16-17 dated 12th May 2016 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

UPS Jetair Express Pvt Ltd …***Appellant***

versus

Commissioner of Customs
Airport, Mumbai ***…Respondent***

Appearance:

Shri Pratik Goyal, Chartered Accountant for appellant

Shri C J Sahu, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**13/06/2017**
Date of decision:	**01/05/2018**

ORDER NO: A/ 86280 / 2018

In connection with the import of two projectors in the name of M/s Lord Enterprises where the value was found to be under-declared and the address of the consignee found to be fictitious, the original authority imposed penalties of ₹ 5,00,000 and ₹ 1,00,000 under section 112 and 114AA of Customs Act, 1962 against M/s UPS Jet Express Pvt Ltd, the registered courier, who had handled the consignment.

2. An appeal against this was rejected by Commissioner of Customs (Appeals), Mumbai – III *vide* order-in-appeal no. MUM-CUSTM-PAX-APP-50&51/16-17 dated 12th May 2016 leading to the present proceedings.

3. Heard Learned Chaptered Accountant appearing for appellant and Learned Authorized Representative.

4. It would appear from the order of the original authority, as confirmed by the first appellate authority, that the appellant was held liable to penal consequence for failure to conform to the Courier Imports and Exports (Clearance) Regulations, 1998. Undoubtedly, the appellant, as a registered courier was bound by the said regulations. However, section 112 of Customs Act, 1962 is liable to be invoked for dealing, or having been connected, with goods liable for confiscation. Likewise, section 114AA is invoked for complicity in filing false declarations.

5. The impugned order has not rendered a finding on either or both of these counts. In the absence of such a finding, reference to the provisions of governing regulations is not an adequate substitute. A

breach of these regulations can be visited with consequences contained in those regulations. It is but natural that a registered courier files import declarations and handles import goods. Mere handling in the course of professional engagement does not necessarily imply prior knowledge of liability of the goods to confiscation. That requires an independent and specific finding which is conspicuously absent in the impugned order.

6. The show cause notice is also bereft of any evidence or suggestion of awareness that the goods under import are liable for confiscation. Consequently, the proceedings lack the rigor that are necessary for imposition of penalties under the sections.

7. For the above reasons, the impugned order is modified by setting aside the penalties imposed against M/s UPS Jet Express Pvt Ltd.

(Pronounced in Court on 01/05/2018)

(C J Mathew)
Member (Technical)

**/as*