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

**APPEAL NOS: C/615, 636 & 637/2009**

[Arising out of Order-in-Original CAO No: 46/2009/CAC/CC/KS dated 12th March 2009 passed by Commissioner of Customs (Adjudication), Mumbai.]

R R Joshi (Shipping & Forwarding) Pvt Ltd
Ajay Uday Singh
Tony Xavier Michael … ***Appellants***

*versus*

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

*Appearance:*

Shri VM Doiphode, Advocate for appellant no.1

Shri SR Nair, EO (AR) for respondent

**CORAM:**

**Hon'ble Shri Anil Choudhary, Member (Judicial)**
**Hon'ble Shri C J Mathew, Member (Technical)**

**Date of hearing: 08/01/2018**
**Date of decision: 08/05/2018**

**ORDER NO: A/86326-86328 / 2018**

*Per: C J Mathew*

M/s R R Joshi (Shipping & Forwarding) Pvt Ltd, Shri Ajay Uday Singh and Shri Tony Xavier Michael are in appeal against order-in-original CAO no. 46/2009/CAC/CC/KS dated 12th March

2009 of Commissioner of Customs (Adjudication), Mumbai challenging the imposition of penalty of ₹ 5 lakhs on the first and ₹ 3 lakhs on the other two under section 112 of Customs Act, 1962.

2. Allegedly they were involved in mis-declaration that led to evasion of duties of customs on the imports effected by M/s Daewoo Ship Building and Heavy Machinery Ltd. The consignments intended to fabricate 'SHG platforms' for offshore drilling on contracts of M/s ONGC Limited, were, instead of being imported against bills of entry, transferred from the air cargo complex against transshipment permits by claiming these to be ship stores intended for their vessel AYANG-II. The adjudicating authority has held that the value was mis-declared and that the contents were described as 'ship stores' to suppress the link to the offshore project for which reliance has been placed on a number of documents that were seized from M/s Daewoo Ship Building and Heavy Machinery Ltd and from the custom house agent.

3. We have heard the Learned Counsel appearing for R R Joshi (Shipping & Forwarding) Pvt Ltd. Shri Ajay Uday Singh has, in a letter seeking waiver of penalty, pleaded that he is financially indigent. Neither he nor Shri Tony Xavier Michael are represented.

4. The primary contention in the grounds of appeal are that the principles of natural justice have been violated in that they were not

heard before they were visited with detriment and that various documents which were necessary for defending themselves had not been provided to them. On a perusal of the relevant portion of the impugned order, it is seen that there is an elaborate discussion on the mis-declaration of value as well as destination of the goods but the role of the appellants has been narrated thus

> *'27. ……*
>
> *F) M/s. Daewoo Ship Building and Heavy Machineries Ltd. now known as M/s. Daewoo Heavy Industries Ltd. and its officers i.e. S/Shri H.I. Bomb, M.H. Lee, C.S. Yoon, M/s. Transnational Shipping, Shri Joe Cabral, M/s. R.R. Joshi, Shri F.J. Lewis, Mr. Ajay Singh, Mr. Tony Michael and M/s. Durga Enterprises are the firms and persons who have done or omitted to do certain acts or omissions and such acts or omissions and such acts or omissions have rendered these goods liable to confiscation under Section 111 of the Customs Act, 1962 or have abetted in doing or omission of such acts; and are also the firms and persons who were concerned in carrying, removing, depositing, keeping, concealing and/or dealing with the impugned goods knowing fully well and/or were having reasons to believe that the said goods are liable to confiscation and thus they have rendered the impugned goods liable to confiscation under Section 111 (d) & (m) of the Customs Act, 1962 and thus they have rendered themselves liable to penal action under Section 112(a) and (b) of the Customs Act, 1962.*
>
> *28. In the present case goods imported are liable to confiscation as held by the following decisions.*
>
> *i) Cestal South Zonal Bench, Chennai in Venus Enterprises Vs., CC, Chennai has held that misdeclaration*

> *and suppression of value, maintenance of parallel invoices goods liable for confiscation, penalty imposable - fine imposable even if goods not available for confiscation - Section 111(m) 112(a) and 125 of Customs Act, 1962.*
>
> *ii) Hon'ble Supreme Court of India in Weston Components Ltd. Vs. CC, New Delhi had held that redemption fine imposable even after release of goods on execution of bond mere fact that the goods were released on bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods was found not valid or that there was any other irregularity which would enable the Customs Authorities to confiscate the said goods Section 125 of Customs Act, 1962.*
>
> *iii) Hon'ble High Court of Judicature at Madras in Dadha Pharma Pvt. Ltd. Vs. Secretary to Govt. of India had held that "Action can be taken under Section 112 of the Customs Act, 1962 even if goods not available for confiscation Section 110 as well as Section 111 ibid speaks of liability to confiscation are not actual confiscation".'*

before going on to impose penalties.

5. Furthermore, it is clearly noted in the impugned order that the appellants were not present at any of the hearings. The adjudicating authority has narrated the various requests for documents thus:

> *'Consequent to the High Court's order dated 16.12.2008 personal hearing was granted on 29.12.2008, 23.01.2009 and 10.02.2009. However, noticee nos. 1, 2, 3, 4, 5, 7, 8, 10, 11, 12 & 13 i.e. M/s. Daewoo, S/Shri H. I. Bomb, M. H. Lee, C.S. Yoon, M/s. Trans International Shipping, S/Shri Joe Cabral, F. J. Lewis,*

*Tony X. Michael, M/s. Durga Enterprises, Shri S.U. Shin, Shri J.W. Kim never appeared for hearing nor replied to the p.h. intimation.*

*Shri Ajay Uday Singh, noticee no. 9, in response to this office intimation regarding p. h. fixed on 29.12.2008, he sought 10 to 15 days time. Again in his letter dated 05.01.2009 he requested to supply photo copies of the related documents. In his letter dated 23.01.2009 Shri Ajay Udya Singh again requested time for hearing. However, he never appeared for p. h. fixed for 10.02.2009, 25.09.2009 and 09.03.2009 respectively.*

*Shri Sunil Kumar, Advocate of M/s. R. R. Joshi (Shipping & Forwarding) Pvt. Ltd. noticee no. 6 asked for documents and the same were supplied to them under proper acknowledgement. However, opportunities of hearings were never availed by them.*

*Since the noticees were not coming forward for personal hearing despite granting sufficient opportunities as above, they have failed to utilise the same. Consequently, the matter can not be kept pending indefinitely as the Hon'ble High Court vide order dated 16.12.2008 has directed the adjudicating authority to decide the case within 3 months. Accordingly, I have no other alternative than deciding the case based on available records.'*

6. Undoubtedly, the appellants had one reason or other for not being presented at the hearing on the scheduled date. Their absence is attributed in the grounds of appeal to non-furnishing of relevant documents. Be that as it may, considering that plea for documents had been made to the lower authority and that the principles of natural justice had been deviated from in denying them an opportunity to be

heard compounded by the absence of any finding against each of the appellants separately, the impugned order is in jeopardy.

7. Imposition of penalty, especially on customs brokers, should be in proportion to the gravity of the involvement. In the absence of finding of such involvement and in view of the specific plea for hearing and furnishing of documents having been denied, it would be appropriate to set aside the penalties imposed on the three appellants and to remand the matter back to the adjudicating authority for fresh determination of their roles within the framework of section 112 of the Customs Act, 1962.

8. It shall be the responsibility of the adjudicating authority to furnish relevant documents and to grant reasonable time to respond to the show cause notice at a personal hearing before dealing with the remand afresh. The entire process shall be completed within a period of six months from the date of receipt of the order by the adjudicating authority.

9. Accordingly, the three appeals are allowed by way of remand on the terms specified above.

*(Pronounced in Court on 08/05/2018)*

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|---|---|
| **(Anil Choudhary)** | **(C J Mathew)** |
| ***Member (Judicial)*** | ***Member (Technical)*** |

**/as1*