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

APPEAL NO: C/86850/2017

[Arising out of Order-in-Original No: 180/2016-17/CC/NS-I/JNCH dated 02/03/2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Lalit Agarwal … ***Appellant***

versus

Commissioner of Customs (NS-I)
Nhava Sheva– I …***Respondent***

Appearance:

Shri Prashant Patankar, Consultant for appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

Date of hearing	**23/04/2018**
Date of pronouncement	**23/04/2018**

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Hon'ble Shri Ramesh Nair, Member (Judicial)

ORDER NO: A/86612 / 2018

The present appeal is directed against Order-in-Original No: 180/2016-17/CC/NS-I/JNCH dated 02/03/2017 passed by the Commissioner of Customs (NS-I), Nhava Sheva whereby penalty of ₹ 1 lakh was imposed on the appellant under Section 112(a) of the

Customs Act, 1962.

2. The fact of the case are that the appellant is a partner of CHA. He has filed the documents for import of goods by Shri Vishal Rohra and Shri Haresh Rohra by using IEC of M/s Rudraksh Enterprises. The department investigated the case regarding undervaluation. In the investigation, certain insurance documents were found which shows higher value of the goods as compared to value declared in the import documents. The case against the appellant is that he facilitated with the IEC of Rudraksh Enterprises to the actual importer. Therefore, he was involved in the offence of undervaluation of imported goods.

3. Shri Prashant Patankar, Learned Consultant appearing on behalf of the appellant drawn my attention to para 18.23 of the order wherein the adjudicating authority has given a finding for the charges against them. He submits that even from the finding of the adjudicating authority it is not sure about the involvement of the appellant in the *modus operandi* of the importer Shri Shri Vishal Rohra and Shri Haresh Rohra and it was also recorded by the adjudicating authority that the customs broker did indeed play a passive role if not an active role in the import. Thus, it shows that there is no direct involvement of the appellant in the offence of undervaluation of the goods. He submits that as regards the involvement of appellant for use of IEC of Rudraksh Enterprises by the actual user is not an offence *per se*. This

act, alone cannot be a basis for allegation of involvement in the case of undervaluation. He place reliance on the following judgment:

i. *Hamid Fahim Ansari v. Commissioner of Customs (Import), Nhava Sheva* 2009 (241) ELT 168 (Bom.)

ii. *Atul D Sonpal v. Commissioner of Customs (ACC & Import), Mumbai* 2012 (275) ELT 248 (Tri.Mumbai)

iii. *IS Corporation v. Commissioner* 2016 (339) ELT A125 (Tri.Mumbai)

4. He further submits that the appellant owned CHA firm M/s Kismat Clearing Agency filed the bill of entry on the basis of documents produced to them and from the documents it cannot be made out whether the goods have been undervalued or otherwise. Therefore, when the CHA filed the bill of entry on the basis of documents made available to him, case of undervaluation was not unearthed. It is on the basis of a detailed investigation and on the basis of contemporaneous import undervaluation was unearthed and therefore CHA cannot be made responsible. In support of this he places reliance on the following judgments.

i. *Commissioner of Customs, Tuticorin v. Moriks Shipping & Trading Pvt Ltd* 2015 (317) ELT 3 (Mad.)

ii. *Commissioner of Customs, Mumbai v. M Vasi* 2003 (151) ELT 312 (Tri.Mumbai)

iii. *Vetri Impex v. Commissioner of Customs, Tuticorin* 2004 (172) ELT 347 (Tri.Chennai)

iv. *Akanksha Enterprises v. Commissioner of Customs, Mumbai – I* 2006(203) ELT 125 (Tri.Del.)

v. *GM Enterprises v. Commissioner of Customs (Export), Nhava Sheva* 2010 (262) ELT 796 (Tri. Mumbai)

5. Shri Manoj Kumar, Learned Authorised Representative appearing on behalf of Revenue reiterates the findings of the impugned order . He particularly refers to para 18(a) of the impugned order wherein he invited attention to the observation of the adjudicating authority that the appellant was aware that the import of the identical bearings were cleared by other importers at a higher price. Therefore, the appellant was aware of the under valuation of the goods.

6. I have carefully considered the submission made by both the sides and perused the records. The appellant has acted as a CHA and filed bill of entry in respect of imports made on the basis of IEC of M/s Rudraksh Enterprises. Since CHA filed the bill of entry on the basis of documents produced to him by the importer and in such

documents no discrepancy was pointed out, the undervaluation of the imported goods was determined only on the basis of independent investigation carried out by the customs authorities. Even though the insurance documents were relied upon but the enhancement of the value was made on the basis of contemporaneous imports. In these facts it cannot be expected from the CHA to know about the fact whether any undervaluation was done by the importer. Therefore, he cannot be made responsible for undervaluation in the peculiar fats of the case. I have gone through the paragraph No. 18.4.3 of the impugned order which reads as under:

> “18.4.3 I now take up the contention that no allegation of the suppression of values in the Bills Of Entry against the Custom Broker made by the Importers. As per CBEC manual the following documents are required to be submitted by the importer or through his CHA at the time of filing the Bill of Entry viz Signed invoice, Packing list, Bill of Lading or Delivery Order/Airway Bill, GATT valuation declaration form, Importers/CHA's declaration, Letter of Credit, wherever necessary, Insurance document, Import license, where necessary, Industrial License, if required, Test report in case of items like chemicals, DEEC Book in original, where relevant, Catalogue, technical write up, literature for machineries, spares or chemicals, as applicable, Separately split up value of spares, components, machinery, Certificate of Origin, if preferential rate of duty is claimed. In this instant case the insurance documents recovered from Shri Vishal Rohra showing insured value of goods pertaining to the imports as given in par 7.1.1, 7.1.2 and 7.1.3 indicate very high insurance

> values as compared to the amounts declared and mentioned in the Bills of Entry for those goods which implies that the values given in the Insurance documents and that given in the Bills of Entry do not match. As Insurance documents form a vital part in the list of documents to be submitted at the time of filing by the importer, there seems to have either been a suppression or omission with reference to these insurance documents at the time of filing the Bills of Entry by both the importer and his Customs broker. Hence, this indicates that Shri Lalit Agarwal would have been aware of the modus operandi of the importer Shri Vishal Rohra as he used to file the Bills of Entry on behalf of the importer Shri Vishal Rohra. There does not appear to be any bonafide motive by the Customs Broker to ignore this aspect or suppress this information to Customs at the time of filing the Bills of Entry. Hence I find that the contention that although the other noticees Shri Hitesh Ajmera and Shri Vishal Rohira made no allegations against Shri Lalit Aggarwal regarding valuation of the goods at the time of filing of Bills Of Entry as the Customs Broker did indeed play a passive role if not an active role in the imports of the impugned goods in this case."

7. From the above finding it is seen that the adjudicating authority himself is not sure about the involvement of the appellant in the *modus operandi* of the importer. Therefore, he mentioned in the order that this indicates that "Shri Lalit Agarwal would have been aware of the *modus operandi*." Moreover, the last sentence of the finding he himself admitted that the custom broker played a passive role if not an active role. Therefore, the entire finding is based on assumption and presumptions and on that basis the appellant cannot be punished.

8. The judgment relied upon by the Learned Counsel supports his case. Accordingly, I do not find any substance in the impugned order for imposing penalty on the appellant. Accordingly, the penalty imposed under Section 112(b) of the Customs Act, 1962 is set aside and the appeal is allowed.

(Dictated in Court)

(Ramesh Nair)
Member (Judicial)

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