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

Appeal No. C/650 & 651/2011

(Arising out of Order-in-Appeal No. 300 & 301 (Group III)/2011 (JNCH)/Imp-254 & 255 dated 27.05.2011 passed by Commissioner of Customs (Appeals), Mumbai)

Amit Jha **Bharat Kashirsagar**	**Appellant**

Vs.

Commissioner of Customs **(Import) Nhavasheva**	**Respondent**

Appearance:

Shri Vinay Ansurkar, Advocate	for appellant
Shri Manoj Kumar, Asst. Commr (AR)	for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 11.07.2018

FINAL ORDER NO...**A/86970-86971/2018**

Per: S.K. Mohanty

These appeals are directed against the impugned order dated 27.05.2011 passed by the Commissioner of Customs (Appeals), Mumbai II. Imposition of penalties under Sections 112(a) and 114AA of the Customs Act, 1962 is the subject matter of present dispute.

2. Brief facts of the case are that one M/s Pioneer Enterprises filed a bill of entry No.694979 dated 25.09.2009 through CHA M/s. Universal Shipping and Forwarding Agency, for clearance of 11150 kgs of ‘PVC sheets’ of various measures. Upon examination of the particulars contained in the bill of entry vis-à-vis the imported goods, the Officers of Customs found that the goods have been mis-declared inasmuch as ‘PVC leather cloth’ were imported, as against the declared goods of ‘PVC sheets’. It was further observed that the bill of entry has reflected more quantity, than the weight measured during the course of weighment. On the basis of above irregularities as noticed by the Group Assessment Wing, the department issued show-cause notice, seeking for confirmation of the duty demand, confiscation of the goods and for imposition of penalties on various persons, including the appellants herein. The authorities below have invoked the provisions of Section 112(a) and 114AA of the Act, on the ground that the present appellants have concealed the facts regarding actual weighment and providing of correct description of the imported goods from the Customs department.

3. Heard both sides and perused the case records.

4. Sections 112(a) and 114AA of the Act provides for imposition of penalty for improper importation of goods and use of false and incorrect material respectively. So far as Section

112(a) of the Act is concerned, the connected person is exposed to the penal consequences, who in relation to any goods, does or omits to do any act, which act or omission, would render such goods liable to confiscation under section 111 of the Act. Further, Section 114AA of the Act provides for imposition of penalty on the person concerned, who 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.

4.1 In the instant case, it is an admitted fact that the goods in question were confiscated under Section 111(l) and 111(m) of the Act and the same were redeemed on payment of redemption fine. Thus, it is not in dispute that for the wrongful acts and deeds, the goods were rendered liable for confiscation and accordingly, the provisions contained in Section 112 of the Act are satisfied for imposition of penalty. On perusal of the impugned order, I find that Shri Amit Jha, Proprietor of the CHA firm and Shri Bharat A. Kshirsagar, employee of CHA firm had concealed the fact regarding the actual weight, correct description and proper value of the impugned goods from the department. Hence, in my considered view, the ingredients mentioned in Section 112(a) are satisfies for imposition of penalties on the appellant. However, considering the gravity of offence and the amount received by the appellant for providing

CHA service to the clients, I am of the view that the penalty imposed on them can be reduced. Accordingly, the impugned order is modified, in reducing the quantum of penalty imposed under Section 112(a) of the Act from Rs.1 lakh to Rs.50,000/- on each appellant.

4.2 On perusal of the impugned order, I find that the learned Commissioner (Appeals) has only stated the reason of concealment of fact about weighment variance, incorrect description and value of the impugned goods. Learned Commissioner (Appeals) has not specifically stated that the appellants had intentionally made, signed or used any declaration, statement or document, which were false or incorrect in any material particular. Thus, in absence of any specific findings with regard to sign / using of any declaration, statement or document, the provisions of Section 114AA of the Act cannot be invoked for imposition of penalties on the appellant. Therefore, the impugned order, so far as it confirmed the penalties under Section 114AA of the Act on the appellants is set aside and the appeals are allowed in favour of the appellants.

4.3 In the result, the appeals are partly allowed in setting aside the penalties imposed on the appellants under Section 114AA of the Act. Further, the impugned order also modified in reducing quantum of penalty imposed under Section 112(a) from Rs.1 lakh to Rs.50,000/- on each appellants.

(operative part of order pronounced in Court)

(S.K. Mohanty)
Member (Judicial)

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