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

Appeal No. C/86273/2018

(Arising out of Order-in-Appeal No. 953 (Adjn(I)/2017 (JNCG)/Appeal-II dated 29.12.2017 passed by Commissioner of Customs (Appeals), Nhava Sheva, Mumbai II)

Arshad Baig **Appellant**

Vs.

Respondent

Commissioner of Customs
JNCH, Nhava Sheva, Mumbai II

<u>Appearance:</u>

Shri P.A. Augustian, Advocate for appellant
Shri M.K. Mall, Asst. Commr (AR) for respondent

<u>CORAM:</u>

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

Date of Hearing & Decision : 23.07.2018

FINAL ORDER NO. **A/87432/2018**

Per: S.K. Mohanty

Brief facts of the case are that, based on a specific intelligence, the Directorate of Revenue Intelligence (MZU) undertook an investigation on certain Mumbai based operators, who have engaged in fraudulent import of High end cars / Sports Utility Vehicles by resorting to under-valuation and mis-declaration of various particulars of the said cars, with intent to evade payment of appropriate customs duty. During the course of investigation, it was revealed that one Shri Qureshi Intekhab

Alam Nisar Ahmed (Shri Qureshi, in short) had imported the vehicle namely "New Hummer H3 RHD 3653 CC Petrol" by declaring the transaction value as USD 36100 CIF (equivalent to Rs.15,36,055/-). For the purpose of assessment, the said importer had claimed the benefit of Notification No. 21/2002-Cus dated 01.03.2002 (Sr. No.344). Shri Qureshi, the importer herein, in his statement recorded under Section 108 of the Customs Act, 1962 (for short "the Act") had admitted that the actual cost of vehicle was Rs.27 lakhs. The declared value of the impugned vehicle was rejected by the Customs Officers under the provisions of rule 12 of Customs Valuation Rules, 2007 and re-determined the same on the basis of information received from OEM M/s General Motors India Pvt. Ltd. On the basis of investigation, the department initiated show cause proceedings against various persons, including the appellant herein. The matter was adjudicated vide order dated 25.03.2015 and penalties were imposed on the appellant under Section 112(a) and 114AA of the Act. On appeal against the adjudication order, learned Commissioner (Appeals) vide impugned order dated 29.12.2017 had upheld the imposition of penalty on the appellant.

2. Learned Advocate appearing for the appellant submits that provisions of Section 112(a) of the Act is not applicable for imposition of penalty inasmuch as the appellant had assisted the importer with clearance of the vehicle, which is a post

importation activity. He also submits that the appellant no way concerned with signing of the relevant documents or furnishing any declaration with regard to clearance of the vehicle from the port. Thus, he submits that provisions of Section 114AA of the Act are also not applicable for imposition of penalty on the appellant.

3. On the other hand, learned D.R. appearing for Revenue submits that since the importer had agreed to pay Rs.4 lakhs to the appellant for customs clearance of the impugned vehicle and the value of the vehicle had been mis-declared, the appellant is exposed to penal consequences provided under Section 112(a) and 114AA of the Act.

4. Heard both sides and perused the records.

5. I find that the statement of the appellant was recorded by the officers of the Customs on 24.12.2008 under Section 108 of the Act, wherein he had *inter alia,* stated that Shri Qureshi, importer of the vehicle agreed to pay Rs.4 lakhs for customs clearance of the imported vehicle and that the value of the imported goods had been mis-declared. Further, I find from the findings recorded in the adjudication order that the appellant had advised the importer not to accept any under-valuation, as the same would complicate the matter and many other importers would have to pay higher duty. The statements furnished by the

appellant were never retracted before adjudication of the matter. Thus, the truth and the averments made therein cannot be altered at the appellate stage. Thus, the provisions of section 112(a) of the Act are attracted for imposition of penalty on the appellant and the authorities below are justified in imposing penalty under the said statutory provision.

5.1 With regarding to imposition of penalty under Section 114AA of the Act, I find that the appellant did not make, sign or used any declaration / statement in respect of importation of the vehicle. Thus, penal provisions contained in Section 114AA of the Act cannot attracted for imposition of penalty on the appellant.

6. In view of above, the appeal is partly allowed, to the extent of setting aside the penalty imposed under Section 114AA of the Act. However, the impugned order sustains, so far as it upheld the penalty imposed under Section 112(a) of the Act.

7. In the result, the appeal is partly allowed.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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