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

Appeal No. C/777/2010

(Arising out of Order-in-Original No. CC-(RT)13/2010 ACC dated 04.08.2010 passed by Commissioner of Customs, Mumbai)

Om Freight Forwarders Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs (Export) Mumbai **Respondent**

Appearance:

Shri Anil Balani, Advocate for appellant
Shri Bhushan Kamble, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing / Decision: 08.08.2018

FINAL ORDER NO...A/88185/2018

Per: S.K. Mohanty

Brief facts of the case are that based on intelligence that certain exporters were over invoicing export consignment of garments with intention to claim ineligible draw-back benefit, the Customs department investigated into the matter and observed that certain shipping bills were filed by M/s Shristhi Enterprise and M/s Shivji Enterprises, through the CHA M/s Om Freight Forwarders Pvt. Ltd. The shipping bills described the goods as "ladies tops made of man-made fabric", whereas on physical examination of the goods by the officers of Air Cargo Complex, it was found that the description of the goods were "ladies knitted tops made of cotton and blended fabric", which were of inferior quality and the value has been declared grossly on the higher side. On the basis of investigation, show cause proceedings were initiated by the department for confiscation of the goods covered under the shipping bills and for imposition of penalties on various persons. The matter was adjudicated by the impugned order dated 05.08.2010, wherein the Commissioner of Customs (Export) has confiscated the export goods, with an option to redeem the same on payment of redemption fine. Besides, the impugned order also imposed penalties on various persons (including the appellant herein). Feeling aggrieved with the said order, so far as it imposed penalty of Rs.7 lakhs, the appellant has filed this appeal before the Tribunal.

2. The learned Advocate appearing for the appellant submitted that the appellant had never admitted having knowledge or involvement in over-valuation of the export goods. He further submitted that the department has not specifically alleged regarding earning of extra amount by the appellant over and above the normal clearing agency charges received by it. Thus, he submitted that the provisions of Section 114(iii) of Customs Act, 1962 cannot be invoked for imposition of penalty.

He has relied on the decisions of this Tribunal in the case of *Air Travel Enterprises India Ltd. – 2009 (239) ELT 275 (T), Sethu Samundhra Shipping Services – 2010 (262) ELT 570(T), Parvez J. Irani – 2016 (333) ELT 333(T), Sarosh Nagrwala – 2017 (358) ELT 542 (T), Moriks Shipping & Trading (P) Ltd. – 2015 (317) ELT 3 (Mad.) and Success Engineering – 2007 (215) ELT 220 (T)* to state that penalty cannot be imposed in absence of non-fulfillment of ingredients provided under Section 114 of the Act.

3. On the other hand, learned D.R. appearing for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. We find that in the statement recorded under Section 108 of the Act from Shri Vijay Dixit, Export Manager of the appellant's firm on 03.01.2009, he has stated that the activities undertaken by the appellant were in context with preparation and filing of the shipping bills. On perusal of the findings recorded at paragraph 5 in the impugned order, we do not find that the appellant through its employee had admitted or confessed regarding the knowledge or its involvement in over-valuation of the goods. Further, it is not the case of Revenue that the appellant had earned any extra amount over and above the contracted amount fixed for providing the CHA service.

Thus, on such circumstances and specifically, in view of the fact that the department has not brought out any specific evidence regarding the involvement of the appellant in improperly export of goods, we are of the considered opinion that penalty imposed under Section 114(iii) cannot be sustained for judicial scrutiny.

6. Therefore, we do not find any merits in the impugned order, so far as it imposed penalty on the appellant. Accordingly, after setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Operative part pronounced in open Court)

(C.J. Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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