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

Appeal No. C/726/11

(Arising out of Order-in-Original No. 60/2009-CC(I)/JNCH dated 28.02.2009 passed by Commissioner of Customs, Nhaava Sheva)

Shri Mohan Nair **Appellant**

Vs.

Commissioner of Customs (Import), Nhava Sheva **Respondent**

Appearance:

Shri Prassanna S. Namborlin, Advocate for appellant
Shri B. 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: 14.08.2018

FINAL ORDER NO. **A/88269 / 2018**

Per: S.K.Mohanty

Imposition of penalty under Section 112(b) of the Customs Act, 1962 on the appellant Shri Mohan Nair, is the subject matter of present dispute.

2. Brief facts of the case are that the intelligence gathered by the Directorate of Revenue Intelligence (DRI), Ahmedabad indicated that M/s. Angana Exports, having manufacturing unit in

Bharuch, had obtained Advance Licences on the basis of fake / false certificates / addresses and imported polyester yarn duty-free with actual user condition. The said party had divertd the imported yarn into the domestic market, instead of actually using the same in the manufacture of twisted polyester filament yarn for export purpose. Thus, it had been contended by the officers of DRI that the said party had contravened the condition of actual user laid down in para V of Notification No.43/2002-Cus dated 22.04.2002 read with the provisions of Chapter IV of the Export & Import Policy – 2002-07. With regard to the present appellant, the department had contended that the consignment of polyester yarn was also imported and cleared without payment of customs duty, by using the advance licences obtained in the name of M/s Angana Exports. It has also been contended that the appellant had himself invested money and was owner of the goods. Thus, the department alleged that the appellant had abetted the fraud by actively involving himself in the fraudulent importation of goods, which are liable for confiscation under Section 111(o) of the Customs Act, 1962. On the basis of detailed investigation, the department initiated show cause proceedings, seeking for denial of duty exemption, for recovery of the duty amount, confiscation of the imported goods and for imposition of penalties on various persons, including the appellant herein. Show-cause notices issued by the department were adjudicated vide the impugned order dated 20.03.2009, wherein the proposals made therein were confirmed and penalty amounting to Rs.3 lakhs was imposed on the appellant under Section 112(b) of the Customs Act, 1962.

3. Heard both sides and perused the records.

4. The appellant submitted that the consignment of polyester yarn was not actually imported by the appellant and for importation and purchase of the said goods on high seas sale basis, the appellant had only arranged finance for M/s Angana Exports. It is has further been stated that the appellant had not dealt with the imported goods in any manner, which rendered the goods liable for confiscation. Thus, the appellant contended that the penalty imposed under Section 112(b) of the Act, cannot be sustained. The impugned order in paragraph 50, at page 60 has recorded the statements under summon from the appellant. On detailed analysis of the background of the case and the submissions made by various persons, including the appellant, the adjudicating authority has held that the appellant is the owner of the goods, that non-fulfillment of actual user condition of the advance licences was known to the appellant; and that the appellant had deposited the amount equivalent to the value of the consignment by way of cash/crossed cheques issued from the account of M/s Angana Exports, to show that payment made to the High Seas Seller towards the cost of the

consignment. Upon detailed analysis of the case, the adjudicating authority has concluded that appellant had abetted the fraud by actually involving himself and as such, the goods were rendered liable for confiscation under Section 111 of the Act and penalty is imposable under Section 112(b) of the Act.

5. On going through the case records and specifically, the findings recorded in the impugned order in paragraph 112.17 at page 157, we do not find any justifiable reason to interfere with such observations made by the adjudicating authority in support of imposition of penalty on the appellant. Further, we also find that the decisions relied on by the appellant is distinguishable from the facts of the present case inasmuch as in those decided cases, no specific orders were passed in context with confiscation of goods and accordingly, it was held that in absence of finding on liability of goods for confiscation, Section 112 of the Act cannot be invoked for imposition of penalty. In the present case, the situation is entirely different in as much as, there was proposal in the show-cause notice both for confiscation of goods and for imposition of penalty, which were confirmed by the adjudicating authority through a reasoned and speaking order.

6. Therefore, we do not find any infirmity in the impugned order, so far as it invoked the provisions of Section 112(b) of the

Act for imposition of penalty on the appellant. Accordingly, appeal filed by the appellant is dismissed.

(operative part pronounced in Court)

(C.J. Mathew)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

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