

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 197 of 2011

(Arising out of Order-in-Original No.CAO No.107/2010/CAC/CC/SS dt. 31.12.2010 passed by the Commissioner of Customs (E.P.) Mumbai, Zone -II)

Commissioner of Customs (Export) MumbaiAppellant
New Customs House, Ballartd Estate,
Mumbai – 400 001.

VERSUS

M/s Styale Corporation
B-4/15, Mahesh Nagar, S.V. Road,
Goregaon (W), Mumbai – 400 062.

.....Respondent

WITH

(i) Customs Appeal No. 198 of 2011 (Commissioner of Customs (Export) Mumbai; (ii) Customs Appeal No. 199 (Commissioner of Customs (Export) Mumbai); (iii) Customs Appeal No. 200 of 2011 (Commissioner of Customs (Export) Mumbai); (iv) Customs Appeal No. 201 of 2011 (Commissioner of Customs (Export) Mumbai); (v) Customs Appeal No. 202 of 2011 (Commissioner of Customs (Export) Mumbai); (vi) Customs Appeal No. 203 of 2011 (Commissioner of Customs (Export) Mumbai);

(Arising out of Order-in-Original No.CAO No.107/2010/CAC/CC/SS dt. 31.12.2010 passed by the Commissioner of Customs (E.P.) Mumbai, Zone -II)

Appearance:

Ms. P.V. Sekhar, Authorized Representative for the Appellants
Shri Suresh Balasubramain, Advocate for Respondent

CORAM:

HON'BLE S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88535-88541/2018

Date of Hearing: 04.12.2018
Date of Decision: 04.12.2018

PER: S.K MOHANTY

Revenue has filed these appeals against the impugned order dt. 31.12.2010 passed by the Commissioner of Customs, New Customs House, Mumbai.

2. Briefly stated, the facts of the case are that M/s Stayle Corporation Ltd., Respondent herein had imported duty free raw material namely, Polyester Fabrics of varying GSM b/w upto 250 gsm. to 280 gsm. The said goods were imported duty free pursuant to the advance licenses issued by the office of Jt. D.G.F.T., Mumbai with a condition that imported Polyester Fabrics should be used in manufacture of finished product Grey/Dyed Fabrics with embroidery and Ladies Long Coat with lining. The respondent got the advance licenses registered at Mumbai Customs and the above raw materials were accordingly imported by it. After clearance of the goods for home consumption, the DRI Officers, Mumbai Zone received specific intelligence to the effect that the importer and license holder M/s Styale Corporation Ltd. does not have any manufacturing facility and the imported consignments are being wrongly warehoused at Bhiwandi and the same are being diverted in the local market and sold against cash. Since the imported goods were not used for the intended purpose in fulfilling the export obligation against the advance licenses, the department further investigated into the matter of violation of the conditions of advance licenses. In this context, statements of various persons were recorded under summons. Thereafter, the department initiated show cause proceedings against the respondent and others, seeking for confirmation of the duty demand and for imposition of penalties. The matter was adjudicated vide the impugned order dt. 31.12.2010, wherein the Ld. Commissioner of Customs had confirmed the duty demand of Rs.39,49,037/- and also imposed

penalty of equal amount on the respondent. Besides, the impugned order also imposed penalties on Shri Kamal Lougani and Shri Kishan Loungani under Section 112(a) of the Customs Act, 1962. However, the impugned order has dropped the proposals made in the show cause notice for imposition of penalties on M/s S.K. Mehra CHA, M/s Prashant Freight Forwarders Pvt. Ltd., Shri Omprakash Tiwari of M/s Prashant Freight Forwarders Pvt. Ltd. and Shri Jagdish Sharma, Manager of the respondent.

2.1. Revenue has assailed the impugned order on the ground that the Ld. adjudicating authority has erred in not imposing penalty on Shri Omprakash Tiwari and Shri S.K. Mehra, the CHAs. It has been contended in the appeal memorandum that since the goods were imported against advance license and the benefit of exemption were extended to such imports, the said CHAs were responsible for due compliance of the requirement of conditions laid down in Notification No. 43/2002-CUS dt. 19.04.2002. Thus, Revenue has contended that those CHAs are exposed to the penal consequences provided under Section 112 (a) *ibid*. Further, Revenue has also contended that Shri Jagdish Sharma, Manager of the respondent was aware that the conditions of advance licenses were violated and accordingly, he should appropriately be penalised under the provisions of Section 112 (a) *ibid*. It has further been contended on behalf of Revenue that since the respondent had evaded payment of customs duty due to the department, the penalty imposable under Section 114A *ibid* should be equal to the duty plus interest and not on the duty element alone.

3. Heard both sides and examined the case records.

4. We find that the Ld. Adjudicating authority has dropped the proposals made in the show cause notice for imposition of penalties on the CHAs Shri Omprakash Tiwari and M/s. S.K. Mehra on the ground that the CHA's job does not include keeping track of the goods after clearance, to see whether the same being properly used in terms of the license. In so far as the role of CHA is concerned,

the same relates to the performance of the activities of clearance of goods upon assessment of the Bills of Entry. It is not the case of Revenue that the said CHA's have not diligently performed their duties in clearance of the consignment from the port custody. Thus, under such circumstances, imposition of penalty under Section 112 (a) *ibid* will not be justified on the ground that their role and duties are not extendable up to the stage of manufacture of the final product by the respondent and exportation thereof. Hence, we do not find any infirmity in the impugned, in so far as it has dropped the show cause proceedings against the CHA's, seeking for imposition of penalty. With regard to the issue of imposition of penalty on Shri Jagdish Sharma, Manager of the respondent, Revenue has contended that he was having an ID Card for collecting the licenses from DGFT, which implies that he was well aware of the provisions of "Export and Import Policy" and accordingly, is exposed to the penal consequences provided under Section 112(a) *ibid*. We find that the Revenue has not brought on any *iota* of evidence to substantiate the fact of that the said employee of the respondent did any act or omission which have rendered the imported goods liable for confiscation. Since, the department specifically alleged that penal provisions have rightly been invoked against the said employee, the onus entirely lies with the Revenue to prove that the conditions of the statute have been contravened, justifying for invocation of Section 112 *ibid*. Thus, we are of the considered view that the non-imposition of penalty on Shri Jagdish Sharma in the impugned order is proper and justified. With regard to the grounds urged by Revenue that penalty under Section 114A *ibid* should be calculated, taking into consideration the duty and the interest amount, we are of the view that such interpretation of Revenue cannot be sustained in view of the clear and un-ambiguous wordings used in the said statutory provisions. Section 114A *ibid* mandates imposition of equal penalty of the duty or interest determined under Section 28 *ibid*. Since, the word "or" is finding place between duty and interest, it cannot be interpreted that penalty should be imposed equal to the duty and interest so determined in the course of adjudication. Thus, the impugned order

has correctly interpreted the provisions of Section 114A *ibid* in imposing equal amount of penalty in respect of the confirmed duty demand.

5. In view of the foregoing discussions, we do not find any merits in the appeals filed by Revenue. Accordingly, the same are dismissed.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)