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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 85039 of 2013

(Arising out of Order-in-Appeal No. 632 to 635 (Adj/Exp)/2012 (JNCH) EXP-72 to 75 dated 06.11.2012 passed by Commissioner of Customs (Appeals), Mumbai-II)

Shri Suresh S. Poojari **.....Appellant**
Plot No. 368, Road No. 19,
Sanjeev Poojari Chawl,
Jawahar Nagar, Goregaon (W),
Mumbai-400062

VERSUS

Commissioner of Customs **.....Respondent**
(Export), Nhavasheva
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka – Uran,
Dist.- Raigad, Maharashtra-400707

WITH

(i) Customs Appeal No. 85040/2013 (Shri Sameer Sawant); (ii) Customs Appeal No. 85041/2013 (Shri Tushar Bhojani); (iii) Customs Appeal No. 85042/2013 (Shri Vijay Dabre)

(Arising out of Order-in-Appeal No. 632 to 635 (Adj/Exp)/2012 (JNCH) EXP-72 to 75 dated 06.11.2012 passed by Commissioner of Customs (Appeals), Mumbai-II)

Appearance:

Shri N.D. George, Advocate for the Appellant
Shri Bhushan Kamble, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/87611-87614/2019

Date of Hearing: 01.03.2019
Date of Decision: 01.03.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that M/s Billion International had filed the Shipping Bill No. 7188414 dated

20.03.2009 for export of stainless steel household articles. In the documents submitted before the customs authorities, the said exporter had declared the weight of the consignment as 21,821.17 Kgs., whereas on examination of the goods by Customs, the actual weight was found to be 6,789.52 Kgs., resulting in excess drawback claim of Rs.4,20,887/-. Thus, the past exports made by M/s Billion International were taken up for investigation by SIIB, which resulted in recalling three more consignments pertaining to the Shipping Bill Nos. 7200595 dated 25.03.2009, 7154791 dated 09.03.2009 and 7171653 dated 16.03.2009. Since, the goods under the said shipping bills were already exported, the same were called back from the foreign destination and on examination, it was found that there was a shortage of 67,310.24 Kgs. in weight, which has resulted in claim of undue drawback of Rs.18,71,805/-. On the basis of investigation, the department observed that the goods were mis-declared in terms of weight and quality. Accordingly, show cause proceedings were initiated, seeking for cancelation of the Let Export Order in respect of the aforesaid shipping bills, as per Section 51 of the Customs Act, 1962; confiscation of goods and imposition of penalties under Section 114(iii) *ibid* on various persons, including the appellants herein. The matter was adjudicated vide order dated 21.02.2012, wherein the proposals made in the show cause notice were confirmed. The adjudication order has imposed penalties of Rs.2,00,000/- on Shri Tushar Bhojani, Rs.3,00,000/- on Shri Vijay M. Dabre, Rs.1,00,000/- on Shri Sameer Sawant and Rs.50,000/- on Shri Suresh Poojari. The adjudication order was appealed against by the appellants before the learned Commissioner of Customs (Appeals), Mumbai-II, which were disposed of vide the impugned order dated 06.11.2012, in reducing the quantum of penalty to Rs.1,00,000/-, Rs.1,50,000/-, Rs.50,000/- and Rs.25,000/- respectively. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and perused the records.

3. On examination of the case records, I find that Shri Tarun Popatlal Kothari, Manager of the exporter, M/s Billion International in the statement recorded under summon had diposed that the workers of the supplier of goods M/s Mahavir Industries did the mistake in loading wrong cartons in respect of aforesaid shipping bills; that he (Manager) took full responsibility for the mis-declaration in the quantity of consignment loaded in the vehicle for movement to the port of export. He further stated that the CHA was not involved in the case of irregular exportation of goods. The appellant herein Shri Tushar Bhojani, is the partner of the CHA firm M/s Tushar Shipping Agency and other appellants are the customs clerk, appointed by such CHA firm. Shri Tushar Bhojani vide statement dated 19.05.2009 recorded under summon had stated that the documents in respect of the disputed shipping bills were examined by the CHA firm and confirmed that number of packages, marks etc. of the exported goods were found correct as per the declaration furnished by the exporter.

4. On perusal of the documents available in the case file, it transpires that the supplier of goods M/s Mahavir Industries had admitted their mistake in loading the wrong cartons and of not informing the CHA of the contains in the packages/cartons. Further, in the voluntary statement recorded under Section 108 of the Customs Act, 1962, the Manager of the supplier had also voluntarily stated that the CHA firm was not involved in wrong packing or movement of goods. The CHA's role with regard to import/export of goods is limited to the area of filing of shipping bill, clearance of the goods for export/import from the customs etc. I find that the department has not brought on any evidence to prove the case that the appellants had abetted the export and/or clearance of the goods for export by any fraudulent means. Thus, I am of the considered view that the penal

provisions as per Section 114(iii) *ibid* cannot be invoked against the appellants.

5. Therefore, I do not find any merits in the impugned order, insofar as it has upheld the adjudication order in support of imposition of penalties on the appellants. Accordingly, the impugned order is set aside and the appeals are allowed in favour of the appellants.

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

(S.K.Mohanty)
Member (Judicial)

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