CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86394 OF 2013

[Arising out of Order-in-Appeal No: 656/(Adj.Import)/2012 Misc/JNCH/IMP-570 dated 7th November 2012 passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva.]

Rajaram Yadav
4/42 Cologne House, Plot No. 220
Shree Punjab Society, Andheri (West), Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs (Import)
JNCH, Nhava Sheva, Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Stebin Mehta, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85873 / 2020

DATE OF HEARING:	29/01/2020
DATE OF DECISION:	29/01/2020

PER: C J MATHEW

The dispute in this appeal challenging order-in-appeal no. 656/(Adj.Import)/2012 Misc/JNCH/IMP-570 dated 7th November 2012 of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva pertains to diversion of goods in breach of condition of actual use in notification no. 25/99-Cus dated 28th February 1999 that had been availed for import. Consequently, the imports, effected by M/s RC Industries and M/s Singh Industries that were found to be fronting for another individual responsible for the diversion after clearance of the goods from the port of import, were held liable to recovery of differential duty of ₹ 32,42,527 and ₹ 19,78,939 respectively. In addition, Shri Rajaram Yadav, said to be connected with the clearances and onward shipment from Mumbai, was imposed with penalty of ₹ 1,00,000 under section 112 of Customs Act, 1962. His appeal before the first appellate authority was rejected leading to the present appeal impugning that order before us.

2. According to Learned Counsel for appellant, he had merely filed 10 bills of entry on behalf of M/s Singh Industries and 6 bills of entry on behalf of M/s RC Industries in which, as per instruction, benefit of notification no. 25/99-Cus dated 28th February 1999 for exemption from basic customs duty subject to utilisation for manufacture of excisable goods was claimed. He submits that, in the proceedings before the first appellate authority, it had been contended that there was no evidence of role of the appellant to warrant imposition of penalty under section 112 of Customs Act, 1962, that the goods were rendered liable to confiscation only owing to diversion which the appellant had

no role in and that he was unaware of the import being for the benefit of a trader but that the impugned order had merely extracted findings of the original authority to uphold the imposition of penalty. He drew our attention to paragraph no. 11 of the impugned order for this purpose.

3. It is further submitted by Learned Counsel that the finding against the appellant by the original authority in paragraph no. 22.4, referred to by the first appellate authority, does not lie within the scope of section 112 of Customs Act, 1962 but relatable to obligation enumerated in regulations governing customs broker license issued in pursuance of section 146 of Customs Act, 1962. According to him paragraph no. 40, dealing with confiscability of the goods, did not pinpoint any role of the appellant and that paragraph no. 46, referred to in the impugned order, is of no relevance to section 112 of Customs Act, 1962. He placed reliance on the decision of the Tribunal in *PC Chakraborty v. Commissioner of Customs (Port), Kolkata [2011 (263) ELT 462 (Tri-Kolkata)]*, in *Banshi Badan Mondal v. Commissioner of Customs (Port), Kolkata [2010 (253) ELT 816 (Tri-Kolkata)]*, in *Sanjay Dave v. Commissioner of Customs, Kandla [2009 (245) ELT 492 (Tri-Ahmd)]* and in *SM Dave v. Commissioner of Customs, Kandla [2009 (247) ELT 437 (Tri-Ahmd)].*

4. Learned Authorised Representative reiterated the findings in the

impugned order and placed reliance upon the Tribunal in *DJP International v. Commissioner of Customs (ICD), New Delhi [2017 (350) ELT 294 (Tri-Del)]* in support of his contention that any admission recorded in the statement of the appellant does not require to be re-established in adjudication proceedings.

5. It is apparent from the contents of the impugned order that the appellant has been proceeded against in view of confiscability of the impugned goods and as the clearances had been effected by him. However, as pointed out by Learned Counsel, the imposition of penalty for non-verification of antecedents of the importer, one of the obligations devolving upon the appellant as an employee of customs broker, is independent of the ingredients that empower the invoking of section 111 of Customs Act, 1962. Consequently, the sole issue that remains is the evidence to establish that the appellant was aware of the diversion of the goods after clearance. There is no direct evidence of such on record. It is seen from the order of the original authority that the transporter had documented delivery of the impugned goods at the purported manufacturing facility in Parwanoo and Solan though, on advice of the trader, these were delivered at another destination. From this, it would appear that the appellant was not connected with the diversion of the imported goods. In the several decisions cited by Learned Counsel, the criticality of evidence to link the customs broker with the specific act of smuggling, especially where diversion is

concerned, has been highlighted.

6. In the absence of evidence to link the appellant with the diversion of goods, his role in clearance does not warrant imposition of penalty under section 112 of Customs Act, 1962. Accordingly, the penalty on the appellant in the impugned order is set aside and appeal allowed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*