CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86128 OF 2019

[Arising out of Order-in-Original No: 20/2013/CAC/CC(Import)/AB dated 19th February 2013 of Commissioner of Customs (Import),Mumbai.]

Sudhir More
G-225, Bhoomi Green Garden, Raheja Estate,
Borivali (E), Mumbai-400 066. … ***Appellant***

versus

Commissioner of Customs (Import)
New Customs House, Ballard Estate, Mumbai-400 025. ***…Respondent***

APPEARANCE:

Shri Akhilesh Kangsia and Ms Madhura Khandekar, Advocates for the appellant

Shri Sanjay Hasija, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85557/2022

DATE OF HEARING: 05/05/2022
DATE OF DECISION: 05/05/2022

This appeal is directed against order-in-original no. 20/2013/CAC/CC/AB dated 19th February 2013 of Commissioner of Customs (Import), Mumbai Custom House in which the appellant, along with other entities, had been imposed with penalties under Section 112 of customs Act, 1962 while excluding other noticees in show cause notice dated 24th March 2011 who had opted for recourse to chapter XIV – A of Customs Act, 1962 before the Customs, Central Excise and Service Tax Settlement Commission.

2. Setting out the background, Learned Counsel submits that the role of the appellant is limited to signing the ‘charter party’ on behalf of M/s Reliance Transport and Travels Pvt Ltd and that the proceedings had been commenced, and concluded, against him without either seeking his explanation during the course of investigations or without any notice having been served on him at any stage thereafter. He drew attention to

> *’10.6 Shri Sudhir More, of M/s RTTPL remained actively involved in preparation of Charter Party Agreement, writing letter to DG Shipping seeking clarifications for retaining the yacht in India and writing various letters to department for claiming the yacht. He also assisted Shri Hari Nair and Shri V.R.Mohan in execution of the plan of import the yacht and evasion of the Duty on the same.*
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> *28. Shri Sudhir More of M/s Reliance Transport and Travels Pvt. Ltd. has not filed any reply towards the show cause notice. Neither has he or any one in his behalf appeared for the personal hearings fixed on 07.11.2012, 03.12.2012, 10.12.2012 and 17.12.2012. This goes on to imply that either Shri Sudhir More has no defence to offer or has chosen not to offer any defence. Since ample opportunities have been provided to Shri More as stated under Section 122A of the Customs Act, 1962, I am constrained to decide the role of Shri Sudhir More based on available records.*

29. The Charter Agreement between M/s Ammolite Holding Ltd. and M/s. Reliance Transport and Travels Ltd. (RTTL) a Mumbai based associate company of Reliance ADAG, was signed by Shri Sudhir More on behalf of M/s RTTL. This Agreement was for one year from 22.10.2008 to 22.10.2009 (erroneously typed as 28th Oct 2008) for a total consideration of USD 4,00,000 (Rs. 2 Crores approx.) and signed by Shri V.R. Mohan on behalf of M/s. Ammolite Holding Ltd:, Jersey. Both these companies being the holding companies of Reliance ADAG group, it has been brought out in the show cause notice that the charter agreement was to camouflage the larger conspiracy of duty evasion on the "yacht TIAN" by denoting it as a foreign going vessel which came to India on a limited contract of one year. The meagre amount of Rs. 2,00,00,000/- for one year payable by M/s RTTL to M/s Ammolite bears testimony to this fact. Shri Sudhir More has admittedly signed the charter agreement at the behest of Shri Tushar Motiwala, Director of M/s RTTL and Shri V.R. Mohan, Director of M/s Ammolite. Shri More was also incharge of clearly the bills of expenditure claimed by M/s Marine Solutions and M/s Assar Lines towards the operations on the yacht. Moreover, the letter dated 06.10.2008 to DG Shipping requesting for permission for operating the "yacht TIAN" in India was also signed by Shri Sudhir More as instructed by Shri V.R. Mohan. Thus Shri Sudhir More was signing the documents pertaining to the impugned yacht as directed by the seniors in his company. It has also come out from the investigation that Shri Sudhir More as CEO of M/s RTTL was looking after day 16 day affairs of the company. He was well aware that the "yacht TIAN" being procured by the Reliance ADAG through the group companies M/s Ammolite and M/s RTTL was for the purpose of recreational rides of the family members of the top executives. In fact, Shri Sudhir More has also signed an

> *agreement, between M/s Reliance ADAG (as user of the "yacht TIAN") and M/s RTTL (as operator of the "yacht TIAN"). All these acts of Shri Sudhir More would prove that he, in connivance with other noticees was actively involved in the procurement of the impugned "yacht TIAN" and its operations in India. Since, Shri Sudhir More has aided and abetted the act of evasion of duty on the subject "yacht TIAN" which has rendered it liable to confiscation, Shri Sudhir More is liable to penalty under Section 112(a) of the Customs Act, 1962 and I hold so.'*

in the impugned order to demonstrate that finding of the adjudicating authority does not, in any way, offer any explanation of applicability of section 112(a) of Customs Act, 1962.

3. According to him, the impugned order records that declaration filed under section 30 of Customs Act, 1962 for coverage of import of a yacht as 'goods' bound for Sri Lanka while yet another, purporting to report arrival of the same vessel on its own propulsion *en route* to Colombo, was filed but, at the same time, set sail for Goa with requisite permissions and that it was thereafter, and for her retention in Indian waters, that the 'charter party' had been signed by the appellant on behalf of his employer. It was pleaded that his role had nothing to do with episodes till then which were assigned as justification for confiscation of vessel under section 111 of Customs Act, 1962 leading to penalty under section 112 of Customs Act, 1962.

4. He further submits that the importing-company, as well as

several employees had approached Settlement Commission, under provisions of Customs Act, 1962 but that he had been kept in the dark about the commencement of proceedings then or even before. He, further contends that the charter party had also been entered into only at the behest of his Directors. He relies upon the decision of the Tribunal in *Commissioner of Customs (Exports), Mumbai v. Mahendra Kumar Darewala [2016 (340) ELT 727 (Tri – Mumbai)],* in *R K Srivastava v. Commissioner of Customs, New Delhi [2008 (225) ELT 523 (Tri- Del)* and in *Gammon India Ltd v. Commissioner of Customs(Export), Mumbai [2019 (369)ELT 918 (Tri-Mumbai)]* to submit that proceedings concluded against the principal-noticee before the Settlement Commission closes the proceedings *in toto* and that one employee cannot be held responsible for any act in which the employer alone is the beneficiary.

5. According to the Learned Authorized Representative, the decision in *Sohel F Kazani v. Commissioner of Customs (Import), Mumbai [final order no. A/85264-85270/2022 disposing off customs appeal no. 86482 of 2013 filed by several appellants against order-in-original no. 20/2013/CA/CC(I)/AB/VB dated 19th February 2013 of Commissioner of Customs (Imports), Mumbai],* also cited by Learned Counsel for the appellant, makes clear the culpability for which penaltiesn were aptly decided. He relies upon the findings of the original authority as far as the role of appellant herein is concerned to

contend that the penalty had been correctly imposed in accordance with Customs Act, 1962. Insofar as the closure of proceedings against the noticees, following the order of the Settlement Commission against the principal-noticee, it is his contention that the decision in *re Sohel F Kazani* did not consider such proceedings to have any bearing on other noticees.

6. The vessel had been brought to India on 22nd October 2008, and, on the basis of facts available in the impugned order as well as in the order of the Tribunal in relation to the other noticees, it would appear that the vessel was taken to Goa on 29th December 2008. The charter party, in which the appellant herein was concerned, had been signed on 2nd January 2009.

7. It appears that, of the noticees, the appellant alone has been proceeded against for the transaction for the charter party while all others had roles precedent to, and upon arrival of, the yacht. It is on record that the charter party was signed only after the vessel arrived in Goa with permission of appropriate authorities. Section 112 of Customs Act, 1962 comprises two parts and, consequent upon upholding liability to confiscation under section 111(m) and 111(n), the first, which relates to act of omission or commission which renders the goods liable to confiscation under section 111 has been invoked; such confiscation is adjudged upon declaration filed for import, activity connected with the import or failure to fulfill

conditions subject to which clearance of goods is allowed. From the facts narrated against the appellant herein, it would appear that his actions are not related to any of those which are a pre-requisite for section 112(a) of Customs Act, 1962. The penalty must be set aside.

8. Before parting with this matter, it is also necessary to record that Learned Authorized Representative had submitted that the appeal had been filed beyond the period permissible under section 129 A (3) of Customs Act, 1962. It is contended on behalf of the appellant that the appeal had been filed within three months of receipt of certified copy after the appellant was made aware of the impugned order once recovery proceedings had commenced. It is presumed that, at the stage of listing, the appeal was in order in all aspects including eligibility at the time of filing of the appeal. Such presumption is implicit in the disposal of every appeal listed for final hearing.

9. The appeal is allowed and the impugned order is set aside.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

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