CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Customs Appeal No. 85680 of 2020

(Arising out of Order-in-Original CAO No. 35/SA(35)ADG (ADJ.)/DRI, MUMBAI/2020-21 dated 17.06.2020 passed by the Additional Director General (Adjudication), Mumbai)

Shri C.S. Prasad **Appellant**
H. No. 749, 12th Cross,
Off Magadi Main Road,
Bharat Nagar, 2nd Stage,
Bangalore 560 091.

Vs.

Additional Director General-Mumbai Adj. **Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

AND

Customs Appeal No. 85863 of 2020

(Arising out of Order-in-Original CAO No. 35/SA(35)ADG (ADJ.)/DRI, MUMBAI/2020-21 dated 17.06.2020 passed by the Additional Director General (Adjudication), Mumbai)

Shri Yogendra Singh **Appellant**
Examiner, Inspector, CBEC,
House No. 5/2, CPWD Quarters,
Thirumangalam, Chennai 600 040.

Vs.

Additional Director General-Mumbai Adj. **Respondent**
New Custom House,
Ballard Estate, Mumbai 400 001.

Appearance:

Shri Mahesh Raichandani, Advocate, for the Appellant
Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 18.08.2022
Date of Decision: 18.08.2022

FINAL ORDER NO. A/86094-86095/2022

These appeals by Shri C S Prasad (Appellant 1) and Shri Yogendra Singh (Appellant 2) are directed against order in original No 35/SA (35) ADG (ADJ)/DRI, MUMBAI/2020-21 dated

17.06.2020 of the Additional Director General (Adjudication), DRI Mumbai. In respect of the two appellants before me Additional Director General, has held as follows:

"6.6. In respect of Noticees Shri C. S. Prasad, Superintendent of Customs, Shri Yogendra Singh, Examiner, (Inspector) (Total differential duty liability 77,80,771/- on re-assessed value of Rs 3,34,36,726/- for clearance of goods as detailed in Annexure-I) and M/s Xeam Ventures Pvt Ltd (Noticee at Sr no 15,16 and 17) for the clearance of imported goods vide Annexure-I & II (at ACC, Bangalore) (Para 24.1.4 of SCN)- wherein total differential duty liability is Rs 1.65.15.739/- arises on re-assessment of imported goods having total value of Rs 5,87,34,672/-:

(i) I impose penalty of Rs 2,00,000/- (Rupees Two Lakhs Only) on Shri C. S. Prasad, then Superintendent of Customs under Section 112 (a) of the Customs Act;

(ii) I impose penalty of Rs 2,00,000/- (Rupees Two Lakhs Only) on Shri C. S. Prasad, then Superintendent of Customs under Section 112 (a) of the Customs Act;"

1.2 Though the order in original decides the issues against number of persons these two appeals are concerned with the penalty imposed on two of the departmental officers and have been listed as per the direction of the bench contained in orders dated 18.05.2022 and 04.08.2022, reproduced below:

Order dated 18.05.2022

"This miscellaneous application has been filed by the applicant for early hearing of the appeal.

2.0 The applicant submits that he was working as Superintendent of Central Tax and now retired. Departmental disciplinary proceedings were initiated against him for aiding the clearance of imported goods. This impacted his pension and other benefits. He also submits that he has been acquitted of all the charges framed against him.

3.0 Considering the submissions of the applicant, I allow the early hearing application and list the appeal for final hearing on 16.06.2022.

4.0 Learned AR informs that appeal bearing No. C/85863/2020 of one more appellant covered by the same order-in-original is pending. This appeal also to be listed together on 16.06.2022."

Order dated 04.08.2022

"Both sides are present.

2. Registry placed a note today to the effect that the other appeal bearing No. C/85863/2020, directed by this Bench on 18th March 2022 to be heard together with this appeal, is a matter to be heard by the Division Bench as being shown in the internal software of CESTAT.

3. Learned Counsel for the Appellant objects to transfer of this appeal to the Division Bench on two grounds: (i) Appellant's early hearing application was allowed for the reason that being a departmental retired employee, his pension and other benefits are being impacted due to continuance of this proceeding against him. (ii) In the other appeal also, there is a penalty of Rupees Two Lakhs imposed on the other appellant, for which auto generated internal software report concerning listing of the appeal before the Division Bench appears to be erroneous.

4. Registry is directed to verify the other appeal bearing No. C/85863/2020 and if the same is also found to be a matter that can be placed before the Single Member Bench, both the appeals be placed for analogous hearing before the Single Member Bench on 18th August, 2022, after taking approval of Hon'ble Sr. Member.

5. In view of the urgency of the matter for which early hearing was allowed, this appeal No. C/85680/2020 is directed to be de-tagged and listed on 18th August, 2022, in the event the other appeal could not be listed before the Single Member Bench.

6. Both parties are to come ready for hearing of the appeal."

2.1 Based on intelligence the officers of Directorate of Revenue Intelligence (DRI) visited ICD Bangalore and issued a letter dated 26.12.2017 addressed to the Additional Commissioner ICD, Bangalore for detaining the shipment pertaining to Bill of Entry No. 4528689 dated 23.12.2017 shipped vide container No TRHU-2538611 for open examination by the officials of DRI. It was also ascertained that two more shipments under Bills of

Entry No. 4548614 & 4549963 both dated 26.12.2017 pertaining to the same importer viz., M/s. Maxco Traders, was filed and processed at the Air India SATS Terminal, Air Cargo Complex (ACC), Bangalore. The officers of DRI visited ACC on 27.12.2017 and ascertained that the shipment pertaining to both the Bills of Entry i.e. Bills of Entry No.4548614 & 4549963 both dated 26.12.2017 were already assessed and 'out of charge' given. The officers traced and identified one person by name Shri Krishna Naik (hereinafter referred to as Krishna) who was the 'H' card holder bearing old number 375/2003 and New Card Sl. No.IC/H/152/2015 (issued by the Commissioner of Customs, Bangalore), employed with M/s. The Avenue Logistix, the Custom House Agent, representing M/s. Maxco Traders. Shri Krishna when intercepted was carrying the 'out of charge' order pertaining to both the shipments and when questioned stated that, both the shipments pertaining to Bills of Entry No.4548614 & 4549963 both dated 26.12.2017 were already given out of charge by the proper officer of customs, and that the said goods are under the custody of the custodian pending delivery of the said goods. The custodian Air India SATS was immediately issued with a letter dated 27.12.2017 requesting them to detain the said goods and not to release the goods without the prior written release order from DRI.

OPEN EXAMINATION OF DETAINED CONSIGNMENTS

2.2. ….. During the course of open examination of the consignment pertaining to Bills of Entry No. 4548614 & 4549963 both dated 26.12.2017, the valuation were erroneously taken based on unbranded goods and the total value of the said two consignments were arrived as detailed in Annexure A & B of the said mahazar dated 27 & 28.12.2017. However since the items present in the said two consignments appeared to be branded goods, the approx value per piece should have been arrived based on the market price of the said product, hence the said consignment was valued by a system at search in the internet of the various websites pertaining to the various brands of the readymade garments and took the approx value per piece based on the branded items present in the said two consignments, in respect of Bills of Entry 4548614 & 4549963 both dated

26.12.2017 and value of each items present in the two consignments and the total value of the said two consignments pertaining to Bill of Entry No. 4548614 & 4549963 both dated 26.12.2017, were arrived, as detailed in Annexure A & Annexure B in the presence of independent witnesses on 06-06-2018.

2.2 Thereafter investigations were undertaken by the DRI, and statements of various persons were recorded. On completion of investigations Show Cause Notice bearing F No DRI/BZU/S-IV/ENQ-56 (INT-NIL)/2017 and SCN Sl No 23/2018-DRI (BZU) on 25.06.2018 was issued to various persons and vide para 24.1.4, the two appellant before me were also called upon to show cause as to why *"penalty should not be imposed on them under section 112 of the said Act, for the acts and omissions discussed supra."*

2.3 The show cause notice was adjudicated as per the impugned order referred in para 1 above. Aggrieved by the impugned order appellants have preferred this appeal.

3.1 I have heard Shri Mahesh Raichandani advocate for the appellant 1 and Shri S K Hatangadi Assistant Commissioner Authorized Representative for the revenue.

3.2 Appellant 2 was not represented during the hearing despite the notice.

3.3 Arguing for the appellant 1 learned counsel submits that_

- As a consequence of the show cause notice issued by the DRI, departmental proceedings were initiated against the appellant 1. Though by the impugned order, appellant has been held guilty of "abetting", the order dated 18.04.2022 of the disciplinary authority exonerates him of the charge of "abetting". As he has been exonerated by the disciplinary authority of the charge abetting after consideration of all the evidences available on record, he should be given the benefit of this order in these proceedings.
- He relies upon the decisions as follows in support:
    - Parminder Jit Singh [2013 (193) ELT 241 (T-Del)]
    - Suraj Prakash [2017 (49) STR 376 (T-Del)]
    - B K Pabri [2017 (358) ELT 819 (T-Del)]

- Boria Ram [2017 (354) ELT 661 (T-Del)]

3.4 Learned authorized representative reiterates the findings recorded in the impugned order to support the imposition of penalty on two appellants.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Additional Director General has in the impugned order recorded the following findings for imposition of penalty under Section 112 (a) of the Customs Act, 1962 on these appellants.

"5.30 Penalty on Shri C.S Prasad, Superintendent under Section 112 of Customs Act

5.30.1 Facts, case laws / legal position as discussed in detail in Para 5.13 above (while discussing the defence submission) is applicable and the same is not being reiterated for the sake of brevity.

5.30.2 I find that SCN sought invocation of penalty on Shri C.S Prasad under Section 112 of the Act for giving out charge of two Bills of Entry viz., 4548614 & 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders at ACC, Bangalore. Detailed examination of the cargo on 27.12.2017 at ACC, Bangalore indicated gross mis-declaration in terms of value, quantity and description. Shri C.S. Prasad in his statement dated 31.01.2018 interalia admitted that, he had granted OOC to the said bills of entry. It was found that as per actual details of the AWB No. 61851348216 and 61851347914/21.12.2017 issued by M/s. Singapore Airlines, bills of entry no 4548614 & 4549963, both dated 26.12.2017 were filed by the Shri Dinesh B.N. alias Dinesh Gowda and others as discussed in this case causing huge attempted evasion to duty and rendering the goods liable for confiscation under Section 111(d) and Section 111(m) of the Act. As per Section 46(2), Shri C.S Prasad was requiring to verify whether the import documents were filed in accordance with AWB, which he failed to do, inspite of docket submitted by CB containing concerned AWB along with incorrect bills of entry and granted out of charge. Thus, he colluded with Shri Dinesh B.N. alias Dinesh Gowda --and others in permitting clearance by which appropriate duty was not paid. Thus, he has contravened *the provisions of Section 47 of the Act, which says that for goods should not be prohibited and appropriate payment of duty must be realized before clearance. In the past, it is observed by the DRI, that he has also granted out of charge in similar manner in respect of goods belonging to the same syndicate filed in the name of dummy IECs, which is currently under investigation. Had Shri C.S Prasad discharged his duty carefully and in good faith, pursuance to the provisions of the Act and checked the AWB, he would have detected the fraud. Further, he has statutorily obliged to follow the provisions of the Customs Act which he failed to do so. He also failed to collect the docket containing import documents.*

5.30.3 Thus, he has aided and abetted the offence of unscrupulous elements and rendered the goods in question liable for confiscation under Section 111(d) and Section 111(m) of the Act and also rendered himself liable for penalty under Section 112(a) of the Act.

5.31 Imposition of penalty under Section 112 of the Customs Act on Shri Yogendra Singh, Inspector of Customs (Noticee No 13)

5.31.1 Facts, case laws / legal position as discussed in detail in Para 5.14 above (while discussing the defence submission) is applicable and the same is not being reiterated for the sake of brevity.

5.31.2 I find that Shri Yogendra Singh, Inspector of Customs did not open and examined the imported goods covered under Bills of Entry No 4548614 & 4549963, both dated 26.12.2017 pertaining to M/s. Maxco Traders. He also admitted that prior to the examination of the imported goods, he fed examination report in the system. By improper examination, he did not conform to the provisions of Section 2 (17) and Section 46(2) of the Customs act. Further, I find that in past, he had cleared 7 bills of entry as detailed in para 28.8.9 of the SCN for different importers, wherein fraudulent import had been taken place and which was effected by the same syndicate, which has been stated in the SCN as still under investigation.

5.31.3 As examination is concerned Shri Yogendra Singh was required to ensure that the goods declared in the import documents should be in conformity with the goods presented for examination at the shed at ACC. Had he done so, he would have detected the gross-misdeclaration of value, quantity and description. Therefore, he did not discharge his duty in accordance with the provisions of the Customs Act and in good faith and this led to improper clearance of goods. Thus, he has aided and abetted the offence of unscrupulous elements and rendered the goods in question liable for confiscation under Section 111(d) and Section 111(m) of the Act and also rendered himself liable for penalty under Section 112(a) of the Act."

4.3 The role of two appellants as discussed in the Show Cause Notice is as follows:

20.7 SHRI C. S. PRASAD, SUPERINTENDENT OF CUSTOMS

20.7.1 Shri C.S. Prasad, Superintendent of Customs, was the officer responsible for giving 'Out of Charge' pertaining to Bills of Entry viz., 4548614 & 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders was recorded on 31.01.2018.

20.7.2 Shri C.S.Prasad in his statement dated 31/01/2018 interalia stated that, he had granted OOC to the Bill of Entry bearing No. 4548614 dated 26.12.2017 filed by M/s.Maxco Traders, Maharashtra, declared to be for import of 1500pcs of 'Packing Material (Sunglasses)'and 820 pieces of Sunglasses (unbranded), for a total invoice vale of 11200HKD (CIF), imported from M/s.Shenzhen Import & Export Co, China.

20.7.3 He was shown the Airway Bill No. 61851348216 issued by M/s. Singapore Airlines Cargo wherein, under the heading "Nature and quantity of Goods" the description declared was 'Garments' whereas the description declared by the importer in the Bill of Entry i.e. BOE No. 4548614 dated 26.12.2017 was 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)' to which he stated that the said AWB No. 61851348216 was part of the docket submitted for clearance of goods imported vide BE No. 4548614 dated 26.12.2017.That on that day he had given out of charge to 279 bills of entry and could not closely peruse all the connected documents. Due to paucity of time he could not *pay attention to the description indicated in the AWB. Hence, he did not notice the discrepancy.*

20.7.4 Shri C.S. Prasad, when shown invoice No. P-530 dated 18.12.2017 and Packing List No. P-530 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein total No of pieces imported is 3783 pieces whereas the quantity declared in the Bill of Entry was 2320.Further the invoice number mentioned in the BOE No. 4548614 dated 26.12.2017 is P-387/20.12.2017 to which he stated that the invoice reflecting 'sun glasses and packing materials for sun glasses' was available in the docket and it was found tallying with the invoice details shown in the EDI, Bill of entry as well as the examination report. Based on these he granted OOC for BE No. 4548614 dated 26.12.2017.

20.7.5 Shri C.S. Prasad when shown invoice No. P-530 dated 18.12.2017 and Packing List No. P-530 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein the description and the quantity of the goods imported are 1. T-Shirts 2381 Pcs, 2. Caps 502 Pcs, 3. Backpack 21 Pcs, 4. Jeans 88 Pcs, 5. Leggings 25 Pcs, 6. Trac Pant 214 Pcs and 7. Socks 252 Pcs. Whereas as per the Bill of Entry, the description of the goods declared are 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)' to which he stated that the invoice produced along with the BOE in the docket showed only sun glasses and packing material of sun glasses and the goods mentioned above were not part of the invoice produced for OOC.

20.7.6 Shri C.S. Prsad when shown the Invoice No. P-530 dated 18.12.2017 and Packing List No. P-530 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein the total invoice value declared is HKD 52459/-, whereas the invoice value declared in BOE No. 4548614 dated 26.12.2017 is only HKD 11, 200/-, stated that as the invoice produced at the time of OOC is different from the invoice stated above, he has nothing to say on the value part.

20.7.7 Shri C.S.Prasad in his statement interalia stated that, he had granted OOC for Bill of Entry No. 4549963 dated 26.12.2017 filed by M/s. Maxco Traders, Maharashtra, declared to be for import of1500 pcs of 'Packing Material (Sunglasses)' and 820 pieces of Sunglasses (unbranded), for a total invoice vale of

11200HKD (CIF), from M/s. Goangzhoo Jomei Commercial Trade Development Co, China.

20.7.8. Shri C.S Prasad when shown Airway Bill No. 61851347914/21.12.2017 issued by M/s. Singapore Airlines Cargo wherein, under the heading "Nature and quantity of Goods" the description declared was 'Garments' whereas the description declared by the importer in the Bill of Entry i.e. BOE No. 4549963 dated 26.12.2017 was 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)'., he stated that the said AWB No. 61851348216 was part of the docket submitted for clearance of goods imported vide BE No. 4548614 dated 26.12.2017.On that day he had to give out of charge to 279 bills of entry and could not closely peruse all the connected documents. Due to paucity of time he could not pay attention to the description indicated in the AWB. Hence, he did not notice the discrepancy.

20.7.9 Shri C.S. Prasad shown the Invoice No. P-525 dated 18.12.2017 and Packing List No. P-525 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein total number of pieces imported were 2827 pieces whereas the quantity declared in the Bill of Entry was 2320. Further the invoice number mentioned in the BOE No. 4549963 dated 26.12.2017 was P-386/20.12.2017, to which he stated that the invoice reflecting 'sun glasses and packing materials for sun glasses' were available in the docket and it was found tallying with the invoice details shown in the EDI, bill of entry as well as the examination report. Based on these he granted OOC for BE No. 4549963 dated 26.12.2017.

20.7.10 Shri C.S. Prasad when shown the Invoice No. P-525 dated 18.12.2017 and Packing List No. P-525 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein the description and the quantity of the goods imported were 1. Jeans 539 Pcs, 2. T-Shirts1538 Pcs, 3. Trousers693 Pcs, 4. jakets27 Pcs and 5. Shirts30 Pcs. Whereas as per the Bill of Entry, the description of the goods declared are 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)' to which he stated that the invoice produced along with the BE in the docket *showed only sun glasses and packing material of sun glasses and the goods mentioned above are not part of the invoice produced for OOC.*

20.7.11. Shri C.S Prasad when shown the Invoice No. P-525 dated 18.12.2017 and Packing List No. P-525 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein the total invoice value declared were HKD 49270/-, whereas the invoice value declared in BOE No. 4548614 dated 26.12.2017 is only HKD 11, 200/-, to which he stated that as the invoice produced at the time of OOC was different from the invoice stated above, and that, he has nothing to say on the value part.

20.7.12. Apart from the above two bills of Entry, Shri C.S. Prasad has given 'Out of Charge' for the following Bills of Entry, belonging to the same syndicate, during the period from October 2017 to 26.12.2017.

……..

20.7.13 The staff of EDI section, in their statements given under Sec. 108 of the Customs Act, 1962 have categorically stated that, M/s. Maxco Traders have never produced any documents while entering data in the EDI system and that the concerned Bills of Entry's viz., Bills of Entry viz., 4548614 & 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders were generated based on scribbled sheet of paper and hence the explanation of Shri C.S. Prasad that, there were a different set of invoices / packing slip etc at the time of his giving OOC is not acceptable. Therefore, it is to be inferred that he has given OOC with out collecting the dockets.

20.7.14 Further, Shri Yogendra Singh, Inspector of Customs, who had given the open examination report pertaining to Bills of Entry No's 4548614 & 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders, in his statement dated 31.01.2018 has categorically stated that, there were no other documents present in the docket except for the check list and hence the explanation of Shri C.S. Prasad that, there were a different set of invoices /packing slip etc at the time of his giving OOC appears to be not acceptable.

20.7.15 Further, the mere fact that no documents pertaining to Bills of Entry viz., 4548614 & 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders, which is confirmed both by the DY. Commissioner of Customs, Data Management Section (DMS) & Shri Syed Faisal, working as Senior Manager for M/s. Idea Infinity IT Solutions Pvt. Ltd, in his statement dated 18.01.2018 clearly indicates that, Shri C.S. Prasad has cleared the above consignments without perusing any documents thereby facilitating the smuggling of goods that were misdeclared in terms of description, Value & Quantity.

20.7.16 It is also pertinent to note that the officer has not collected the import docket containing all the import documents as mandated while giving OOC to the consignments under Bills of entry filed by M/s. Maxco Traders. It appears that the officer has not collected any import dockets for the Bills of entry of the syndicate where OOC was given by him as detailed in above table thereby preventing any attempt for subsequent investigation.

20.7.17 From the foregoing, it is seen that, Shri. C.S.Prasad, Superintendent of Customs, has consistently given OOC for misdeclared Bills of Entry pertaining to particular syndicate without perusing the documents and non application of mind. Further, he has not collected import dockets consistently as mandated for the Bills of entry of the syndicate where OOC was given by him. From the above it appears that the above officer has actively taken part in abetting the smugglers in clearance of undervalued goods without payment of appropriate customs duty.

20.7.18 In view of the above, Shri C S Prasad, Superintendent of Customs has rendered himself liable for penal action under section 112 of the Customs Act, 1962.

20.8. YOGENDRA SINGH, INSPECTOR (EXAMINER) OF CUSTOMS:

20.8.1 Shri Yogendra Singh, Inspector of Customs, the officer responsible for giving Open Examination report pertaining to Bills of Entry viz., 4548614 & 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders was recorded on

31.01.2018.Shri Yogendra Singh in his statement dated 31.01.2018 interalia stated that, during June 2017, he was posted to shed, ACC, Bangalore where he used to do the goods registration in system based on Bill of entry provided by CHA/importer and open examination of import. He further explained that, examination of goods refers to the open verification of the imported goods against the item description provided in Bill of Entry, invoices and packing list. Examination procedure of the imported consignment includes following two steps:

I. *Registration of Goods: once the goods arrive in shed, the CHA/importer will get the 'pick order for Examination' slip from the custodian and provide the same to the inspector along with Order copy, Bill of Entry, invoices, packing list and Airway bill. Order copy contains the instruction for inspector whether to open examine the entire consignment or restrict to a few representative not. The inspector will then check whether the said goods are there at the location against the airway bill number. Then, the goods will be registered in the ICES system according to Bill of Entry number. After the registration, the physical goods are examined based on the order given by AC/DC/group as reflected on system. If the consignment is under RMS, no open examination would be done.*

II. *Examination of Goods: For examination of the consignment, the pre-requisites are Bill of Entry, invoices, packing list and Airway bill. As per the order, the mentioned quantity of consignment is opened and verified for item description and quantity as mentioned in Bill of Entry, invoices and packing list. After examining the consignment, the inspector will fill in the report in the system. Based on the report, the superintendent will give the out of charge order.*

20.8.2 He further confirmed that, for examination of the import consignment, it is foremost required that the item description and quantity should be same as in Bill of Entry, invoices, packing list and Airway bill.

20.8.3 Shri Yogendra Singh, when shown the Bills of Entry bearing No. 4548614 and 4549963 both dated 26.12.2017 pertaining to M/s. Maxco Traders, confirmed that he was the officer to whom the said bills of entry were marked for open examination in the ICES system, and that, he didn't remember the instructions as to what were the exact number of packages instructed to be opened for the examination of the said consignment.

20.8.4. Shri Yogendra Singh when shown the Airway Bill No. 61851348216 issued by M/s. Singapore Airlines Cargo wherein, under the heading "Nature and quantity of Goods" the description declared is 'Garments' whereas the description declared by the importer in the Bill of Entry i.e. BOE No. 4548614 dated 26.12.2017 is 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)', stated that, he has not physically opened and examined the consignment pertaining to the above BOE / AWB and that except the checklist no other document was present in the dockets pertaining to BOE No. 4548614 dated 26.12.2017. No other documents were present in the dockets.

20.8.5. Shri Yogendra Singh when shown the Invoice No. P-530 dated 18.12.2017 and Packing List No. P-530 dated 18.12.2017 pertaining to BOE No. 4548614 dated 26.12.2017 of M/s. Maxco Traders, submitted by M/s. Singapore Airlines, wherein the description and the quantity of the goods imported are 1. T-Shirts 2381 Pcs, 2. Caps 502 Pcs, 3. Backpack 21 Pcs, 4. Jeans 88 pcs, 5. Leggings 25 Pcs, 6. Trac Pant 214 Pcs and 7. Socks 252 Pcs., whereas the description declared in the Bills of Entry were, 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)', stated that he has not physically opened and examined the consignment pertaining to the above BOE / AWB and that except the checklist no other document was present in the dockets pertaining to BOE No. 4548614 dated 26.12.2017.No other documents were present in the dockets.

20.8.6 Shri Yogendra Singh when shown the Invoice No. P-525 dated 18.12.2017 and Packing List No. P-525 dated 18.12.2017 submitted by M/s. Singapore Airlines, wherein the description and the quantity of the goods imported are 1. Jeans 539 Pcs, 2. T-Shirts 1538 Pcs, 3. Trousers 693 Pcs, 4. jackets 27 Pcs and 5.

Shirts 30 Pcs., whereas in the BOE No. 4549963 dated 26.12.2017, the description of the goods was declared as 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)', stated that he has not physically opened and examined the consignment pertaining to the above BOE / AWB and that except the checklist no other document was present in the dockets pertaining to BOE No. 4549963 dated 26.12.2017.

20.8.7 Shri Yogendra Singh perused the Public Notice No. 17/2005 dated 15.02.2005 and Public Notice No: 88/2006 dated 31.07.2006 and confessed that he didn't follow the instructions as mentioned in the said public notices.

20.8.8 Shri Yogendra Singh when shown the Mahazar dated 27th & 28th December 2017 drawn at Air India Stats, Import Shed, Air Cargo Complex, stated that, he done open examination of the same Custom House Agent on certain occasions and during all occasions; his consignments were found to be in order and having confidence on the same, he gave a report without examining the goods. He however, agreed that there was a mass misdeclaration both in terms of description of the goods, the value as well as the quantity as compared to the declarations made in the concerned Bills of Entry. He also acknowledged that the items listed in the Annexure to the Mahazar is totally contradicting with the examination report given by him in both the Bills of Entry.

20.8.9 Apart from the above two Bills of Entry, Shri Yogendra Singh has given Open Examination reports for five more bills of entries wherein the description in the Airway Bills is totally different from the descriptions as declared in the Bills of Entry by the importer.

LIST OF BILLS OF ENTRIES OPEN EXAMINEDBY YOGENDRA SINGH (INSPECTOR)

From the foregoing, it is crystal clear that, Shri Yogendra Singh, Inspector of Customs, has consistently cleared misdeclared Bills of Entry pertaining to particular syndicate without open examining the consignments which among other things, is his primary duty, thereby abetting the smugglers in clearance of *undervalued goods without payment of appropriate customs duty.*

20.8.11 In view of the above, Shri Yogendra Singh, Inspector of Customs has rendered himself liable for penal action under section 112 of the Customs Act, 1962."

4.4 Counsel for the Appellant 1 has placed on record the order in original No 03/2022-VIG BWC dated 18.04.2022 passed by the disciplinary authority, whereby Appellant 1, has been exonerated of the charges of "abetting" in the clearance of the impugned goods held liable for confiscation under Section 111 (d) and 111 (m) of the Customs Act, 1962. By the said order, disciplinary authority has concluded after examining the same set of evidences as follows:

"2.2 The following are the statement of imputations in support of article of charges framed as per Annexure II to the CM dated 29.11.2019.

<u>I – Statement of imputation of mis conduct or misbehaviors in support of Article-I</u>

The Additional Director General of Directorate of Revenue Intelligence Bangalore Zonal Unit have issued a Show Cause Notice bearing F No DRI/BZU/S-IV/ENQ-56 (INT-NIL)/2017 and SCN Sl No 23/2018-DRI (BZU) on 25.06.2018 in which para 24.14 of the SCN includes a proposal to impose penalty under section 112 of Customs Act, 1962 on Shri C S Prasad, Superintendent of Customs for his alleged acts and omissions as discussed in para 20.7 of the above said Show Cause Notice resulting in abetting the smugglers in clearance of mis-declared goods in terms of description, value, quantity and without payment of appropriate duty.

…………..

8. After taking into account the Charge Memorandum, IO Report, CO's reply to the disagreement note, submissions during personal hearing, CO's further submission dated 15-12-2021 and on careful examination of the records of the case, DA tentatively concurred with the findings of the IO. Further, DA tentatively proposed for imposing minor penalty on the CO which is at variance with the first stage advice issued vide letter C.No.

II/10A/10/2019 DGV HZU dated 14-08-2019 (1st Stage Advice No. 06/2019). Accordingly, DA vide letter C.No. II/10.A/18/2021-VIG BWC dated 18-01-2022 sought 2nd stage advice from DGoV, HZU, Hyderabad before proceeding further in the matter as required in terms of CVC Circular No. 05-07-2018. Vide letter F.No.DGOV/Vig/SSA/43/2021-Tech dated 24-03-2022 DGOV, HZU, Hyderabad, has rendered 2nd Stage Advice in the present case and informed that the tentative opinion of the Disciplinary Authority and proposal to impose Minor Penalty on Shri. C S Prasad, Superintendent is accepted and the Second Stage Advice is issued accordingly. Subsequently, as per the prevailing procedure, copy of the said Second Stage Advice was forwarded to the CO vide letter C.No. II/10.A/18/2021-VIG BWC dated 25-03-2022 and informed him to furnish his reply, if any. In reply, Shri. C S Prasad, Superintendent vide letter dated 29-03-2022, has stated that the Second Stage Advice rendered by DGOV, Hyderabad appears to be in agreement with the stand taken him and he may be awarded a least of the Minor Penalties.

DISCUSSION AND FINDINGS

9. I have gone through all the records of the case carefully, including various submissions of the CO, IO report etc. I have also heard Shri C.S. Prasad, Superintendent presently working in Bengaluru West Commissionerate, Bengaluru, in person and his submissions made before the undersigned. After careful analysis of the entire case records and submissions, I have independently arrived at the following conclusions:-

10.1. As regards to the allegations contained in the Article I that the CO has aided the clearance of imported goods which were grossly mis-declared and CO has abetted the smuggling syndicate in clearance of undervalued goods without payment of applicable Customs Duty, I do not find any evidence or any statements that CO had knowingly involved in abetting the act of mis-declaration or under valuation as alleged in the CM. There is no dispute in this case that the CO has given the out of charge to both the impugned consignments which were found later to be mis-declared in respect of the nature and description of goods, quantity and value of the goods which had adverse revenue implications to the Govt. exchequer. However, Inquiry held in *the case could not bring out that C.S. Prasad, Superintendent has himself instigated the importer or CHA or any other person like EDI officials etc to indulge in the forgery or fabrication of documents or mis-declaration, resulting in loss of revenue to the exchequer. Further, Inquiry also could not bring out that Shri C.S. Prasad was engaged/colluded with any importer/CHA/Liner/Outsourced employees in the conspiracy of the act that has resulted in the act of misdeclaration, undervaluation and resultant loss of revenue to the government The Department also could not prove his knowledge that the goods were mis-declared or that he has benefited personally from his actions in the matter. Also, I do not find any intentional aiding of any person by the CO in the abetment.*

10.2. In this connection, it is imperative to examine that while giving the out of charge, whether CO was in the knowledge of the fact that these consignments were mis-declared and despite that knowledge, CO has given the out of charge. From the statements recorded during investigation and also from the examination/depositions of witnesses during the inquiry, I do not find any evidence proving the CO in the act of aiding or abetting the illegal imports by the smuggling syndicate. Further, I find that the department itself while issuing the show cause notice to the importer, in para 16.1.IV, has stated that entire set of forged documents are presented to the assessing officer. From this, it is evident that the department itself has taken a stand (while issuing show cause notice to the importer) that is contrary to the allegation made in the CM on hand. Hence, the charge of abetting the smuggling syndicate by the CO in clearance of undervalued goods without payment of applicable customs duties is rather not correct but it is seen that the smuggling syndicate has mislead the CO by presenting the forged documents for taking the OOC. Inquiry was not able to prove conclusively that the CO has given the OOC knowingly that goods are mis-declared for evasion of taxes. Further it is seen that the CO has checked the documents i.e. Bill of Entry, Examination report issued by the Inspector, Packing list, invoices which tallied with the Bill of Entry. He relied on the examination *report given by the Inspector which categorically stated that the goods were examined and found in order.*

10.3 In this connection, it is also relevant to point out that para 22 of the Annexure-Il-Statement of imputations of misconduct or mis-behaviour in support of Article-I to the impugned Charge Memorandum, it is detailed about the statement of Shri. C.S. Prasad recorded by the Joint Commissioner of Customs, A&ACC Commissionerate on 20-05-2019 were given. The following facts inter-alia deposed by the CO, are pertinent in this case and the same are reproduced below:-

- *he has verified the description of the goods shown in the Bill of Entry Nos. 8614 and 4549963 both dated 26-12-2017 along with the photocopy of voice cum packing list filed bearing number P-387 and P-386 respectively as reflected in the BoEs along with the declarations filed by the importer. The description of the goods in the BOES and in the above said Invoices were sun glassed and packing materials for sunglasses, which tallies with the declaration in the BoE and examination report. Terms of the trade were declared as CIF basis which is inclusive of freight, hence the Airway bill was not verified.*
- *On being shown the Invoice and packing list No. P-530 and BOE 4548614 dated 26-12-20 17 regarding the description of the goods in Invoice and in BOE 4548614 dated 26-12-2017 he stated that he has perused the Invoice and Packing list No.P-530 and BoE .The description in the Invoice and packing list NO P-530 is shown as 1. T-Shirts 2381, 2.Caps 802 Pcs, 3. Backpack 21Pcs, 4. Jeans 88 Pcs and 5. Leggings 25 Pcs, 6.Trac Pant 214 Pcs, 7. Socks 252 Pcs, Whereas as per the Bill of Entry, the description of the goods declared as 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)' The Invoice No.P- 530 was not available in the docket produced for OOC before him instead invoice cum packing list bearing NO.P-387 dt 20-12-2017 showing the description as 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)' was produced /available in the docket.*

- *On being shown the Invoice and packing list No. P-525 and BOE 4549363 dated 26-12-2017regarding variation in the description of the goods in Invoice and in BOE 4549363 dated 26-12-2017 he stated that the description in the Invoice and packing list No. P-525 is shown as 1. Jeans 539 Pcs, 2. T-Shirts 1538 Pcs, 3. Trousers 693 Pcs, 4, Jackets 27 Pcs and 5. Shirts 30 Pcs. Whereas as per the Bill of Entry, the description of the goods declared are 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded) The Invoice No.P-525 was not available in the docket produced for OOC before him, instead invoice cum packing list bearing NO.P-387 dt 20-12-2017 showing the description as 'Packing materials (Sunglasses)' and 'Sunglasses (Unbranded)' was produced /available in the docket.*
- *He further stated that the BoE No.4548614 dt 26-12-2017 filed by M/s Maxco Traders, Mumbai was verified for giving OOC, However, the Invoice available in the docket was P-387 for CIF value of 12200 HKD. The RMS instruction was for open examination of 4 packages and the report for the same was available in the EDI system and based on the said examination report and description shown in the BOE and Invoice produced to me no discrepancy was noticed and hence OOC was issued.*

• *Further elaborating the reasons for non verification of genuineness of the invoice/packing list and the declaration made in the bill of entry and been granted OOC without propel' verification "he stated that due to rush hour and also due to the fact that the examination report tallied with the declaration made in the BoE, he did not insist for legible copy of Invoice and separate packing list.*

10.4. Even the department has also stated that the syndicate has produced forged documents to the officers. In this regard it is relevant to point out Para 16 of the SCN issued to the importers and others. In this para department has not accepted Shri Dinesh's retraction letter dated 20.02.2018 and furnished the reasons as to why the same cannot be accepted. Para 16(iv) of the SCN mentions as follows:-

Shri Dinesh has further informed that whenever, the Bill of Entry is submitted, the same is scrutinized by customs before giving out of charge. He further confirmed that the documents have been examined. The whole investigation and the case revolve around the mis-declaration of the description of the goods, the value and the quantity. The allegations are that an entire set of forged documents have been presented to the assessing officers. Based on the said documents, the Bills of Entry has been examined/ assessed and out of charge given. This is not the case where factual documents were presented and bogus goods were given out of charge for release of goods. Hence ....

10.5 Considering the above facts and para 13 of the IOs report (with regard to Article I), I am in agreement with the discussions/analysis of the points of determination made by the Inquiry officer in the instant case with regard to the charge of aiding and abetting the smuggling syndicate in clearance of undervalued goods without payment of applicable customs duties. None of the witnesses during the inquiry proceedings have proved the existence of the fact of aiding or abetting the illegal imports knowingly by the CO. There is no evidence on record either in the form of documents or any Statement that the CO had colluded with the importer or CO had any knowledge of mis-declaration of goods & value before issuing OOC of the consignments. I find that the CO relied on the examination report of the Inspector to give OOC of the consignments. I am of the opinion that there is no conclusive evidence to prove that there was a lapse on the part of the CO and hence the charges made in the Article I is not substantiated. Accordingly, I hold that charges in Article-I made against Sri C.S. Prasad in the present charge memorandum as not proved."

4.5 Thus I find that Appellant 1 has been exonerated of the charge of abetting by the disciplinary authority. That being so, in my the impugned order which hold the appellant 1 guilty of abetting, for imposition of penalty under Section 112 (a) cannot stand in view of the following decisions:

A. Parminder Jit Singh [2013 (293) ELT 241 (T-Del)]

"6. *We find that disciplinary proceedings had been initiated against all these respondents under CCS (CCA) Rules on the charge of abetting the smuggling activities. However, on completion of the inquiry and on considering the inquiry of such report, the charges against all these respondents have been dropped by the department. While the charges against Shri Sunil Behal, Inspector, Shri Parminder Jit Singh, Inspector, Shri V.S. Sekhon, Inspector, Shri Kewal Singh, Inspector and Shri R.K. Sharma - Inspector (now Superintendent) have been dropped vide order-in-original dated 4-4-2006 by the Commissioner, the proceedings against Shri Rajan Choudhary, Assistant Commissioner (now Deputy Commissioner) have been dropped vide memorandum No. C-1401138/98-Ad. V, dated 17-6-2009 of the Government of India. In view of this, when the disciplinary proceedings against the respondents under CCS (CCA) Rules have been dropped, the proceedings for imposition of penalty against them under Section 112(a) of Customs Act, 1962 which are based on the same charges and the same evidence, would also not survive. Therefore, there is no infirmity in the impugned order. The Revenue's appeals are accordingly dismissed. The Cross Objections No. 91, 108 and 92 of 2007 filed by the respondents also stand disposed of."*

B. Suraj Prakash [2017 (49) STR 376 (T-Del)]

"5.*The disciplinary proceedings initiated against the appellant on the charge of abetting smuggling activities culminated in dropping the charges and exonerating the appellant. This fact is seen to have been brought to the notice of the Tribunal by filing a Misc. application and also furnishing copy of the order. But the Tribunal while passing the impugned Final Order has failed to consider the same. So also the decision relied by the appellant was also not taken note of. The Tribunal being the ultimate fact finding forum, the non-consideration of such vital fact, the omission of which has bearing upon the decision arrived, in our view, is an error apparent on the face of records. We therefore have to hold that there is an error which calls for exercise of jurisdiction of the Tribunal under Section 35C(2) for rectification.*

6.*The grievance of the appellant is that the Tribunal failed to consider the fact that the departmental proceedings have* *culminated in his favour. As rightly pressed by the learned Counsel for the appellants, on similar facts this Tribunal in Commissioner of Customs, Amritsar v. Parminder Jit Singh (supra) has held that when disciplinary proceedings under CCS (CCA) Rules, 1995 are dropped, the imposition of penalty under Section 112 of Customs Act, 1962 on same charge and same evidence cannot survive. In view thereof the impugned order to extent of imposing penalty of Rs. 1,00,000/- upon the appellant under Section 112 of Customs Act is unsustainable. Therefore, the Final Order Nos. C/A/53952-53958/2014 in the Appeal No. C/483/2007-CU(DB) as to the extent of imposing penalty upon the appellant is recalled and set aside."*

C. B K Pabri [2017 (358) ELT 819 (T-Del)]

8. *Further, in the case of Shri Rajiv Kumar Meharwal, the Department itself found him as not indulging in any punishable activity in terms of CCS (Conduct) Rules. In such situation, a penalty under Customs Act on the same activity cannot be sustained. In this conclusion, I rely on the decision of the Tribunal in Suraj Prakash (supra), wherein the Tribunal held that when disciplinary proceedings under CCS (CCA) Rules, 1965 are dropped, penalty under Customs Act cannot be imposed on the same charge against the officers.*

9. *Further, it is relevant to note that to impose penalty under Section 114(iii) on the officers of Customs, it is necessary to establish with supporting evidence, a positive act on the part of the officers to abet a omission or an act of another person which will render the connected goods liable for confiscation under Section 113. Failure, if any, in discharge of duty assigned or negligence on the part of the Custom Officer by itself cannot bring in penal consequence in terms of the said section. Such negligence or failure may attract departmental proceedings for violation of the service rules. For Customs Act, irrespective of the fact whether the person is an officer of Customs or any other person, penalty for an offence of abetting can be imposed only on establishing a positive act on abetment of another person's act or omission which will make the connected goods liable for confiscation. On careful consideration of the evidence on record and submission made by the appellant, I find that there is no* *sustainable ground to impose penalties under Section 114 on the appellants in the present case. Accordingly, the appeals are allowed by setting aside the impugned order.*

D. Boria Ram [2017 (354) ELT 661 (T-Del)]

3. As the challenge in the present appeals is only to imposition of penalty on the said three appellants, we take up their cases individually.

(i) Appeal No. C/53004/2016 SHRI ASHOK KUMAR INDORA, INSPECTOR

On going through the order, we note that penalty stands imposed upon the said appellant on the ground that he has not done proper examination of the consignment inasmuch as, 500 pieces per package were declared whereas, 400 pieces of garments per package were found. Further, the garments in question were of extremely low quality which were visible on a routine examination. For imposing penalty of Rs. 25,000/- on Shri Ashok Kumar Indora, the Commissioner has observed as under :-

"I find that Shri Ashok Kumar Indora, Inspector whose duty was to check these very parameters did not bring the said discrepancy of quantity and inferior quality of the said goods to the notice of any of his senior officers and also failed to state correct facts in the examination report entered in the EDI System but instead stated in his examination report that 'DOCS SEEN BY DC SHED AND AS DIR O/E AS PER S/R AND FOUND THE GOODS AS PER DOCS." Nowhere in his examination report he has mentioned about the poor/sub-standard quality and short quantity of garments against the 20 Shipping Bills under consideration. It is pertinent to mention here that the goods in question were found to be of inferior/sub-standard quality and were not fit for being exported as per Market Enquiry and opinion of Textile Committee. I have also gone through the contents of the Panchnama dated 11-5-2015 which has been drawn on the spot by the investigating officer in r/o conducting examination of shipments covered by the impugned 20 Nos of Shipping Bills and drawing of representative sample out of said shipments in the presence of two independent witnesses and Shri Amit Kumar, Representative of CHA and do not find any legal infirmity in the said Panchnama dated 11-5-2015 as contended by Shri Ashok Kumar Indora, Inspector in his submission. Therefore, contentions raised by him do not hold ground and thus, cannot be sustained. I find that facts and circumstances clearly establishes that Shri Ashok Kumar Indora, Inspector who was responsible for examining the goods in question and was duty bound to give correct and true examination report about the exact quantity and quality of the impugned goods, have failed to discharge his official duty. Accordingly, due to above said omissions and commissions on his part, he has rendered himself liable for penalty under Section 114 of the Customs Act, 1962.

As is seen from the above, the adjudicating authority has imposed penalty on the said Inspector on the ground that he has failed to discharge his official duty properly. We are afraid that the said reasoning cannot be adopted for imposition of penalty in terms of Section 114 of the Act, inasmuch as there is nothing on record to show that there was any mens rea on the part of the said appellant so as to abet the illegal export. The Hon'ble Supreme Court in the case of UOI v. J. Ahmed - AIR 1979 SC 1022, has held that lapses or lack of efficiency would not ipso facto constitute a misconduct to attract the penal provisions. As such, in the absence of any evidence to suggest that the appellant had connived with the exporter, we are of the view that non-performance of the duty, by itself, would not call for any penal action on the said appellant. Accordingly, the penalty imposed upon him is set-aside.

(ii) Appeal No. C/52976/2016 - SHRI BORIA RAM, SUPERINTENDENT -

The Commissioner has imposed penalty on the said Superintendent by observing that he has passed the let export order, which is not a mere formality but has legal requirement to be fulfilled by the Superintendent diligently and the law places a great responsibility on the officer to ensure that the Government revenue is not siphoned by such fraudulent means. For better appreciation of the reasons adopted by the adjudicating authority for imposition of penalty, we reproduce the relevant paragraph from the impugned order:-

"I find that the above contentions are not acceptable since the noticee was responsible for ensuring that the examination done by the Inspector under his supervision was proper. The 'Let Export Order' was given by him is not a mere formality. It is a legal required to be fulfilled by a Superintendent of Customs diligently and the law places a great legal responsibility on the officer to ensure that Government revenue is not allowed to be siphoned off by such fraudulent means. He does not require any further instructions to carry out his duties properly. The onus of satisfying himself that the goods sought to be exported are as per declaration made in the shipping bills is his and his alone. Since the goods were being exported to a sensitive place like Dubai and there have been several instances of frauds of similar nature in the past, therefore, being the supervisory officer, he should have been more vigilant and should have ensured that the consignment was examined by Shri Ashok Kumar Indora, Inspector carefully and properly or should have called for samples of the garments or should have examined/seen the goods before giving LEO to the consignment keeping in view the huge Drawback amount involved and sensitive destination of the export consignment. It is evident that Shri Boria Ram, Superintendent has performed his duty in a casual manner and failed to apply due diligence before giving Let Export Order to consignments as many as twenty in numbers. In view of the above, it is established that he has failed to discharge his official duty and due to his said omissions and commissions, he has rendered himself liable for penalty under Section 114 of the Customs Act, 1962."

The said appellant has contended that the let export order was given by him as he found the examination report of the Inspector as satisfactory. Any lapse in performance of duty can, at the most, be considered as inefficiency which will not lead to any charge of abetment or connivance, thus attracting the penal action. We agree with the appellant that dereliction of duty *cannot be held to be punishable act in the Customs Act. There is neither any allegation much less any evidence on record that such dereliction of duty is on account of culpable mind. There is no statement of either person to show that the Superintendent was aware of the discrepancy in the consignment. As such, in the absence of any evidence to reflect upon the said appellant's role to play in the alleged misdeclaration and by following the Tribunal decision in the case of Khem Singh v. CC, Kandla - 2014 (307) E.L.T. 718 (Tri. - Ahmd.), we hold that imposition of penalty upon the said appellant is not justified and the same is accordingly, set-aside."*

4.6 The crux of the decision at C and D above is that mere failure to discharge the duties assigned in diligent manner cannot be a reason for holding the charge of "abetting" against the officer of Custom for the purpose of imposing penalty under section1 12 (a) of the Customs Act, 1962. Positive evidence to that effect is required to be placed and charge of abetting needs to be proved in positive manner. I have reproduce the paragraphs of Show Cause Notice and the impugned order in para 4,2. And 4.3 and am unable to find any such positive evidence or even the allegation whereby the charge abetting can be sustained. During course of investigation DRI has recorded the statements of large number of persons – importers, CHA etc, but none of the statement even make a wild suggestion to the effect that these officers had connived and abetted in the act of mis-declaration. It is also worth noting that the entire case of misdeclaration is based on the forged documents produced for the clearance of impugned goods as have been recorded by the disciplinary authority in para 10.4 of his order by relying on para 16.1 (iv) of the show cause notice. In view of these facts charge of abetting cannot be sustained against the two officers who are appellant before me.

4.7 While holding as above I make it clear that these pronouncements should not be held to mean that officers are not guilty of dereliction of duties as assigned to them as officer of Customs, while allowing the clearance of imported goods. The charges of dereliction of duty cannot be adjudicated in terms of the provisions of Customs Act, 1962 and need to be considered as per CCS Rules. If appellants in the proceedings initiated under the said rules, are found guilty of dereliction of duties assigned in any manner, disciplinary authority is free to proceed against the said officers in manner prescribed, without referring to exoneration of these officers by this order by the charge of "abetting" for imposition of penalty under Section 112 (a) of the Customs Act,1 962.

5.1 Appeals filed by the two appellants before me are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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