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

Customs Appeal No. 86012 of 2020

(Arising out of Order-in-Original CAO No. 20/2020-21 dated 26.08.2020 passed by the Commissioner of Customs (Imp-I), Mumbai)

Tavinder Obhan **Appellant**
M/s. Continental Hiring Co.,
25, Shroff Bhavan, 2nd Floor,
159, P.D'Mello Road,
Mumbai 400 001.

Vs.

Commissioner of Customs, Import-I Mumbai **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

Appearance:

Shri D.H. Nadkarni, Advocate, for the Appellant
Shri Ram Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 12.01.2023
Date of Decision: 12.01.2023

FINAL ORDER NO. A/85141/2023

This appeal is directed against Order-in-Original CAO No. 20/2020-21 dated 26.08.2020 passed by the Commissioner of Customs (Imp-I), Mumbai. By the impugned order, the Commissioner has held as follows:-

"*ORDER*

" *……………..*

(v) I impose a Penalty of Rs. 50,000/- (Rupees Fifty thousand only) under Section 112(a) of the Customs Act, 1962 on Shri. Tanvinder Obhan.

(vi) I impose a Penalty of Rs. 1,00,000/- (Rupees one lakh only) under Section 114AA of the Customs Act, 1962 on Shri. Tanvinder Obhan."

2.1 Officers of DRI gathered intelligence that several syndicates of crane importers were evading customs duty by procuring invoices of notional value of Rs.28/- to Rs.40/- per kg. of the weight as against the actual transaction value of the cranes which was higher. They were also suppressing the freight charges paid to the shipping lines. Investigations were undertaken against the importer and a show cause notice dated 02.07.2012 was issued to M/s. Sunrise Heavy Lifters Pvt. Ltd. (noticee No.1), M/s. Kandla Cargo Handlers (noticee No.2), Shri Bajranglal G. Agarwal, Shri Madan Lalwani, Shri Mithesh Sethia and Shri Tavinder Obhan. In the said show cause notice, the present appellant was asked to show cause as to why:-

"(i) Penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 in relation to the above mentioned goods which have been rendered liable to confiscation u/s. 111(m) of the Customs Act, 1962, should not be imposed on each one of them;

(ii) Penalty u/s. 114AA in relation to the aforesaid goods should not be imposed on each one of them."

2.2 With reference to the show cause notices M/s. Sunrise Heavy Lifters Pvt. Ltd. (noticee No.1), M/s. Kandla Cargo Handlers (noticee No.2) and Shri Bajranglal G. Agarwal filed application before the Settlement Commission. By final order No. 85/Final Order/Cus/RKT/2013 dated 30.07.2013 in respect of M/s. KCH and the co-noticee Shri Bajranglal G. Agarwal, following was held:-

*"**Customs Duty**: The differential customs duty liability in this case is settled at Rs.6,99,221/- (Rupees Six Lakhs Ninety Nine Thousand Two Hundred Twenty One Only). The Applicant is directed to deposit the same within a period of 30 days from the date of receipt of this order.*

***Appropriation**: An amount of Rs. 34,16,835/- is ordered to be appropriated against the deposit of Rs.50 Lakhs made by the applicant in respect of duty payable on two cranes imported beyond a period of 5 years.*

***Interest**: Since the duty is settled at Rs.6,99,221/- they are hereby directed to recalculate and pay the interest within 30 days from the date of this order and get the same verified by the Department.*

***Fine**: The 3 impugned cranes of declared value of Rs.1,28,11,426/- are confiscated and released on a fine of Rs 1,00,000/- Rs. One Lakh only). Immunity is granted to the applicant from payment of fine in excess of the said amount.*

***Penalty**: The bench imposes following penalties on the applicant and the co- applicant for their role in evasion of Customs duty.*

1. M/s. Kandla Cargo Handlers - Applicant - Rs. 10,000/- (Rs. Ten thousand only).

2. Shri Bajranglal G. Agarwal - Co-applicant - Rs. 5,000/- (Rs. Five thousand only)."

2.3 Subsequently against the remaining noticees including the present appellant, adjudication proceedings were initiated after considering the submissions made. The Commissioner has as per the impugned order adjudged the matter against the remaining three noticees. Aggrieved by the order against him, appellant has filed this appeal.

3.1 We have heard Shri D.H. Nadkarni, Advocate for the appellant and Shri Ram Kumar, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits:-

- The show cause notice is barred by limitation as issued after 5 years from the date of import. The Bill of Entry No.726219 dated 27-11-2006 and Show cause notice was issued on 2-7-2012. The reliance is placed on the judgments/decisions as follows:
  - Bhatinda District Co-Op Milk P. Union Ltd [2007(217) ELT 325(SC)]
  - Hari Concast (P) Ltd. [2009 (242) ELT 12 (P&H)]
  - Swastik Wires- [2008 (231) ELT 448(T)]

- Penalty under Section 114AA of the CA,1962 is applicable to the exports and not to the imports based on the decision of Sri Krishna Sounds and Lighting [2019(370) ELT 594(T)].
- As an alternate submission, it is to submit that before the Hon'ble Settlement Commission, total penalty of Rs.10,000/- and Rs.5,000/- was imposed on M/s. Kandla Cargo Handlers and Shri Bajrangilal G. Agarwal respectively as against excessive penalty imposed of Rs.1,00,000/- and Rs.50,000/- u/s.114AA and u/s. 112(a) of the Customs Act, 1962 respectively on the Appellant in the present proceedings.

3.4 Arguing for the Revenue, learned AR reiterates the findings recorded in the impugned order.

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

4.2 For imposing penalty on the appellant, the impugned order records the following findings:-

"31 I have carefully gone through the case records, written submission of the noticee and the submission made by the noticee during the personal hearing. I find that demand notice was raised to M/S SHLPL and M/s. KCH and the co- noticee Shri Bajranglal G. Agarwal for differential duty not paid due to undervaluation of the imported goods by them. There was also proposed for confiscation of the goods and imposition of penalty under Section 112(a). 4A and 114AA to them. I find that both M/s SHLPL and M/s. KCH alongwith co-noticee Shri Bajranglal G. Agarwal approached Settlement Commission and entire issue with regard to M/s SHLPL and M/s. KCH and the co-noticee Shri Bajranglal G. Agarwal is settled by Settlement Commission. Thus find that the entire issue has been settled by Settlement Commission with respect to M/s SHLPL and M/s. KCH alongwith co-noticee Shri Bajranglal G. Agarwal vide two final orders no.84/FINAL ORDER/CUS/RKT/2013 dated 30.07.2013 85/FINAL ORDER/CUS/RKT/2013 dated 30.07.2013 passed under sub-section (5) of Section 127C of the Customs Act, 1962 and the

finding of the Bench of Settlement Commission order is given below:

"The bench finds that the revised value of the impugned cranes as determined by Revenue is based on Chartered Engineer's Certificate which was accepted by Shri Bajaranglal Agarwal, Director (co-applicant) in his statement dated 03.05.2012. The chartered Engineer's certificate had taken into account the applicable deductions and Shri Bajrangllal Agarwal stated that it was more or less in the range of actual value paid by him. He also admitted to have paid cash amount over and above the actual transaction value. Though, he has retracted his statement after a lapse of one month, it is considered to be an afterthought. The Applicant did not produce any documentary proof, evidencing the correct transaction value as claimed by them. The assessable value as revised by revenue also compared favourably with the prices of cranes, offered for sale internationally. The Bench therefore feels that re-determination of value based on the opinion given by reliable and appropriate."

31.1 Further, the Bench also find that the undervaluation done by the Notice No. 1,2 & 3 i.e. M/s Sunrise Heavy Lifters Pvt Ltd, M/d Kandla Cargo Handlers Pvt Ltd and Sh Bajrang G. Agarwal in this case is substantial as the declared value of Rs. 5,33,63,329/- in respect of 6 cranes was revised to Rs.8,76,75,464 and the declared value of Rs. 1,28,11,426/- in respect of 3 cranes was revised to Rs. 2,48,74,516/-. The impugned cranes were seized by the investigating agency and the same are liable for confiscation for the offence committed. The Bench however gives an option to the applicant i.e. M/s Sunrise Heavy Lifters Pvt Ltd, M/s Kandla Cargo Handlers & Sh Bajaranglal G.Agarwal to redeem the same on payment of fine.

Since the Settlement Commission has already finalized the duty liability. interest, fine and penalty in of the old and used cranes and also department has accepted the said Settlement Commission both order.

The importer M/s Sunrise heavy Lifters Pvt Ltd, M/s Kandla Cargo Handlers and Co-noticee Shri Bajrangial G.Agarwal had *compiled off the above mentioned orders and deposited dues as tabulated below.*

Name of the Noticees	*Customs Duty settled by the Settlement Commission*	*Interest*	*Redemption Fine*	*Penalty on M/s Sh*
M/s S Sunrise Heavy Lifters Pvt Ltd and Sh Bajranglal G. Agarwal vide Order No. 84/FINAL ORDER/CUS/RKT/2013 dated 30.07.2013:				
M/s Sunrise Heavy Lifters Pvt Ltd	*Rs. 80,37,241/- paid vide Challan/cash No. 704 dtd 30.08.2013*	*Rs. 59,47,654/- paid vide Challan/cash No. 1563 dtd 30.08.2013*	*Rs. 5,00,000/- paid vide Challan/ cash No. 1566 dated 30.08.2013*	*Rs. 1,50,000/- paid vide Challan/ cash No. 1565 dated 30.08.2013*
Sh Bajranglal G. Agarwal				*Rs. 50,000/- paid vide Challan/ cash no. 1564 dated 30.08.2013*
M/s Kandla Cargo Handlers and Co-applicant Shri Bajranglal G. Agarwal Order NO. 85/FINAL ORDER/CUS/RKT/2013 dated 30.07.2013				
M/s Kandla Cargo Handlers	*Rs. 6,99,221/- paid vide Challan/ cash No. 538 dtd 23.08.2013*	*Rs. 6,35,276/- paid vide Challan/ cash No. 1193 dtd 23.08.2013*	*Rs. 1,00,000/- paid vide Challan/ cash No. 1193 dtd 23.08.2013*	*Rs. 10,000/- paid vide Challan/cash No. 1194 dtd 23.08.2013*
Sh Bajranglal G. Agarwal				*Rs. 5,000/- paid vide Challan No. 1192 dtd 23.08.2013*

Thus, I take up the issues to be decided for remaining Noticees Sh Madanlal Lalwani (Noticee No. 4), Sh Mithesh Sethia (Noticee No.5) and Sh Tanvinder Ohban (Noticee No.6)

32. Investigation alleged Shri Madan Lalwani was the main executor of clearing of cranes and he operated under the licence of CHA of M/s. Dharmdas & Co (CHA No. 11/100). With the assistance of Shri Madan Lalwani, Shri Bajranglal G Agarwal *cleared the imported cranes from Customs by filing manipulated documents, suppressing the actual value of the cranes and declaring the value of the crane in the range of 28 to 40/- per kg of its weight, as suggested by Shri Madan Lalwani.*

32.1 Sh Madan Lalwani in his written submission dated 16/10/2019 contended that he is just an employee of M/s.M. Dharamdas & Co (CHA) having no control of the operation of CHA; that his statements were recorded by DRI under threat and duress; that his role in the customs clearance was limited to administrative functions alone and he did not have authority to advice clients; that he was merely following the directions given by the managing partner of the CHA, as such liability if any should come on account of the CHA and not its employee; that all the documents including declarations given to the custom authorities were signed by the authorised signatory of CHA M/s. M. Dharamdas & Co with full understanding and knowledge; that he was merely informing the importers about the practice adopted by Customs to benchmark the valuation of cranes: that he never advised the importers not to declare the true value of the crane that it is unclear as to how by deducting the freight value from the CIF value the officers of DRI arrived at the conclusion that in the present case the declared transaction value is lower than the raw material prices and hence the same is liable to be rejected; that he has not committed any violation of the provision of the Customs Act or any other law and as such cannot be made subject to any proceedings there under, During the personal hearing dated 16.10.19 he stated that he has just processed the Bs/E and his role in undervaluation was not there. that CESTAT in an identical case of Noticee in the matter of M/s Crown Lifters & Madan Lalwani case in C/86415/2014-Mum Mumbai have dropped the penalty.

32.2 I find from the documents on record, statements of other noticees and statements of Shri Madan Lalwani dated 21.10.2010/ 27.10.2010/ 02.11.2010 that Shri. Madan Lalwani admitted that he had advised the importers to declare the value of the old and used cranes at range of Rs. 28/- to Rs. 40/- per kg on the basis of the weight of the crane instead of the correct transaction value. He also filed the Bills of Entry in respect of the *impugned cranes on the basis of the manipulated invoices which resulted in the evasion of duty. This aspect was confirmed by Shri Bajrang G. Agarwal in his statement dated 23.11.2010 that he always dealt with Shri Madan Lalwani for clearance of all the cranes and paid 5% of the value of the Cranes in cash, in addition to 1% service charges. find that the detailed investigations had revealed that the importer with the help of Shri. Madan Lalwani had cleared the used cranes in a planned conspiracy to evade the payment of the appropriate customs duty. find that Importer has accepted all charges and settled the issues with settlement Commission. Thus, all the charges levelled against Shri Lalwani are also sustainable as his Involvement has been admitted by Shri Bajrang G. Agrawal. Shril Lalwani interacted with the importers on day to day basis pertaining to the above clearances handled by them. Thus Shri Madan Lalwani was aware that substantial loss of duty was caused to the Government on account of mis- declaration in the actual value of the crane resorted to by the importers.*

32.3 Further, Sh. Madan Lalwani has contended that DRI officials were not empowered to issue show cause notice under Section 28 of the Customs Act, 1962 prior to 08.04.2011. In this regard, I find that the subject matter has already been dealt in terms of Section 28(11) of Customs Act on 16.09.2011 with retrospective effect. Further, rely upon cases of Konia Trading Co. vs. CC(2004) 170 ELT 51 (CESTAT) wherein it has been held by Hon'ble court that "ADG of DRI having been appointed as Customs Collector shall have the powers of a Customs Collector and can discharge functions as 'proper officer' under Section 28(1). We are also of the view in all cases where the officers of DRI are appointed as Customs officers, they will have jurisdiction to discharge functions as a 'proper officer in relation to matters where Customs officers are notified as proper officer. Further, I find that in cases of Chandra Impex vs. CC (2008) 224 ELT 583 (CESTAT) and CC vs. Mahesh India (2009) 243 ELT 339 (Bom HC DB) it has been held by Hon'ble courts that DRI can issue show cause notice under Customs Act.

32.4 I find that Shri Madan Lalwani in is his reply dated 16.10.2019 has stated that his statement dtd

21.10.2010,27.10.2010 and 02.11.2010 were pre-typed and involuntary and same were retracted immediately at first opportunity upon first receipt of statements copies with SCN and underwriting the gravity of misstatements contained. Further, the issue of retraction from the statement recorded under section 108 of the customs act, 1962 has already been settled by Hon'ble Supreme Court in case of Surjeet Singh Chhabra V/s Union of India (1997 (89) ELT 646 (SC) stating that 'statements before Customs Officers, though retracted, are binding'. Further, in case of Assistant Commissioner of C.Ex, Rajamundry Vs Duncan Agro Industries Ltd., Hon'ble Supreme Court - 2000 (120) E.LT 280 (S.C) has held that "A statement recorded by customs officers under Section 108 of the Customs Act is admissible in evidence". Thus, find that claim of Shri Madan Lalwani regarding retraction of their statement can not be accepted. find that issue of statement recorded under section 108 of customs act has been dealt in case of

(i) Haroon Haji Abdulla Vs State of Maharashtra 1999(110) E.L.T.309(S

(ii) K.I.Pavunny, 1997(90)ELT 241 (SC),

(iii) Ramesh Khatnani 2008(226) ELT 183 (Raj.)

(iv) P.B Nair C&F Put Ltd Vs Commissioner of Customs(General), Mumbai as reported in 2015(318) ELT 437(Tri-Mum) Para 5.5 Evidence Statement Retraction of Confessional statement under Section 108 of Customs Act, 1962- Proceedings under Section 108 ibid is a judicial proceeding and if any retraction of confession to be made, to be made before same authority who originally recorded the statement - Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement. [para 5.5]

32.5 Reliance on unverified statements is bereft of legal validity and the fact has been held in noticee's identical matter by Hon'ble CESTAT in case of M/s Gopalji Heavy Lifters Vs

Commissioner of Customs (Import), Mumbai 2016(11) TMI 1516.

I find that in the subject case it has been categorically proved on the basis of documentary evidences that import of old and used cranes and accessories were made on fabricated invoices to suppress the actual transaction value of the crane and Sh. Madan Lalwani has played an important role in urging the importers to import old and used cranes and accessories declaring value of the cranes in range of Rs.28 per Kg to Rs.40 per Kg. Further, in addition to Sh. Madan Lalwani, Sh. Bajaranglal G.Agarwal and Sh. Mitesh Sethia, have also get their statement recorded under Section 108 of the Customs Act, 1962 and stated that it was Sh. Madan lalwani who advised and assisted them to import cranes by suppressing the actual value of the same. It is settled principle of law and has been held by Hon'ble Supreme Court in case of Surjeet Singh Chhabra V/s Union of India (1997 (89) ELT 646 (SC) that statements before Customs Officers, though retracted, are binding'.

32.6 Further, Sh. Madan lalwani contended that in an identical case of Noticee in matters of M/s Crown Lifters Vs CC reported 2016(2) TMI 389 CESTAT Mumbai has observed in para 7.9 that from records it is not established that he is involved in the undervaluation of the cranes. Giving advice to importers that customs has fixed a bench mark of valuation on per weight basis does not make him an accomplice in the act of undervaluation".

32.7 I find that Sh. Madan Lalwani during his statements recorded under Section 108 of the Customs act, 1962 accepted that the entire business was being conducted under his exclusive control and supervision and he was aware about the substantial loss of duty was caused to the Government on account of mis-declaration in the actual value of the crane as was suggested by him. Therefore it cannot be construed that he was not responsible for import of undervalues goods in the subject matter. Further, I find that involvement of Sh. Madan lalwani in the subject undervalued goods has been proved beyond doubt in the previous paras, therefore the case of M/s Crown Lifters Vs CC (Import), Mumbai which was remanded back to the *adjudicating authority for fresh decision is not squarely applicable in the subject case.. It is settled principle of law and has been held by Hon'ble CESTAT of ODIYANDA AYYAPPA MUDDAIAH VIS COMMR. OF CUS., NCH, MANGALORE for Final Order Nos. 20618-20620/2019, dated 6-8-2019 in Appeal Nos. C/21520, 21518 & 21517/2018-SM that "Penalty Smuggling of Contraband Gold Voluntary confessional statements made by all three accused before Customs Officer under Section 108 of Customs Act, 1962- On examination of all material facts and statements, Commissioner (Appeals) rightly concluded that Rajendra Prakash Pawar is key conspirator and mastermind in illegal activity of contraband gold being sole investor of money, sponsoring procurement of contraband gold into India and appellant-I and III aided and abetted illegal activity on payment of hefty remuneration Statements admitting to involvement in smuggling activity given made before Customs Officer, never retracted and proved from WhatsApp communication - Penalty under Section 112(a) of Customs Act, 1962, rightly imposed - No infirmity in impugned order - Section 112(a) of Customs Act, 1962 "[paras 6, 6.1, 7]*

In view of the following hold that Sh. Madan lalwani is liable for penal provisions under Section 112(a) of the Customs Act, 1962.

33. I also find the impugned cranes imported by M/s. SHLPL (Noticee No.1) and M/s. KCH(Noticee No.2) were sourced by S/Shri Mitesh Sethia and Tavinder Obhan. Both facilitated Shri Bajranglal G Agarwal to defraud the government exchequer, by supplying invoices suppressing the actual price of the cranes imported in the name of M/s. SHLPL and M/s. KCH under Bs/Entry listed at Sr.No.3,4,5,7,8 & 9 as detailed in Annexure A to the SCN. Shri Mitesh Sethia in his statement dated 21.02.2012 and 21.10.2011 have also admitted that in respect of 5 cranes sourced through him, Shri Bajranglal G.Agarwal has made cash payments towards actual value of cranes and its declared values and admitted to have suppressed the freight component.

34. I find used Coles 45/50 Truck Cranes imported by M/S KCH was sourced by Shri Tanvinder Obhan, partner of

M/s.Continental Hiring Co, on high sea basis. Both S/Shri Mitesh Sethia and Tavinder Obhan have also independently imported Cranes by resorting to undervaluation, as admitted, and have deposited 5 Crores and 50 Lakhs respectively, voluntarily, towards duty evaded during the course of investigation in respect of those imports (which is being dealt in a separate proceeding).

35. I find S/Shri Mitesh Shethia and Tavinder Obhan facilitated Shri Bajranglal G. Agarwal with the active connivance of Shri Madan Lalwani to defraud the government exchequer by suppressing the actual price of the cranes imported in the name of M/s. SHLPL and M/s.KCH. They have all revealed the different modus operandi, viz. obtaining freight pre-paid Bills of Lading from Shipping Companies, declaring the rate of Cranes in the range of 28/- to 40/- per Kg. of its weight which was acceptable to Customs and paying cash towards the cost of Cranes over and above the declared value, adopted to evade payment of appropriate Customs Duty on the old and used Cranes imported.

35.1 I find that In relation to the aforesaid 9 old and used cranes imported and cleared by M/s Sunrise and M/s Kandla each of Sh Madan Lalwani (In respect of all the 09 cranes listed in Annexrue A to this notice), Mithesh Sethia (in respect of cranes covered under bills of entry listed at Sr.No. 3,4,5,7 and 9 of Annexure "A' to this Notice) and Sh Tavinder Obhan (in respect of Crane listed at St No. 8 in Annexure A to this notice), had deliberately mis-declared the value of the cranes imported which resulted in short levy of Customs duty.

36. All the above stated 9 cranes were cleared in the name of M/s. Sunrise and M/s KCH by adopting fraudulent means as discussed earlier. The bills of entry for clearance of all the aforesaid 9 cranes were filed by Sh Madan Lalwani, who had 'suggested' the values to the importer for raising manipulated invoices. Sh Madan Lalwani had charged an amount of 5% of the value of the crane, in cash, in addition to his agency charges for facilitating such irregular clearances. M/s. Sunrise and KCH and Lalwani acquired possession of and were concerned in removing, selling or purchasing of the aforesaid 9 old and used cranes, *which they knew or had reason to believe were liable to confiscation under section 111(m) of the Customs Act, 1962, as aforesaid. Therefore Shri Madan Lalwani for concerning himself in removing the used cranes, from customs without payment of appropriate customs duty, Shri Mithesh Sethia and Sh Tavinder Obhan in respect to the cranes, as aforesaid, for selling them at prices far in excess of that declared in the invoices supplied for the purpose of customs clearance and in any other manner dealing with the said cranes found liable for confiscation as discussed above. I hold that Shri Madan Lalwani, Sh Mithesh Sethia and Shri Tavinder Obhan are liable to penalty under section 112(a) of the Customs Act, 1962.*

37. Thus, I find that in relation to the aforesaid 9 old and used cranes, Shri Madan Lalwani, Shri Mitesh Shethia and Shri Tavinder Obhan have knowingly and intentionally made, signed or caused to be made or signed and used, the declarations for the purposes of seeking Customs clearance of the aforesaid cranes, which they knew or had reason to believe were false or incorrect. Accordingly, Shri Madan Lalwani, Shri Mitesh Shethia and Shri Tavinder Obhan have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962, in relation to the aforesaid cranes;"

4.3 From the impugned order I do not find any discussion on the role played by the appellant in facilitating the charges of suppression of value. The entire discussion is based in respect of one co-noticee i.e. Shri Madan Lalwani. The only finding recorded in the impugned order is in para 35 onwards. Nothing recorded with regard to evidence leading to finding of such discussion. I also take note of the fact that the show cause notice as contended by the appellant counsel has been issued on 02.07.2012 in respect of the imports made during the period 2005 to 2007. The only observation vis-à-vis against the present appellant as recorded in para 17 of the impugned order referring to the role of the appellant is as follows:-

"17. In his statements dated 10.04.2012 Shri Tavinder Obhan, partner of M/s Continental Hiring Co., stated that he had sold on high seas sales basis one used Coles 45/50 Truck Crane 1985

Chassis No. 38484 imported by M/s. KCH vide Bill of Entry No.726219 dated 27.11.2006. He further stated that Shri Bajranglal Agarwal agreed to file the B/E and also bear the expenses towards Customs Duty and customs clearance charges to be paid to the clearing agent. The said High Seas Sale Agreement was executed between M/s. Continental Hiring Co. and M/s. KCH(Noticee No.2)."

4.4 In absence of any clear-cut finding against the appellant, I am of the view that the penalty imposed on the appellant is excessive. Further I also take note of the fact that the appellant was involved in the case of M/s. KCH (noticee No.2) on whom finally penalty has been imposed by the Settlement Commission to the extent of Rs.10,000/- only and on Shri Bajranglal Agarwal, partner in the said firm, penalty of Rs.5,000/- has been imposed.

4.5 I am of the view that interest of justice will be met if penalty imposed on the appellant under Section 112(a) is reduced from Rs.50,000/- to Rs.1,000/- only and that under 114AA from Rs.1,00,000/- to Rs.5,000/-.

5.1 Appeal is disposed of in the above terms modifying the impugned order, as indicated in para 4.5 above.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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