# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH

### Customs Appeal No. 87435 of 2019

(Arising out of Order-in-Original CAO No. 18/2019-20 dated 21.05.2019 passed by the Commissioner of Customs (Import-I), Mumbai)

**M/s. Damani Shipping Pvt. Ltd.** **Appellant**
205-26, Varma Chambers,
11, Homji Street, 2nd Floor,
Fort, Mumbai 400 001.

Vs.

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

Appearance:

Shri Prashant Patankar, Consultant, for the Appellant
Shri Ram Kumar, Assistant Commissioner, Authorised Representative for the Respondent

**CORAM:**

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

Date of Hearing: 03.02.2023
Date of Decision: 03.02.2023

### FINAL ORDER NO. 85809/2023

This appeal is directed against order in original No 18/2019-20 dated 21.05.2019 of the Commissioner Customs (Import), Mumbai. By the impugned order following has been:

*"ORDER*

*In view of the above discussion and findings, I pass the following order:*

*….*

*7. I impose a penalty of Rs 25,000/- (Rs Twenty Five Thousand only) on the Customs Broker M/s Damani Shipping Pvt Ltd under section 112 (a) of the Customs Act, 1962.*

*…"*

2.1 A show cause notice was issued to M/s Haryana Liquors Pvt Ltd, Haryana for misdeclaration of classification of the goods imported vide Bill of Entry No 47860092 dated 03.03.2014, leading to short payment of duty of Rs 27,38,365/-. Appellant was made co-noticee in the show cause notice as he was the Custom Broker who had filed the bill of entry.

2.2 This show cause notice has been adjudicated as per the impugned order. Aggrieved by the penalty imposed under Section 112 (a) appellant has filed this appeal.

3.1 I have heard Shri Prashant Patankar, Consultant for the appellant and Shri Ram Kumar, Assistant Commissioner Authorized representative for the revenue.

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

4.2 The reasons recorded in the impugned order for imposing the penalty on the appellant as reproduced below:

*"2.3 The Custom Broker M/s Damani Shipping Pvt. Ltd. failed in obtaining the correct specification/ use of the machine imported by M/s Haryana Liquors Pvt. Lid. They failed to fulfil their obligations as per the Para 10(d), 10(e), 10(g) and 10(m) of the Customs Brokers Licensing Regulations, 2018 being aware of the correct classification later. They have not performed their job, with pure intent as Customs Broker under CBLR, 2018. A Customs Broker needs to collect correct information with regard to the classification as well as the valuation of the goods so that a proper Bill of Entry or Shipping Bill, as the case may be can be filed. This is seen from the judgment passed by the Hon'ble High Court of Madras in the case of M/s Sri Kamakshi Agency Vs. Commissioner of Customs, Madras reported in 2001(129) ELT29 (Mad) wherein it was observed that the grant of licence to a person to act as Custom House Agent/Customs Broker was to some extent to assist the Department with the various procedures such as scrutinising the various documents to be presented in the course of transaction of business for entry and exit of conveyance or the import or export of the goods; that in such circumstances great confidence had been reposed in a Custom House Agent/ Customs Broker; that any misuse of such position by the Custom House Agent/ Customs Broker would have far reaching consequences in the transaction of business by the Custom House officials; that therefore when Custom House Agent/ Customs Broker gets indulged in to malpractices resulting*

*in loss of revenue to the Custom House, there was every justification in treating the action of the Custom House Agent/ Customs Broker as detrimental to the interest of the nation. The instant judgement highlights the role of the CB (CHA) in safeguarding the interest of the department and nation in large. The aforesaid judgment was also maintained by the Apex Court as reported in 2002(142) ELT A87 (SC). Accordingly, the submissions made in defence by the notices are not tenable and are liable to be rejected. Accordingly, the same are not taken into consideration. The case laws relied upon by the Noticee CB in their written submissions are distinguishable in nature and facts of the instant case. In view of the above, the charges made against each of the notice stands proved. They mis-classified the impugned goods and committed or omitted to do an act which rendered the goods liable to confiscation under section 111 (m) of the Customs Act, 1962 and consequently they themselves liable for penal action under section 112(a) of the Customs Act, 1962.*

*2.4 The proposed penalty under section 114A is only imposable to the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28. The noticee, M/s Damani Shipping Pvt. Ltd. (noticee no. 2 of the SCN) is not liable to pay the duty or interest in this case, hence the proposed penalty under section 114A of the Customs Act, 1962 cannot be imposed to the noticee no. 2 of the subject SCN."*

4.3 From the above it is evident that by the impugned order the penalty has been imposed on appellant for the various acts of commission and omission leading to contravention of Regulation 10(d), 10(e), 10(g) and 10(m) of the Customs Brokers Licensing Regulations, 2018. Penalty under section 112 (a) is not contemplated for the contravention of the provisions of the Customs Brokers Licensing Regulations, 2018.

4.4 Customs Brokers Licensing Regulations, 2018, is a complete code itself and provides for the penal actions to be taken in terms of the said regulations. If appellant is guilty of any contraventions in the respect of said regulations action lies under the said regulations and not Section 112 (a) of the Customs Act, 1962.

4.5 Similar view has been held by the CESTAT vide order No A/85914/2022 dated 28.092022, in the appellants own case.

4.6 I do not find merits in the impugned order imposing penalty on the appellant for the contraventions alleged.

5.1 Appeal is allowed.

(Order pronounced in the open court)

**(Sanjiv Srivastava)**
**Member (Technical)**

*tvu*