CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Miscellaneous Application (EH) No. 85480 Of 2023

(on behalf of Appellant)

in

Customs Appeal No. 86358 Of 2021.

(Arising out of Order-in-Original No. CC-VA-49-2020-21 ADJ-I-ACC dated 30.03.2021 passed by Commissioner of Customs (Import), Mumbai)

Navdeep Narula **.....Appellant**
Director Brightpoint India Pvt Ltd
5th Floor, A Wing, Empire Plaza,
Vikhroli West, Mumbai-400083.

VERSUS

Commissioner of Customs (Import)
– Mumbai (Air Cargo Import) **.....Respondent**
Air Cargo Complex, Sahar Andheri (E),
Mumbai-400099.

Appearance:

Shri Akhilesh Kangsia a/w Shri Bharat Menon, Advocates for the Appellant
Shri Ashwini Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86161/2023

Date of Hearing: 19.07.2023
Date of Decision: 19.07.2023

PER : S. K. MOHANTY

Heard both sides and perused the case records.

2. Applicant/Appellant has filed this miscellaneous application, seeking early hearing of appeal on the ground that the impugned order confirming the demand on the company M/s Bright Point India Pvt. Ltd. has already been disposed off by the Tribunal vide Final Order No. A/85977/2023 dated 20.06.2023. The Applicant/Appellant has further stated that since the present appeal relates to the issue

of imposition of penalty on the Director, in line with the order dated 20.06.2023, the present appeal can also be disposed off. We accept the contentions made by the Applicant/Appellant that this appeal has a bearing on the appeal already decided in the case of M/s Bright Point India Pvt. Ltd. Accordingly, the miscellaneous application filed by the Applicant/Appellant is allowed. Since, the issue lies in a narrow compass only for consideration of the issue of imposition of penalty on the Director of M/s. Bright Point India Pvt. Ltd., we are of the view that the present appeal can also be taken up for hearing today for a decision on merits. Learned AR appearing for the Revenue has not raised any objections with regard to taking of the appeal for a decision on merits today.

3. In the Impugned order, the Learned adjudicating authority has invoked the provisions of Section 114AA of the Customs Act, 1962 for imposition of penalty on the Appellant. The provision of Section 114AA *ibid* is extracted herein below:

> *"114AA. Penalty for use of false and incorrect material.—*
> *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

4. On perusal of the said statutory provision, it reveals that in case of use of false and incorrect material, the said penal provisions can be invoked for imposition of penalty on the person concerned, who has indulged into the fraudulent activities. Since, the Tribunal in the case of M/s Bright Point India Pvt. Ltd. vide order dated 20.06.2023 has held that the demand cannot be sustained under Section 28(1) *ibid* read with Section 28(4) *ibid,* it cannot be said that there is any fraud committed by an individual, who acts on behalf of the incorporated company, juristic legal person. Thus, according to our considered view, the penal provision contained in Section 114A *ibid* does not sustain. In the present case also penal provision under Section 114AA cannot be invoked, inasmuch as the said statutory provision does not provide for proof of the elements-

such as, suppression of facts, fraud, wilful mis-statement etc., with intention to evade payment of Customs duty.

5. Therefore, we do not find any merits in the impugned order, insofar as it has invoked the provisions of Section 114AA *ibid,* against the Appellant for imposition of penalty. Therefore, the impugned order is set aside, and the appeal is allowed in favour of the Appellant.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

Sm/kpw