CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85038 OF 2013

[Arising out of Order-in-Original No: 28/2012 dated 28th September 2012 passed by the Commissioner of Customs (Export), Nhava Sheva.]

Dhakane & Co
282 Shai Bhagat Singh Road, Khandke Building
Office No. 25 & 30, 2nd Floor, Fort, Mumbai - 400001 … ***Appellant***

versus

Commissioner of Customs (Export)
Jawaharlal Nehru Customs House, Nhava Sheva
Dist: Raigad, Maharashtra ***…Respondent***

APPEARANCE:

Shri Vinay Ansurkar, Advocate for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: _____85060/2024

DATE OF HEARING: 01/02/2024
DATE OF DECISION: 01/02/2024

PER: C J MATHEW

The appellant, a 'customs broker' proceeded against for imposition of detriment under section 114 of Customs Act, 1962 in connection with alleged mis-declaration of description and value in exports of M/s Pearl Enterprises intended for Malaysia effected against three shipping bills, challenges penalty of ₹ 5,00,000 on the ground that they had nothing to do with the procurement as to be aware of any details thereof and that the order[1] of Commissioner of Customs (Export), Nhava Sheva had, contrary to the circumstances in which the offence was sought to be fastened on them, placed emphasis on some earlier consignments handled by them for the same exporter only to enhance the gravity of alleged consequence.

2. The appellant had filed 3 nos. shipping bills, *viz*., no. 8547510/11.06.2001, 8547238/11.06.2001 and 8547512/11.06.2001, for export of 25,524 pieces of 'ready made garments' valued at ₹ 91,63,503 against claim for drawback of ₹ 9,54,699. The test reports intimated that the impugned goods were found to have been made from 'knitted/woven fabric of cotton yarn' contrary to the claim of being made from 'manmade fibre' which was never refuted by the exporters despite several opportunities offered. Based on market survey and in the absence of any documentary evidence to the contrary from the exporter, the declared value was rejected under the authority of rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Relying on the very same market survey which was held to conform to rule 6 of Customs Valuation (Determination of Value of

---

[1] [order-in-original no. 28/2012 dated 28th September 2012]

Export Goods) Rules, 2007, the assessable value was re-determined as ₹ 37,29,600.

3. Pointing to the finding in the impugned order that

> *'35. With regard to the CHA M/s. Dhakane & Co., I find that the said three shipping bills of M/s. Pearl Enterprises were filed by the CHA firm M/s. Dhakane & Co (AAAFD 1255ECH001). Shri Ashok P. Dhakane (Kardex No. D-264) confessed vide statement dated 29-11-2010 that they had received all the documents pertaining to said three shipping bills from Shri Riyaz Ahamed, Director of exporting firm M/s. Pearl Enterprises. His further versions was that they had checked the IEC of the exporter on line and the same was found to be correct. On further investigation, it was also found that the CHA M/s. Dhakane & Co had filed all past 23 shipping bills of the exporter M/s Pearl Enterprises. I find that the IEC Edit Report provided by the DGFT New Delhi showed that Shri Deepak Kumar Arora, son of Shri Pawan Kumar Arora is the only proprietor of M/s Pearl Enterprises (IEC No. 0508039444). As per the records, Shri Riyaz Ahamed is no way related to the said firm. I find that the CHA had received documents from an unauthorized person without verifying genuineness of the exporter, the export documents and the goods under export, and filed the shipping bills on behalf of M/s Pearl Enterprises for customs clearance. The act of CHA proved beyond doubt that they had abetted and connived with the exporter in getting inadmissible drawback claims, which attracts penalty under Section 114(i) of the Customs Act, 1962.*

> *a. Their version was that they were not aware of the fraud committed by the exporter. I find that the CHA had cleared around 21 consignments in the past. As per their version they had verified the IEC on line. It means that they knew the fact that Shri Deepak Kumar Arora was the proprietor of the firm and the person who used to give documents on behalf of M/s Pearl Enterprises was not the proprietor of the exporting firm. Even though they knew this fact, they did not respond and did not stop clearing the consignments of M/s Pearl Enterprises. From the above events, it is evident that the CHA had the knowledge of the fraud and they connived with the exporter in clearance of misdeclared and overvalued goods under Drawback. Therefore, penalty on them under Section 114(i) of the Customs Act, 1962 is justifiable.'*

it was contended by Learned Counsel that their knowledge of the constituent material used for production or of the purchase price had not been established. He argued that if it took test reports to ascertain the fabric used, physical observation alone would not have been sufficient. He submitted that the adjudicating authority had, and without any evidence of mis-declaration in earlier consignments, wrongly presumed similar pattern in those exports.

4. Learned Authorized Representative argued that the finding of the adjudicating authority that connected documents was received from an unconnected person had not been repudiated and, therefore, the involvement not discountenanced.

5. It would appear that the offence was fastened on the impugned goods, for being misdeclared with intent to claim drawback in excess of entitlement. The claim itself was for ₹ 9,54,699 which, on not being found acceptable, was not curtailed to eligible extent but confiscated absolutely to effectively deny it in entirety. There is no finding on the foreclosure of option to redeem under section 125 of Customs Act, 1962. We find that nothing has been brought on record to indicate that the appellant was concerned with any aspect of procurement prior to entering of goods for export to be cognizant of the fabric used or the purchase value. It is only owing to absence of any defence on the part of the exporter that the facts came to be unchallengeable *qua* the appellant also.

6. However, we cannot fail to take note that the appellant did admit to export documents having been received through an unconnected person. While that, of itself, may not lead to the conclusion of being aware of the fabric used or the value of purchase, it, nevertheless, should have been sufficient cause for caution as to satisfy himself about the veracity of the declarations being made. The role of the appellant in filing the declarations in the shipping bill, and responsibility thereof, is not in dispute. Consequently, recourse to section 114 of Customs Act, 1962 is not inappropriate.

7. We have noted above that the fastening of penalty was on

account of confiscation solely in the absence of defence. Moreover, there is no finding that the goods were not entitled to some drawback. There is also no finding on the mis-declaration of the earlier consignments which have been referred to as justification for magnitude of penalty. The gap between domestic value and declared value is not necessarily of such difference as to be beyond a commercial transaction, even if it to be outlier. The penalty imposed, therefore, appears to be unduly harsh and disproportionate.

8. Consequently, the ends of justice will be met by reducing the penalty to ₹10,000. Appeal is, accordingly, disposed off.

(Operative Part of the Order Pronounced in the Open Court on 1st February 2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*