

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

Customs Appeal No. 85299 of 2021

(Arising out of Order-in-Original No. 04/SA(04)ADG(ADJ.)/DRI, MUMBAI/20-21 dated 03.04.2020 passed by Additional Director General (Adjudication), Mumbai)

Suresh Kumar Aggarwal

.....Appellant

Partner of ICS Cargo,
Ideal Trade Centre, Office No. 402,
4th Floor, Plot No. 64, Sector-II,
CBD Belapur, Navi Mumbai- 400 614.

VERSUS

Commissioner of Customs -III

.....Respondent

Jawaharlal Nehru Customs House (JNCH),
Nhava Sheva, Taluka-Uran,
Dist. Raigad, Maharashtra- 400 707.

Appearance:

Shri Prabhat Kumar, Advocate for the Appellants
Shri D.S. Mann, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M.PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85533/2024

Date of Hearing: 30.01.2024
Date of Decision: 03.06.2024

PER : M.M. PARTHIBAN

This appeal has been filed by Shri Suresh Kumar Aggarwal, Partner of M/s I.C.S. Cargo, Mumbai (herein after referred to as 'the appellant', for short), assailing the Orders-in-Original No. 04/SA(04) ADG(ADJ.)/DRI, MUMBAI/20-21 dated 03.04.2020 (referred to as 'the impugned order') passed by Additional Director General (Adjudication), Mumbai.

2. The brief facts of the case are that the appellant is a licensed customs broker holding Customs Broker License No. R-037/97 issued by the Commissioner of Customs (I&G), New Custom House, New Delhi for transacting the business of customs broker. The appellant is also registered with the customs authorities at Mumbai in terms of Regulation 7(3) of Customs Brokers Licensing Regulation, 2018 for transacting business of their

clients at Mumbai. The appellant had facilitated customs clearance of power tools imported from China by certain importers during the year 2017. On the basis of investigation conducted by the Directorate of Revenue Intelligence, Delhi Zonal Unit (DRI) against various importers, it was concluded that the said Shri Suresh Kumar Aggarwal, Partner of M/s I.C.S. Cargo had connived with the importers for undervaluation of imported goods with an intent to evade customs duty. In this regard, DRI investigation *interalia*, recorded statements of Shri Suresh Kumar Aggarwal, Partner of M/s I.C.S. Cargo and on the basis of his role played in import duty evasion case, show cause proceedings were initiated vide SCN dated 11.04.2018. The said show cause notice was adjudicated by the ADG (Adjudication), Mumbai vide impugned order in confirmation of the demands proposed in the SCN and imposing penalty on the importers, besides imposition of penalty of Rs.5,00,000/- on the appellant under Section 114AA of the Customs Act, 1962. Feeling aggrieved with the impugned order, the appellant had preferred this appeal before the Tribunal. As a matter of abundant caution, it is clarified that present appeal is limited to the extent of assailing the impugned order only for imposition of penalty on the appellant.

2. Heard both sides and perused the records of the case. I have also examined the submissions advanced by the learned Advocate appearing for the appellant and the learned Authorized Representative of the Department. Further, I have also perused the additional written submissions in the form of paper books submitted by both sides along with citation of case laws which both sides have mentioned in support of their case.

3. The impugned order deals with various issues covering rejection of declared value of imported goods, re-determination of the value of such imported goods under Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [CVR], for eight importers; demand of differential duty under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA *ibid*; confiscation of seized goods under Section 111(m) *ibid* and offering the same for provisional release on redemption fine under Section 110A; besides imposition of penalties on various importers and other co-noticees under Section 112(a), 114A, 114AA *ibid*. However, the short point for determination before me is limited to that portion of the order relating to imposition of penalty on the appellant, as co-noticee, under Section 114AA *ibid*. The relevant portion of the impugned order for which this appeal has

been filed and on which I am required to determine the issue is contained in paragraph 6.7(c) of the Order portion of the impugned order.

4. On perusal of the impugned order dated 03.04.2020, in the above context, it is seen that the learned ADG (Adjudication), had recorded that the following findings for coming to the conclusion in importation of penalty under Section 114AA *ibid*. The relevant paragraphs in the impugned order is extracted herein and given below:

"5.16.1 I find that the SCN has proposed penalty against Mr. Suresh K. Aggarwal, Partner of M/s I.C.S. Cargo (Customs Broker firm having License No. 11/1248 at Mumbai Customs) Section 114AA and 117 under Customs Act, 1962. The noticee in his reply has submitted that since Shri Siddharth Sharma was a Director/Partner in many companies and was a man of means he did not suspect misuse of IEC, that his suspicion was not aroused as the values of power tools declared by Sharma's companies were in the same range as the values declared by Yusuf Pardawala. I find that Mr. Suresh K. Aggarwal in his statement dated 15.01.2018 and 22.01.2018 has admitted to the fact that the documents for the Bills of Entry for import of power tools by the companies owned by Mr. Siddharth Sharma should have been received from him, but since he was aware that since the said consignments were actually owned by Mr. Yusuf Pardawala he received the same from Mr. Yusuf Pardawala and that he filed the bill of entry in the companies of Mr. Siddharth Sharma, that after the clearance of the consignments of Mr. Yusuf Pardawala the same were despatched by them to Bhiwandi warehouse of Mr. Yusuf Pardawala. He further submitted that the payments and charges for clearance etc. were paid to them from the accounts of concerned companies in which the bill of entry was filed. Thus, he was aware that the IECs of Shri. Siddharth Sharma were utilized by Shri Yusuf Pardawala. Therefore, it was but natural that the values declared in Shri. Siddharth Sharma's companies were similar to that of Shri Yusuf Pardawala.

5.16.2 I find that Shri Suresh K Aggarwal, Partner of M/s I.C.S. Cargo (Customs Broker firm having License No. 11/1248 at Mumbai Customs) in his statement recorded under section 108 of the Customs Act, 1962 has admitted to the fact that he was aware that Mr. Yusuf Pardawala of M/s Yuri Impex Pvt. Ltd. was utilizing the IEC of other entities for making imports. In this respect I find that as per Section 7 of the Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010 read along with Rule 12 of Foreign Trade (Regulation) Rules, 1993, every person should make import or export only with Importer-Exporter Code number allotted to him. Further as per Para 2.9.2 of Handbook of Procedures, Vol.1, 2009-12 an IEC number allotted to an applicant is valid for all its branches/ divisions/ units/ factories. Thus, an IEC Number cannot be used by anyone other than an IEC holder himself. Further, this has been clarified by DGFT vide its circular No.6 (RE-2013) / 2009-2014 dated 16.09.2013 wherein it has been mentioned that violation of the provisions of the Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010 read with Rule 12 of Foreign Trade (Regulation) Rules, 1993 would attract action under Section 8 and 11 of the Said Act. I find that in terms of clause 11(d) of the CBLR Regulations, 2013, the Customs Broker has to advise his client to comply with the provisions of the act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, which the noticee has failed to do. He also submitted that where the consignments were other than of power tools the documents were forwarded by Shri. Siddharth Sharma himself. Thus, I do not agree with the submission of the CB that CBLR were scrupulously followed.

5.16.3 I find that although no direct connivance has been brought forth as regards under-valuation on the part of the Customs Broker, I find that on the basis of evidences adduced by the investigation that he was aware about mis-use of IEC and also instrumental in submitting mis-declared B/E to Customs and hence liable to penalty u/s 114AA of the Customs Act, 1962. The afore mentioned omission and commission by Mr. Suresh K Aggarwal even after being fully aware of the unscrupulous activities undertaken by the importers, undoubtedly attracts penal action under the relevant Rules. Accordingly, I hold that Mr. Suresh K Aggarwal, Partner of M/s I.C.S. Cargo (Customs Broker firm having License No. 11/1248 at Mumbai Customs) is liable for penal action under Section 114AA of the Customs Act, 1962. To arrive at the above Conclusions, I have also relied upon a number of judgements which are enumerated in above Paragraphs 5.11.6 to 5.11.9. I do not reproduce the same for the sake of brevity.

5.16.4 As regards penal liability has proposed under Section 117 of the Act, it is noticed that:

Section 117:Penalties for contravention, etc., Not expressly mentioned.—

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding four lakhs rupees.

I do not find it a fit case for penalty under Section 117 as acts and omissions of Noticee are covered within the penal provisions as provided under Section 114 AA of the Act.

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5.17. In view of the detailed discussion herein above, I find that:

...

(vii) Mr. Suresh K Aggarwal, Partner of M/s I.C.S. Cargo (Customs Broker firm having License No. 11/1248 at Mumbai Customs) is liable to penalty under Section 114AA of the Customs Act, 1962.

Accordingly, I pass the following Order.

ORDER

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6.7(c) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on Mr. Suresh K Aggarwal, Partner of M/s I.C.S. Cargo (Customs Broker firm having License No. 11/1248 at Mumbai Customs) under Section 114AA of the Customs Act, 1962."

5. As the original authority has dropped the proposal for imposition of penalty on the appellant under Section 117 of the Customs Act, 1962 and had imposed penalty on the appellant only under Section 114AA ibid, the short issue for consideration before me is to examine the issue in the limited compass of determining whether the imposition of penalty on the appellant under Section 114AA ibid in the present case is legally sustainable or not?

6. The facts of the case indicate that the impugned order has been passed in respect of an issue relating to undervaluation of the imported goods i.e., power tools imported from China, by various importers. In this regard, the role of appellant as a Partner of Customs Broker (CB) have been analysed by the learned ADG (Adjudication) and he had justified the imposition of penalty under Section 114AA *ibid*.

7. In order to address the above issue of imposition of penalty under Section 114AA, I would like to refer the relevant legal provisions contained in the Customs Act, 1962.

"Section 114AA of the Customs Act, 1962

¹Penalty for use of false and incorrect material.

114AA. *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."*

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रजिस्ट्री सं० डी० एल—(एन)04/0007/2006—08 REGISTERED NO. DL—(N)04/0007/2006—08



असाधारण
EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 35] नई दिल्ली, शुक्रवार, जुलाई 14, 2006 / आषाढ़ 23, 1928
No. 35] NEW DELHI, FRIDAY, JULY 14, 2006 / ASADHA 23, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 14th July, 2006/Asadha 23, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 13th July, 2006, and is hereby published for general information:—

THE TAXATION LAWS (AMENDMENT) ACT, 2006

No. 29 OF 2006

[13th July, 2006.]

AN ACT further to amend the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975 and the Central Excise Act, 1944.

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Taxation Laws (Amendment) Act, 2006.

Short title.

CHAPTER II

DIRECT TAXES

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¹ Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.

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	CHAPTER III				
	INDIRECT TAXES				
	Customs				
Amendment of section 17.	20. In the Customs Act, 1962 (hereafter referred to as the Customs Act), in section 17, after sub-section (4), the following sub-section shall be inserted, namely:—				52 of 1962.
	“(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification,				
	XX	XX	XX	XX	XX
Insertion of new section 114AA.	27. After section 114A of the Customs Act, the following section shall be inserted, namely:—				
Penalty for use of false and incorrect material.	“114AA. 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.”.				

8.1 From plain reading of the above legal provisions under Section 114AA of Customs Act, 1962, it is clear that it has been introduced for the first time in the said Act and brought into effect from 13.07.2016. The said provision lays down that a maximum penalty not exceeding five times the value of the goods is liable to be imposed in certain situations stated therein. I also find that the Customs Act, 1962 *inter alia*, provide for imposition of penalties under various sections such as Section 112, 114, 114A *ibid* which was in existence prior to the insertion of Section 114AA. Further, some more sections have also been introduced for imposition of penalty, subsequent to the introduction of section 114AA viz. Section 114AB, 114AC *ibid*.

8.2 Thus in order to ascertain the true intent of the legal provisions of newly introduced Section 114AA *ibid*, it is relevant to look into the existing legal provisions for imposition of penalty and the background of such new legal provisions. Section 111 *ibid* deals exclusively with situations covering confiscation of the imported goods, and Section 113 *ibid* deals exclusively with situations covering confiscation of the export goods. Consequently, penalty under Section 112 *ibid* deals with imported goods and penalty under Section 114 *ibid* deals with export goods. Section 114A *ibid* deals with penalty for short levy or non-levy of customs duty in certain cases. As the provisions of imposing penalty under Sections 114AB, 114 AC *ibid* have been brought into the law subsequent to the issue of Show Cause Notice in this case, there are arises no need to discuss the same for the present case. For

ease of reference the relevant legal provisions under Section 112, 114A *ibid* are extracted and reproduced below:

"Penalty for improper importation of goods, etc.

112. Any person,—

- (a) who, **in relation to any goods, does or omits to do any act** which act or omission would render such goods liable to confiscation under section 111, or **abets the doing or omission** of such an act, or
- (b) who **acquires possession** of or is in any way concerned in **carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,—

(i) in the case of **goods in respect of which any prohibition is in force** under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the **case of dutiable goods, other than prohibited goods**, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:

²Substituted by the Finance Act, 2015, w.e.f. 14-5-2015. Prior to its substitution, sub-clause (ii), as amended by the Finance Act, 2001, w.e.f. 11-5-2001, read as under:

['(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;']

(iii) in the case of **goods in respect of which the value** stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) **is higher than the value thereof**, to a penalty ¹⁹[not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the **case of goods falling both under clauses (i) and (iii)**, to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the **case of goods falling both under clauses (ii) and (iii)**, to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Penalty for short-levy or non-levy of duty in certain cases.

114A. Where the **duty has not been levied or has been short-levied** or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by **reason of collusion or any wilful mis-statement or suppression of facts**, 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 shall also be liable to pay a penalty equal to the duty or interest so determined :

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account :

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation.—For the removal of doubts, it is hereby declared that—

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."*

(Emphasis supplied)

8.3 From a careful analysis of the above legal provisions it can be seen that Section 112 *ibid* deals with omission or commission of an action, in relation to goods, acquiring possession of goods, various actions such as carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing of such goods, all of which make such goods liable for confiscation. Similarly, Section 114A *ibid* deals with non-levy or short levy of customs duty arising on account of the reason of collusion or any wilful misstatement or suppression of facts by any person. In contrast to the above, legal provisions under Section 114AA *ibid* does not mention about the goods which are liable for confiscation, but it deals with the situation of certain conduct of a person, in transaction of any business for the purpose of Customs Act, 1962. Any transaction for the purpose of customs law sans goods, can therefore be indicative that the various actions mentioned in Section 114AA *ibid*, such as making or signing of any declaration, statement or document which is false or incorrect, which may lead to such action that renders the person doing such action being liable for penalty, is without reference to the goods, and is only relating to declaration, statement or document without presence of goods. In the perspective of import of goods, the act of making any declaration or statement or documents for customs law starts from filing of Import Manifest under Section 30 *ibid* and filing of Bill of Entry under Section 46 *ibid* in case of licit import, when the vessel

enters into the country/India; and in case illicit import when the smuggled goods enters the 'customs waters' for taking necessary action as provided under the Customs Act, 1962. Since, in all these situations elaborated above, as goods are involved, invoking the penal provisions under Section 114AA *ibid* is not appropriate, rather penal provisions under Section 112 or 114A is more appropriate.

8.4 In the perspective of export goods, the action of declaration or statement or documents for customs law starts firstly at the time of filing of Shipping Bill under Section 50 *ibid* for assessment of export goods, even before the export goods are brought to 'customs area' for inspection of export goods. In this regard, it is also important to note that in terms of Section 11I to 11L read with 11H(c) *ibid*, the Central Government has powers to specify certain goods having regard to the magnitude of the illegal export of goods and if it is required in public interest to take special measures, such as intimation to the proper officer of Customs, maintaining of accounts, its transportation etc., for the purpose of checking the illegal export or facilitation the detection of illegal export. In such case of such specified goods, any activity in relation to such specified goods in an inland area not exceeding one hundred kilometers in width from any coast or other border of India, including Indian customs waters becomes subject to such restrictions as aforesaid. In other words, in case of exports even before the export goods are brought to customs area or in specified goods, within such specified area, any act mentioned in Section 114AA *ibid* is liable for penalty under that section without involving any goods. This can also be extended to such situations of export, where without involving any goods, fake export documents are being created in order to avail illegal benefits of export incentives like drawback, rebate etc.

8.5 In this regard, I also find that in order to appreciate and properly apply the legal provisions of the taxation statute, I would take the guidance provided in the judgement dated 06.04.2021 given by the Hon'ble Supreme Court in the case of *Deputy Commissioner of Income Tax & Anr. Vs. Pepsi Foods Ltd.* in Civil Appeal No. 1106 of 2021. In this case, while dealing with constitutional validity of third proviso to Section 254(2) of the Income Tax Act, 1962, which was struck down by a judgement of the Hon'ble Delhi High Court wherein they held that such a provision which did not permit the Income Tax Appellate Tribunal to give extension of a stay order beyond 365

days, even in a case where the assessee was not responsible for delay caused in hearing the appeal and has laid down the importance of following the 'golden rule' of interpretation of statute. The relevant paragraph in the said judgement of the Hon'ble Supreme Court is extracted and given below:

"24. The learned ASG then relied upon Commr. of Customs V. Dilip Kumar & Co. (2018) 9 SCC 1 (paragraphs 32 to 34). This judgment only reiterates the well-settled principle that in the field of taxation hardship or equity has no role to play in determining eligibility to tax. The present appeals have nothing to do with determining eligibility to tax. They have only to do with a frontal challenge to the constitutional validity of an appeal provision in the Income Tax Act. Also, it is important to remember that the golden rule of interpretation is not given a go-by when it comes to interpretation of tax statutes. This Court in CIT v. J.H. Gotla (1985) 4 SCC 343, put it well when it said:

"46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

47. We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. Furthermore, in the instant case we are dealing with an artificial liability created for counteracting the effect only of attempts by the assessee to reduce tax liability by transfer. It has also been noted how for various purposes the business from which profit is included or loss is set off is treated in various situations as assessee's income. The scheme of the Act as worked out has been noted before."

25. The law laid down by the impugned judgment of the Delhi High Court in M/s Pepsi Foods Ltd. (supra) is correct. Resultantly, the judgments of the various High Courts which follow the aforesaid declaration of law are also correct. Consequently, the third proviso to Section 254(2A) of the Income Tax Act will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the Section only if the delay in disposing of the appeal is attributable to the assessee. The appeals of the revenue are, therefore, dismissed."

8.6 Further, in the case of *Commissioner of Customs & Central Excise, Ahmedabad Vs. Kumar Cotton Mills Pvt. Limited* – 2005 (180) E.L.T. 434 (S.C.) in Civil Appeal No.473 of 2005, the Hon'ble Supreme Court had held that the interpretation of the sub-section (2A) to Section 35C of the Central Excise Act, 1944 in a manner that would act as punishing the tax payer/assessee in delay caused on account of the matters which is completely beyond their control is incorrect construction/interjection of law. The relevant paragraphs of the said judgement is extracted below:

"2. The issue in these appeals is the construction of sub-section (2A) of Section 35C of the Central Excise Act, 1944. The sub-section which was introduced on 11-5-2002 by the Finance Act, 2002 provided as under :

"(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed;

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of Section 35B, the Appellate Tribunal shall dispose off the appeal within a period of one hundred and eighty days from the date of such order;

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated."

3. The provision has clearly been made for the purpose of curbing the dilatory tactics of those assesseees who, having got an interim order in their favour, seek to continue the interim order by delaying the disposal of the proceedings. Thus, depriving the revenue not only of the benefit of the assessed value but also a decision on points which may have impact on other pending matters.

4. The Tribunal which was then known as Customs, Excise Gold (Control) Appellate Tribunal (CEGAT) came to the conclusion that the amendment did not affect stay orders which were passed prior to the date of coming into force of the amendment and also held that the amendment did not in any way curtail the powers of the Tribunal to grant stay exceeding six months.

5. During the pendency of the appeal before this Court, the matter was referred to a Larger Bench of the Tribunal. The Larger Bench has by its decision reported in 2004 (169) E.L.T. 267 upheld the view impugned in this case. The decision of the Larger Bench has not been challenged by the Department being of the view that repeated special leave petition raising the same issue was unnecessary.

6. The sub-section which was introduced in *terrorem* cannot be construed as punishing the assesseees for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified.

The reasoning of the Tribunal expressed in the impugned order and as expressed in the Larger Bench matter, namely, *IPCL v. Commissioner of Central Excise, Vadodara* (supra) cannot be faulted. However we should not be understood as holding that any latitude is given to the Tribunal to extend the period of stay except on good cause and only if the Tribunal is satisfied that the matter could not be heard and disposed of by reason of the fault of the Tribunal for reasons not attributable to the assessee."

On the basis of above judgment of Hon'ble Supreme Court, I am of the *prima facie* view that the appellant cannot be imposed with a penalty under Section 114AA *ibid* for his role as a CHA/CB in import of goods.

8.7 Furthermore, in the case of *Commissioner of Customs (Import) Vs. Trinetra Pvt. Limited* – 2020 (372) E.L.T. 332 (Del.) wherein the department having aggrieved that penalty imposed on CHA/CB under Sections 112(b) and 114AA of the Customs Act, 1962 was deleted by the Tribunal, had filed Customs Appeal CAA No.195 of 2019. In the said case, the Hon'ble Delhi High Court have held that in the absence of an element of *mens rea* or conscious knowledge which can be attributed to CHA/CB, and where a CHA/CB had merely facilitated imports on strength of documents that were handed over to him by importer no penalty can be imposable under Section 112(b) or 114AA *ibid*. The relevant paragraphs of the said judgement is extracted below:

"10. Now coming to the facts of the present case. The facts noted above are not disputed before us, however, the Customs Department is aggrieved by the deletion of the penalties imposed on the CHA. In respect of the show cause notice dated 6-3-2013, penalty has been imposed under Section 112(b) as well as 114AA of the Act. A perusal of the said provisions clearly reveals that the penalty under the said provisions can be imposed wherever there is an element of *mens rea* or conscious knowledge, which is a *sine qua non* for imposition of the penalty. This is evident from a plain reading of Sections 112 and 114AA of the Act, which uses the expressions "does or omits to do", "or abets the doing or omission of such act", "which he knows or has reason to believe are liable to confiscation under Section 111"- in Section 112 and "knowingly or intentionally" in Section 114AA. The facts of the case in hand do not reveal any such element of *mens rea* or conscious knowledge qua the importer. There is no active role attributed to the respondent, which justifies the imposition of the penalty under Section 112(b) and Section 114AA of the Act. Nothing has emerged even in the criminal investigation.

11. In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section 111 of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, *mens rea* may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. [Ref.

: *Amritlakshmi Machine Works v. The Commissioner of Customs (Import)*, [2016 SCC OnLine Bom 66 = 2016 (335) E.L.T. 225 (Bom.)].

12. *In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-à-vis the respondent.*

13. *Since, the present appeal does not raise any substantial question of law that requires any adjudication by this Court under Section 130 of the Customs Act, the appeal is dismissed in limine without any order as to costs."*

The above judgements of the Hon'ble Supreme Court and High Court of Delhi, confirms the view taken by me in the above paragraph that the penalty under Section 114AA *ibid* is not imposable in the case of the appellants who is acting as a Partner of Customs Broker firm, in relation to import of goods.

9.1 In an effort to delve into background to the introduction of legal provision under Section 114AA, *ibid*, I find that in the Budget Speech for the year 2005-2006 presented before the Parliament on 28.02.2005, the Hon'ble Finance Minister had stated as follows regarding the changes proposed in the Direct and Indirect Tax Laws:

"180. I have received many suggestions on amendments to the direct tax laws and the indirect tax laws. I have decided to accept some suggestions that require to be acted upon immediately, but I do not propose to burden the Finance Bill with those changes. Instead, I intend to introduce a separate Bill for that purpose during this session. In due course, I intend to place before Parliament a revised and simplified Income Tax Bill."

Accordingly, the Taxation Laws (Amendment) Bill, 2005 was introduced in the Parliament on 12th May, 2005, providing for certain proposals to further amend the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975 and the Central Excise Act, 1944. This *inter alia* included insertion of new Section 114AA in the Customs Act, 1962. During the process of examination of the Bill by the Parliament, the said Bill was referred for examination by Standing Committee on Finance and submission of report thereon, under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

9.2 After detailed examination, the Standing Committee on Finance had submitted its Twenty Seventh Report on the Taxation Laws (Amendment) Bill, 2005 on 12.12.2005. In the said report, the Committee's observation on the newly inserted Section 114AA brings out more clarity to the legislative intent and purport of this Section. The relevant paragraphs of the said 27th Report of the Standing Committee on Finance is extracted and given below:-

Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

After section 114A of the Customs Act, the following section shall be inserted, namely:—

"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."

63. The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, Which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under:

"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

65. The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.

NEW DELHI;
12 December, 2005
21 Agrahayana, 1927 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

From the above detailed discussion and examination of the legal provisions as introduced in the Taxation (Amendment) Bill, 2005, which inter alia includes Section 114AA, it could be concluded that Section 114AA was examined in detail by the Standing Committee on Finance, before it was brought into the Customs Act by Taxation Laws (Amendment) Act, 2006 w.e.f. 13.07.2006. During the examination of the Section 114AA by the Standing Committee on Finance on the **representatives of trade expressing that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an exporter/importer to give a 'false statement' etc.**, it was explained by the Ministry of Finance that **new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports, where the exports were shown only on paper and no goods crossed the Indian border. The imposition of enhanced penalty is applicable for serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes. On such explanation given by the Ministry of Finance,** the Standing Committee on Finance considered recommending the above amendment with the observations for its proper implementation so that there is no undue harassment on the exporters.

9.3 I also find that on account of the use of words ‘...in the transaction of any business for the purposes of this Act, shall be liable to a penalty...’ appearing in Section 114AA *ibid* and the words “No persons shall carry on business as a customs broker...” appearing in Section 146 *ibid* for grant of CB license, in a slightly similar manner does not any way grant authority for imposition of penalty on the Customs Broker under Section 114AA of the Customs Act, 1962, for the violation or contravention of the obligations imported on CB under CBLR 2018.

9.4 Further, the findings of the ADG (Adjudication) in the impugned order that on account of the violation of Regulation 11(d) of the CBLR, 2013 /Regulation 10(d) of the CBLR, 2018, the appellant has also become liable to penalty under Customs Act, 1962 is not sustainable for the reasons that the CBLR, 2018 is a separate set of Regulations under Section 146 *ibid*. These Regulations-CBLR, 2018 *inter alia*, provide for the manner of regulating the licensing of Customs Broker, their qualification, obligations under the statute and the consequences of violation of such regulation including circumstances under which the license granted may be suspended or revoked or make them liable for penalty etc. after due conduct of inquiry proceedings as provided therein. Regulation 18 of CBLR, 2018 provides for imposition of penalty on a customs broker who fails to comply with any provision of CBLR, 2018 which *inter alia* include the obligation under Regulation 10(d) *ibid*, for which the original authority had imposed a penalty under Section 114AA *ibid* as explained above. Thus, I am also of the considered view that the grounds on which such penalty was imposed in the impugned order is not in conformity with the legal provisions of the Customs Act, 1962 and CBLR, 2018.

10.1 From the above detailed discussions and analysis, in answering the question of imposition of penalty on the appellant in the role of Partner of customs broker firm, under Section 114AA *ibid*, I had come to the following conclusions. In appreciation of the aspect of various rules for interpretation of statute, I had attempted to apply firstly the ‘literal rule’ of interpretation to see the plain meaning of the legal provision contained in Section 114AA *ibid* as discussed in paragraphs 8.1 to 8.4 above, and thus have come to the conclusion that the provision for imposition of penalty under Section 114AA is applicable in a situation and on any person making an action stated therein *sans* goods.

10.2 In order to further examine whether such attempt has lead me to the proper conclusion, I had also attempted to apply the 'mischief rule' of interpretation by analysing what was the legal provision for imposition of penalty before insertion of the Section 114AA *ibid*, what was the mischief or defect for which the penal provision under Section 114AA was firstly introduced, what remedy the Parliament has provided to cure such defect and what is the true reason of the remedy in my analysis in paragraphs 9.1 and 9.2 above. Thus, I had come to the conclusion that the penalty provided under Section 114AA *ibid* is only in respect of transacting any business with Customs sans goods, i.e., fake paper transactions without involving export of goods.

10.3 In the result, I had also confirmed that the conclusions arrived by me as above, by applying the 'Golden rule' of interpretation in order to ensure that in the above attempt in interpretation of a statute, whether my conclusion had led to an absurd result, so as to avoid deriving any meaning of the words in Section 114AA *ibid*, that these does not turn in to any such absurdity, by discussing the issue at paragraphs 8.5 and 8.6 as well as at paragraphs as 9.3 and 9.4.

11. With all the above analysis leading to certain findings and conclusion as discussed above, I have come to the considered view that the provisions of Section 114AA *ibid* does not apply to the present case of the appellant co-noticee who is a Partner in a Customs Broker firm, as neither there was any dummy export being made only on paper, nor there was any criminal intent involving evasion of duty. In fact, the present case deal with demand of short paid duty arising from under valuation of imported goods by various importers, in which the appellant-CB being co-noticee had only facilitated as a customs broker, but was imposed a penalty under Section 114AA *ibid*. Hence I had come to the considered view that imposition of penalty under Section 114AA does not arise in the present case of the appellant.

12. In view of the foregoing discussions and analysis, and in terms of the judgements of the Hon'ble Supreme Court, it is found that there are no strong grounds to sustain imposition of penalty under Section 114AA of the Customs Act, 1962 on the appellant in the present case. Consequently the impugned order dated 03.04.2020, to the extent that it has imposed penalty

of Rs.5,00,000/- (Rupees Five Lakhs) on the appellant is not legally sustainable.

13. In the result, by modifying the impugned order dated 03.04.2020, to the limited extent of setting aside the penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) imposed on Mr. Suresh K Aggarwal, Partner of M/s I.C.S. Cargo (Customs Broker firm having License No. 11/1248 at Mumbai Customs) under Section 114AA of the Customs Act, 1962 in terms of paragraph 6.7(c) of the impugned order, the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 03.06.2024)

(M.M. Parthiban)
Member (Technical)

Sinha