CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 147 OF 2006

[Arising out of Order-in-Original No: 128/2005/CAC/CC(I)/AKP dated 30th November 2005 passed by the Commissioner of Customs (Import), Mumbai – I.]

Ravindra Prakash Srivastava
Dy General Manager (Marketing & Liaison)
Rashtriya Chemicals & Fertilizers Ltd, Priyadarshini,
Easter Express Highway, Sion, Mumbai 400 022 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 148 OF 2006

[Arising out of Order-in-Original No: 128/2005/CAC/CC(I)/AKP dated 30th November 2005 passed by the Commissioner of Customs (Import), Mumbai – I.]

M Sundararaman
Director (Finance)
Rashtriya Chemicals & Fertilizers Ltd, Priyadarshini,
Easter Express Highway, Sion, Mumbai 400 022 … ***Appellant***

versus

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

APPEARANCE:

Shri D B Shroff, Senior Counsel with Shri Akash Singh, Advocate for the appellants

Shri P A Dalatkhan, 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: 85592-85593/2024

DATE OF HEARING: 24/01/2024
DATE OF DECISION: 13/06/2024

PER: C J MATHEW

These appeals have been filed by two individuals, *viz*., Shri Sundararaman, Director (Finance) and Shri Ravindra Prakash Srivastava, Deputy General Manager (Marketing & Liaison) of M/s Rashtriya Chemicals & Fertilizers Ltd, out of the several who were proceeded against under Customs Act, 1962 along with M/s Rashtriya Chemicals & Fertilizers Ltd and M/s ICICI Bank Ltd in connection with clearance of goods, effected against bill of entry no. 480059/22.07.2004 and bill of entry no. 931881/22.07.2004 that were confiscated under section 111(o) of Customs Act, 1962, for having been imported without the certifications prescribed for availing exemption under notification no. 84/1997-Cus dated 11th November 1997 as amended from time to time. By order[1], Commissioner of Customs (Import), Mumbai-I, holding that the clearances had been permitted against 'project implementing authority certificates (PIAC)' that was found to be forged and, therefore, ineligible, went on to find that

> *'54. Shri M Sunderraman, Director(Finance) for RCF and Shri Ravindra Prakash Srivastava, Chief Manager (liaison) of*

[1] [order-in-original no. 128/2005/CAC/CC(I)/AKP dated 30th November 2005]

RCF are the two persons who perpetrated the fraud on behalf of M/s RCF by colluding with Uhde India Ltd and Shri Rakesh Yadav in obtaining the forged certificates. They are therefore liable for penal action u/s 112(a) of the Customs Act, 1962.

55. As regards the role of M/s ICICI bank Ltd. though they might not have been directly involved in the act of bribe giving, their acts of omission and commission have been discussed in para 19(viii) above and their gross negligence resulted in forged certificates being produced for seeking exemptions from Customs. Had they taken their responsibilities properly and acted with due diligence, as was expected of a PIA, this fraud would not have been effectuated. They are therefore liable for penal action 112(a) of the Customs Act,1962, for abetment as their acts of commission and omission resulted in making the imported goods liable for confiscation u/s 111(o) of the Customs Act, 1962. Further it has been held in the case of Airport Authority of India Ltd vs CC, New Delhi [2003(158) ELT33(Tri-Del)] that penalty can be imposed under section 112(a) for abetment on account of negligence also.'

prefacing it with

'53. As regards M/s RCF though they were not the importers – in the sense that they did not file the B/E—but they were the direct beneficiaries of the exemption notification. As per the terms of the agreement between M/s Uhde India Ltd and M/s RCF the burden of customs duty, if imposed, was to be passed on to RCF. Therefore, M/s RCF had as much interest in getting the consignment cleared expeditiously without payment of duty a:; did M/s Uhde India Ltd , if not more. They were also a party to giving of bribe to Shri Rakesh yadav to get the forged/ fabricated certificates. But not being the direct importers their role becomes secondary compared to that of M/s Uhde India

Ltd. They are clearly abettors in this case liable for penal action u/s 112 (a) of the Customs Act 1962.'

2. Learned Senior Counsel for the appellants submitted that these two appeals had been originally listed together with those of M/s Rashtriya Chemicals & Fertilizers Ltd and M/s ICICI Bank Ltd but that the Tribunal, *vide* final order[2], held that

> *'1.2 Though the appeals of all the noticees/appellants were tagged and listed for hearing we directed for de-tagging/delinking the appeals of all other Appellants except for the two appellants i.e. M/s Rashtriya Chemical and Fertilizers Ltd. (Appellant 1) and M/s ICICI Bank Ltd (Appellant 2). So we are in present order dealing with the appeals filed by these two appellants.'*

and that

> *'4.45 In view of the above the appeals filed by the other conoticees need to be considered separately on the basis of their roles played in the act of getting forged signatures on the Project Implementing Authority Certificates. Their appeals need to be decided on the merits of their case after hearing them. For this reason we have delinked those appeals from the present two appeals.'*

giving the impression that it was, owing to unavailability after 'detagging' for being heard on that day, left with no option but to direct those to be taken up separately.

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[2] [final order no. A/86681-86682/2021 dated 1st July 2019]

3. Learned Senior Counsel submitted that the finding in the appeal of M/s Rashtriya Chemicals & Fertilizers Ltd to the effect that

> *4.34 Appellant 1 has in his appeal challenged the order of confiscation under Section 111 (o) of the Customs Act, 1962 and penalty imposed under Section 112 (a), ibid. These sections read as follows:*
>
> > *SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -*
> >
> > *(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*
> >
> > *SECTION 112. Penalty for improper importation of goods, etc.- 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*
>
> *xxxxx*
>
> *4.38 Commissioner observation that the Appellant 1 was direct beneficiary of the Acts of contractor and Shri Rakesh Yadav, forging the countersignature, cannot be the reason for imposition of penalty under Section 112 (a). Section 112 (a) as worded requires leading more positive evidence to establish the act of omission or commission or abetment on the part of the person which made goods liable for confiscation, for imposition of penalty. In this case where we find that Appellant 1, have acted bonafidely throughout and made all efforts to comply with conditions of notification, the penalty under Section 112 (a) cannot be justified. So we set aside the penalty imposed on Appellant 1 under Section 112 (a).*
>
> *xxxxx*

> *5.0 In view of our discussions as above, we allow the appeals filed by Appellant 1 and Appellant 2 against the impugned order.'*

has set aside the confiscation which has consequences insofar as appeal of the two individuals before us are concerned inasmuch as there can be no penalty without finding that goods are liable to be confiscated.

4. We have heard Learned Authorized Representative.

5. These appeals are to be decided only the limited aspects of scope for retention of penalty under section 112 of Customs Act, 1962 once liability to confiscation has been set aside by the Tribunal. It is settled law that confiscation is *qua* goods – imported or exported – while penalty is *qua* persons, whether natural or artificial. There is no scope under Customs Act, 1962 for separate confiscation *qua* persons and to be determined by disaggregation of noticees to the adjudication proceedings. The show cause notice is clear and, in no uncertain terms, alleged that the goods are liable for confiscation in accordance with the manner provided in section 111(o) of Customs Act, 1962. Penalty under section 112 of Customs Act, 1962 would follow to the extent that noticees

> *'(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..*

(b) ……'

in section 112 of Customs Act, 1962 which, therefore, implies that, only to the extent that a person was thus responsible by acts of omission or commission in contributing to the cause that lead to confiscation of the goods, penalty could be imposed. In the absence of confiscation of the goods, as determined by the Tribunal in the appeals of M/s Rashtriya Chemicals & Fertilizers Ltd and M/s ICICI Bank Ltd *supra*, penalty cannot be imposed under section 112 of Customs Act, 1962 on any person in relation to the impugned goods. Accordingly, nothing survives in the impugned order insofar as these two individuals are concerned.

6. The appeals are, therefore, allowed.

(Order pronounced in the open court on 13/062/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*