# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

## CUSTOMS APPEAL NO: 85560 OF 2021

[Arising out of Order-in- Original No: 94/2020-21/Commr/NS-V/CAC/JNCH dated 27th February 2021 passed by the Commissioner of Customs (NS-V), Nhava Sheva.]

**Samir J Shah**
285, Sucheta Niwas, 1st Floor, Room No. 18,
S.B.S Road, Fort, Mumbai-400 001 … ***Appellant***

*versus*

**Commissioner of Customs**
Jawaharlal Nehru Custom House, Nhava Sheva,
Raigad, Maharashtra- 400707 …***Respondent***

*APPEARANCE*:

Shri Ashwini Kumar Prabhakar, Advocate for the appellant

Shri A Pathan, Deputy Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**FINAL ORDER NO: 85601 /2024**

| | |
|---|---|
| DATE OF HEARING: | 16/04/2024 |
| DATE OF DECISION: | 16/04/2024 |

This appeal lies against order[1] of Commissioner of Customs, Nhava Sheva affirming recourse to section 112(B) of Customs Act, 1962 to impose penalty of ₹ 5,00,000/- on Shri Samir J Shah for alleged role in concealing particulars that could have had effect on

[1] [order-in- original No. 94/2020-21/Commr/NS-V/CAC/JNCH dated 27th February 2021]

assessment of bill of entry.

2. Learned Counsel for appellant, who is on the staff of 'customs broker' concerned submitted that proceedings were initiated for alleged misdeclaration of value in the import of "multi functional laser printer parts" against 42 bills of entry in the past after examination of the consignment subsequently imported sought to be cleared against bill of entry by M/s N V Associates no. 3829112/18.11.2013, revealed these to have been affixed with brand name of 'Xerox' leading to action under section 111 and section 112 of Customs Act, 1962 consequent to re-determination of assessable value. Learned Counsel further submitted that the appellant was not in any way concerned with the identity of goods and that declaration had been filed solely in accordance with documentation furnished by the importer. He also submitted that the finding of

> *'19.5 As regards the contention that Shri Samir shah was only a employee of M/s Wairkar, I find Shri Samir was working with CHA firm, M/s Accurate which had cleared the earlier consignments of M/s. N.V. Associates. Shri Mukund Warkar in his statement recorded under Section 108 of the Customs Act, has stated that the jobs or M/s N.V. Associates were brought to their office by Samir Shah. Shri Samir Shah has himself admitted that Shri Deepak Shah had contacted him (Samir Shah) for clearance of his goods. I also find that Deepak Shah have shifted his CHA from M/s Accurate to M/s Wairkar. Shri Samir Shah in his statement had stated that in the span of 3 months he has cleared 6 Bills of Entry of M/s N.V. Associates. Hence the contention of Shri Samir Shah of being a mere employee does not hold water and his role in the said evasion of duty is on record particularly the fact that he asked for the Part nos. and still did not ensure that brand of the goods was declared in the Bills of Entry.*

*xxx*

> *20.1 Shri Samir Shah was aware of the wrong doings of the Importers and still continued to clear the consignments of M/s N.V. Associates. Being an employee of CHA he was supposed to safeguard the interests of Customs department, however, facts of the case indicate that Shri Samir Shah have acted as a middleman between M/S N.V. Associates and the CHA having caused the filing of Bills of Entry and undervaluation of goods and have thus rendered himself liable for penalty under Section 112(b) of the Customs Act, 1962 as proposed in the SCN.'*

in the impugned order does not evince that the ingredients envisaged for imposition of penalty under section 112 (b) of Customs Act 1962 had been established.

3. Learned Authorized Representative submitted the appellant had conceded that the declaration in the latest bill of entry did not include the brands affixed on the goods which suffices for fastening penalty in relation to goods held liable for confiscation under section 111 of Customs Act, 1962 on that very ground for earlier imports identically declared.

4. It would appear that the admission of alleged discrepancy in the 42 consignment imported earlier by M/s N V Associates was, in the absence of any examination report adduced in the impugned proceedings and owing to solely statements recorded during investigation, presumed by the original authority. It would appear that the case against the appellant is built on a statement confirming the facts relating to latest consignment that alone had been subjected to

examination. There is nothing on record to establish that branded goods were contained in the earlier consignment or that the appellant was aware of similarly discrepancy in the goods handled earlier by him. Furthermore, the appellant was not shown as having dealt with the goods in any manner before or after clearance to counter the claim of having been concerned only with filing of bill of entry.

5. Goods were confiscated under section 111(m) of Customs Act, 1962 which is contingent only upon incorrect that declaration in bills of entry for clearance. No evidence has been brought on record to establish that the appellant was aware of the presence of branded products in the consignment when bills were filled as only such act of omission and commission rendering goods liable for confiscation then would lead to penalty under section 112 of Customs Act, 1962. There was, thus, neither any cause for invoking section 112(a) of Customs Act, 1962, which the customs authorities desisted from proceeding with, and nor is there evidence of appellant having been concerned with the goods in the manner set out in section 112(b) of Customs Act, 1962. Accordingly, the impugned order is set aside to allow the appeal.

*(Dictated and Pronounced in Open Court)*

**(C J MATHEW)**
***Member (Technical)***

*/as