# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

**Customs Appeal No. 85590 of 2019**

(Arising out of Order-in-Appeal No.MUM-CUSTM-PREV-APP-1029/2018-19 dated 23.01.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III)

**MDS Associates** **.... Appellant**
Flat No.411, B-Wing, Punit Tower-2,
Plot No.53, Sector 11, CBD Belapur,
Navi Mumbai 400 0614.

Versus

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

## APPEARANCE:

Shri Brijesh Pathak, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/87608/2024**

Date of Hearing: 23.12.2024
Date of Decision: 23.12.2024

***Per: S.K. MOHANTY***

Imposition of penalty under Section 114AA of the Customs Act, 1962 on the appellant is the subject matter of present dispute.

2. Brief facts of the case are that the Customs department had gathered information that one M/s. Royal Impex had imported banned/prohibited explosive firecrackers but declared the same as 'Car Mats' in the Bill of Entry (B/E) filed for home consumption. On the basis of the wrong declaration made in the B/E, further investigation was carried out and the department found that the appellant M/s. MDS Associates along with others have knowingly and intentionally filed the B/Es with the wrong description of the

goods, which were prohibited for import under ITCHS. Based on the investigation, show cause proceedings were initiated against the notices, including the appellant herein. In the adjudication order dated 28.07.2016, the original authority had imposed penalty of Rs.7,00,000/- under Section 114 of the Customs Act, 1962 on the appellant. On appeal against the adjudication order dated 28.07.2016, the learned Commissioner (Appeals) vide the impugned order dated 23.01.2019 has upheld confirmation of the penalty amount and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has filed the present appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submitted that the appellant in the capacity of a Customs Broker (CB), had not made any declaration or signed any documents with intent to evade payment of Customs duty on importation of the disputed goods. Thus, he submitted that since there is no element of *mens rea* on the part of the appellant, imposition of penalty in the original order and subsequently upheld in the impugned order cannot be sustained. To support such stand, learned Advocate has relied upon the order passed by the Co-ordinate Bench of this Tribunal, in the case of Hera Shipping Solutions Pvt. Ltd. Vs. Commr. of Cus. Chennai-IV, reported in 2022 (382) E.L.T. 552(Tri.-Mad).

4. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that the provisions of Section 114 AA *ibid* are attracted in the case, where any person knowingly or intentionally makes or signs any documents, which is false or incorrect in any material particulars. Thus, he submitted that M/s. Royal Impex being a dummy firm and was not in existence at the material time of import, the appellant herein had filed the B/E under his signature, mis-declaring the goods as Car Mats and not as Firecrackers. Hence, he submitted that the provisions contained in Section 114AA *ibid* are attracted for imposition of penalty on the appellant.

5. Heard both sides and perused the case records.

6. Section 114AA of the Act of 1962 provides for imposition of penalty for use of false and incorrect material with regard to import or export of the goods. The said statutory provision is extracted herein below:

> *"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 purpose of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

7. On perusal of the case records, it transpires that the appellant-CB had filed the B/E No. 7223537 dated 30.10.2014 online, in the name of M/s Royal Impex, by declaring the imported goods as 'Car Mats (Plastic)'. While filing the B/E, the appellant-CB had made a declaration online that *"I/We certify that the above entries are correct".* On investigation, it was found by the department that the IEC holder is a bogus importer. Further, the appellant-CB had filed the B/E without any KYC documents, authorization and without original documents. Accordingly, the original adjudicating authority had correctly held that the said act or omission of filing the B/E, without obtaining the original papers and KYC verification, clearly amounted to making false or incorrect declaration in filing the B/E under the Act of 1962.

8. On reading the above statutory provision, it is manifestly clear that if a person makes/signs any declaration, statement etc., knowing fully well about its truth and accuracy, but subsequently if it is found that the same is false or incorrect, then such person concerned is exposed to the penal consequence provided in the statute. On examination of the case records, more particularly the adjudication order, I find that the B/E in the present case, was filed by the appellant by mis-declaring the goods as Car Mats (Plastics), instead of the actual imported goods i.e., explosive fire-crackers. Since, the appellant in this case had signed the document (Bill of Entry), and that the said goods were prohibited for import, it cannot be said that the appellant was not aware about such mis-declaration made in the Bill of Entry. Further, M/s. Royal Impex on whose name the B/E was filed, later on found to be a dummy firm and was not in existence at the material time, when the goods reached the port of import. Thus, in my considered view, imposition of penalty on the appellant under Section 114AA is justified.

9. Therefore, I do not find any infirmity in the impugned order dated 23.01.2019 passed by the learned Commissioner (Appeals) and accordingly, dismiss the appeal filed by the appellant.

(Dictated and pronounced in open court)

**(S.K. Mohanty)**
**Member (Judicial)**

SM