CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86631 OF 2023

[Arising out of Order-in-Appeal No: 111 to 114 (CAC)/2023(JNCH)/Appeals dated 7th February 2023 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Dhairya International
B-VIII/26, Tanda Road, Jalandhar – 144004 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87543 OF 2023

[Arising out of Order-in-Appeal No: 111 to 114 (CAC)/2023(JNCH)/Appeals dated 7th February 2023 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Mukul Gupta
Dhairya International B-VIII/26, Tanda Road
Jalandhar – 144004 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Ms Kanika Malhotra, Advocate for the appellants

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86395-86396/2025

DATE OF HEARING: 01/05/2025
DATE OF DECISION: 01/10/2025

PER: C J MATHEW

M/s Dhairya International and the partner in the firm, fastened with penalty of ₹ 10,00,000 under section 114 of Customs Act, 1962, is in appeal before us against order[1] of Commissioner of Customs (Appeals), Mumbai–II for having upheld the said detriment determined in adjudication of alleged contravention in export of 'readymade garments' purportedly exported by them,

2. On behalf of appellants, it is submitted by the Learned Counsel that they had no interest in the goods and were not concerned with the alleged irregularities therein owing to which they not only should not have been penalized but also that the impugned proceedings should not have been commenced at all. Narrating the backdrop, she submitted that an export consignment, comprising 12 shipping bills for clearance 'girls shirts and T shirts' valued at US $ 95,95,509.80, was found to be short by almost half of the declared quantity and the actual value thereon to be about a tenth of that declared leading to issue of notice. Learned Counsel submitted that they had procured readymade garments

[1] [order-in-appeal no. 111 to 114 (CAC)/2023(JNCH)/Appeals dated 7th February 2023]

from a supplier at Tirupur which had not only been consigned directly to an entity in Mumbai but were also entered for export against shipping bills filed in the their name without any instructions from them and that neither of the appellants had signed to file shipping bill owing to which they could not be held liable for any action under Customs Act, 1962.

3. According to Learned Authorized Representative, the claims now made by the appellant were not tenable inasmuch as they would have been cognizant of the intended export by electronic communication upon which objections could have been raised and that, even at the stage of investigation ,the appellants had failed to inform lack of concern with the goods while, at the same time, the admission in statements of the partner of the appellant-firm were never retracted. It was further submitted that, notwithstanding the present protestation of concern with the goods, the appellant did, in the past, request for provisional release of the goods.

4. We are not concerned with the purported inconsistencies in the stand of the appellants as those are on record only unilaterally so in the absence of the appellants having been heard in person. The opportunity for hearing having been granted notwithstanding, such conclusions remain uncontroverted. Learned Counsel has submitted that appellants, even if concerned with procurement of goods, had nothing to do with further disposition thereof and the findings of lower authorities do not

controvert that submission either. We find that the order has reference to 'exporter' and, cautiously so, has not named the exporter. There is, thus, no finding of linkage of the appellants with the exports and, even now, there is nothing more except admission that they had procured the goods with investigation not having examined the further role of the appellants insofar as alleged contraventions are concerned.

5. In line with limited plea before us, confiscation of the goods is not an issue in the appeal. As far as the penalties are concerned, in the absence of identified exporter and with no evidence of appellants being the exporter, the findings appear to turn on the appellants being beneficial owner; a beneficial owner has to established as beneficiary and there is nothing on record to evidence that any incentive or facilitation would have accrued to the appellants upon successful exportation of impugned consignments. The specific finding leading to the imposition of penalty on the appellants is

> '*24. DISCUSSION AND FINDINGS*
>
> *xxxxx*
>
> *(xv) The Exporter has resorted to gross overvaluation and misdeclaration in quantity to avail irregular export benefits, therefore, the goods appear liable for confiscation under Section 113(i), (ia) and (k) of the Customs Act, 1962. Further, Exporter liable to penal action under Section 114 (Hi) of the Act, for having misdeclared the export goods in terms of value and quantity thus rendering them liable for confiscation under Section 113 of the Customs Act, 1962 and also having made*

> *false declaration in the Shipping Bills filed before the Indian Customs in contravention of the provisions of Section 50(2) of the Customs Act, 1962 with an intent to avail inadmissible duty drawback and other export incentives.'*

which has failed to examine and conclude the specific role of the appellant in contraventions, if any. It is also on record that

> *'7. The Appellants' contention that the impugned order has been passed ex-parte without considering the submissions of appellant and in defiance to principle of natural justice, I find from the impugned order, that the OA following the principles of natural justice had granted ample opportunities of personal hearing dated 30.07.2019, 28.08.2019, 25.09.2019 and 18.08.2020 to th8 appellants prior to issuance of the impugned Order-in-Original to enable them to put forth their views, which they had deferred/not availed, for reasons stated found unsatisfactory. As such, I hold that principles of natural justice have been followed in this matter. Hence contention of the appellants is not just and proper.'*

6. It is admitted fact that the appellants were not heard before the show cause notice was disposed off and the assumption of the findings remaining unchallenged prompted the first appellate authority to fasten the goods to the appellants. Thus, it was that the orders of the lower authorities proceeded to merely follow the narration in the show cause notice and confirmed the penalties against the appellant. In the light of above, we find that the impugned order lacks reason of law and fact in concluding that the appellant was liable to be proceeded against in connection with export goods that were short of quantity declared and

held as overvalued owing to which we set aside the penalties under section 114 and section 114AA of Customs Act, 1962 imposed on M/s Dhairya International and Shri Mukul Gupta.

7. Appeals are accordingly disposed off.

(Order Pronounced in Open Court on 01/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*