

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 50503 of 2021-SM

(Arising out of order-in-appeal No. CC(A)CUS/D-II/ICD TKD/345/2020 dated 24/30.07.2020 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Girish Kumar Singh

C-296/A, New Ashok Nagar
Near Dharmshila Hospital
New Delhi-110096.

Appellant

VERSUS

Commissioner of Customs

New Customs House
Near IGI Airport, New Delhi-110037.

Respondent

APPEARANCE:

Sh. Rajesh Chhibber, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50679/2022

DATE OF HEARING: 14.03.2022
DATE OF DECISION: 03.08.2022

ANIL CHOUDHARY:

The issue in this appeal is whether penalty of Rs. 10 lakhs has been correctly imposed on the appellant under Section 112(b) of the Customs Act, 1962 of the Customs Act.

2. The appellant is working as clearing agent of imported goods, but not having any CHA/CB license. Till 2007 the appellant had dealings with Sh. Habib-uz-Zaman who was involved in import of goods. Habib-uz-Zaman again approached the appellant in 2016 for helping for import

of marbles. Since Habib-uz-Zaman was not having IEC, he asked appellant to find out some person on whose IEC the goods could be imported. Around same time, one IEC holder Mr. Devi Das Dhingra, Proprietor of M/s Ankit Enterprises asked the appellant to help him to surrender his IEC registration. Therefore, the appellant introduced Devi Das to Habib-uz-Zaman and accordingly for a consideration Devi Das agreed to allow Habib-uz-Zaman to import marbles on the IEC of Devi Das. That in the instant case, Habib-uz-Zaman sent bill of lading dated 10.10.2016 showing import of corrugated boxes. On enquiry by the appellant, Habib-uz-Zaman informed that due to urgent requirement he imported corrugated boxes and he ensured that the same shall not be repeated. This was communicated by the appellant to Devi Das. It is an admitted fact that the CHA was also appointed by Habib-uz-Zaman himself and the appellant had no role in the import of said goods.

3. DRI developed an information regarding smuggling of cigarettes of foreign origin from Singapore in a 40 feet container – KMTU29283620 which was lying at ICD, Tughlakabad (ICD, TKD) since 22.10.2016, which was declared to contain corrugated boxes (packing material) in the bill of lading. The bill of entry was not filed. As per the bill of lading No. KMTCSIN502440 dated 10.08.2016, the consignment was shipped to M/s Ankit Enterprises. The above said container, on examination, was found to contain only a few corrugated boxes (106 Nos.) and the remaining container had the cigarettes of foreign origin of different brands viz. "GUDANG GARAM International", "Red Black" and "DJARUM BLACK". Detailed investigation revealed role of various persons including the appellant in the import of said container.

4. This appellant came to know about improper import by Habib-uz-Zaman only when he was called by the customs officer for recording of his statement on 03.02.2017 followed by another statement on 19.04.2017. The appellant categorically denied having any knowledge about the mischief of cigarette import by Habib-uz-Zaman. This appellant categorically stated that he was not involved in the improper import of cigarette nor involved in the clearance of the said consignment.

5. Pursuant to investigation show cause notice was issued on 15.06.2017 proposing to confiscate the cigarette and imposed penalty on various persons including this appellant. This appellant contested the show cause notice on the allegation on him that he was involved in the import of the consignment of cigarette, as he has facilitated by being a channel between Devi Das and Habib-uz-Zaman and Badi-uz-Zaman. Vide order-in-original the consignment of cigarette was absolutely confiscated and penalty of Rs. 5 lakhs was imposed on M/s Ankit Enterprises, the IEC holder. Further, penalty of Rs. 50 lakhs was imposed each on Habib-uz-Zaman and Badi-uz-Zaman under Section 112(a) of the Act. Penalty of Rs. 10 lakhs was also imposed on this appellant under Section 112(b) of the Customs Act, 1962.

6. Being aggrieved, this appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order has been pleased to reject the appeal observing that it was this appellant who has arranged the meeting between the IEC holder M/s Ankit Enterprises and Habib-uz-Zaman who is the actual importer. Further, observed

that this appellant also undertook to arrange for custom clearance of the imported consignment.

7. Being aggrieved, the appellant is before this Tribunal.

8. Learned Counsel for the appellant inter alia urges that the appellate authority has not applied his mind on the submissions of appellant as he has merely upheld the findings of the original authority. He was incorrectly held that the appellant did not rebut the findings of original authority. Therefore, the impugned order is bad in law. On facts, the role of appellant was only to arrange meeting between Devi Das and Habib-uz-Zaman and the appellant neither filed the bill of entry or was involved in clearance of goods. Any action on the part of appellant much before the import of goods could not be made basis to invoke penalty under Section 112(b) of Customs Act.

9. It is further urged that the lower authority has wrongly held that since the appellant facilitated the misuse of IEC, he was to be treated as he was involved in said particular import of cigarettes, whereas there was not an iota of evidence on record either in the form of document or statement that the appellant was at all having any information of the so-called mischief played by Habib-uz-Zaman. It is further urged that the penalty under Section 112(b) is not attracted in the facts and circumstances as penalty under this Section is attracted for reasons which have not been found to exist in the case of this appellant.

Section 112 reads as follows:-

“(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”.

It is further urged that penalty has been imposed mechanically as there is no finding that this appellant has acquired possession or was 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.

10. It is further urged that it is a settled law that for making out a case, the Department is required to categorically mention the provision which was made basis for imposition of penalty. The appellant relies judgment of Apex Court in the case of **Amrit Food Ltd., -2005 (190) ELT 433 (SC)** which has been followed in number of cases. For ready reference, the appellant is relying upon the decision of this Tribunal in the case of **Shri Mahavir Wire Industries vs. CCE -2016 (335) ELT 159 (Tri. Del.)**. It is further urged that appellant also relies upon the decision of this Tribunal in the case of **Green Port Shipping Agency vs. CC-2021 (378) ELT 458 (Tri. Del.)** wherein it has been held that no penalty can be imposed without proving the role of person being charged. Learned Counsel accordingly prayed that the appeal may be allowed.

11. Learned Authorised Representative for the Revenue relies on the impugned order.

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12. Having considered the arguments of both sides and on perusal of the appeal record, I find that the only allegation against this appellant is that he introduced the actual importer Habib-uz-Zaman and Badi-uz-Zaman to the IEC holder, who agreed for the use of his IEC on consideration agreed to be provided by Habib-uz-Zaman. Thereafter, there is no role of this appellant forthcoming. None of the co-noticee has stated anything against this appellant save and except that he has introduced the importer and the IEC holder. Thus, I find that none of the condition as stipulated in Section 112(b) of the Act is attracted for imposing penalty. Accordingly, I set aside the impugned order and allow the appeal so far this appellant is concerned.

13. In the result, the appeal is allowed.

(Pronounced on 03.08.2022).

(Anil Choudhary)
Member (Judicial)

Pant