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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CUSAA 128/2018

GUNJAN SHARMA ..... Appellant

Through Ms. Reena Rawat and Mr. Piyush Kumar, Advocates.

versus

COMMISSIONER OF CUSTOMS (PREVENTIVE) ..... Respondent

Through Mr. Harpreet Singh, Senior Standing Counsel.

% Date of Decision: 20th August, 2019

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

<u>J U D G M E N T</u>

<u>MANMOHAN, J</u>: (Oral)

1. Present appeal has been filed under Section 130 of the Customs Act challenging the final order No. C/A/55930/2017-CU(DB) dated 18th August, 2017 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi in Custom Appeal No. C/56324/2013, whereby it directed the Appellant – the Customs House Agent, to pay reduced penalty of Rs. 15,00,000/-.

2. The questions of law framed in this appeal are as follows:-

> "*(i) Whether Customs, Excise and Service Tax Appellate Tribunal was right in imposing a penalty of Rs. 15 lakhs despite holding that Appellant was not involved in the clearance of the impugned offending consignment of M/s Planet Overseas?*
>
> *(ii) Whether the order passed by the Customs, Excise and Service Tax Appellate Tribunal is perverse and contrary to the facts on record and mentioned in the order-in-original?*"

3. The relevant facts of the present case are that on 27th March, 2012, the Customs Officers examined container No.HDMU 6480486 (for which no Bill of Entry had been filed) and found that it contained fire crackers. The container had been lying at the Inland Container Depot, Tughlakabad, New Delhi for almost two months. On visiting the address given in the Importer Exporter Code (IEC) of the importer, M/s Planet Overseas, it was discovered that the premises did not exist at the given address.

4. Since the Appellant in February 2012 had handled a different consignment of the same importer, M/s Planet Overseas, covered under Bill of Entry No. 6078993 dated 23rd February, 2012, which was released upon ten percent examination, officers searched Appellant's premises but did not find any incriminating document or material with respect to the offending goods. However, they enquired about the past clearance attended by the Appellant, whereupon the Appellant furnished all the documents relating to the consignment cleared by him including KYC documents and informed that the said consignment was cleared after due

scrutiny of documents and due physical examination of goods by the officers.

5. It is the case of the Appellant that despite there being no material to connect the Appellant with the consignment containing offending goods, the Appellant was served a Show Cause Notice dated 27th September, 2012, proposing penalty under Section 114AA and 117 of the Customs Act, 1962 and later vide Order No. 02/SU/COMMR./2013 dated 11th January, 2013, the respondent imposed a penalty of Rs. 30,00,000/- upon the Appellant under Section 114AA and 117 of Customs Act, 1962.

6. The Customs, Excise and Service Tax Appellant Tribunal, New Delhi vide impugned order No. 55930/2017 dated 18th August, 2017 held as under:-

> "*7. After hearing both the sides and on perusal of the record, it appears that on an earlier occasion, the appellant has cleared the consignment, which was meant for M/s Planet Overseas (Mr. Karandeep Singh, Proprietor). The said documents were not the proper documents somehow the consignment was cleared. The appellant has failed to discharge his obligations under the Board's circular No. 9/2010 dated 08.04.2010. Thus, the appellant has not discharged his duties to verify the KYC norms.*
>
> 8. *But fact remains that in the instant case, the appellant has not submitted any documents to clear the container in question. It is the submission of the ld. Counsel that he does not know that Shri Karandeep Singh, who is the proprietor of M/s Planet Overseas and he never met with him. The documents for the earlier consignment were received by Mr. Surender, who had received the documents from Mr. Ravish Kumar. For clearance of the present container, the appellant was not involved. When it is so, the levy of the penalty is*

> *looking on the higher side. By keeping in the mind the doctrine of equality, justice and good conscious, we modify the impugned order and restrict the penalty of Rs. 15,00,000/- (Rupees Fifteen lakhs only). Thus, the appellant will get partial relief from the impugned order*."

7. Learned counsel for the Appellant states that the Appellant had no connection with the container No. HDMU6480486 which contained fire crackers. She states that the Appellant had handled only one out of seven earlier shipments imported by the importer and hence, invocation of Section 114AA was patently perverse. She emphasises that the appellant had cleared more than 1100 consignments since inception through various ports and that it was not found erring on any count even in a single case.

8. She points out that in the present case, the Appellant had taken reasonable steps to verify the IEC Code on the website of DGFT. She contends that as a gigantic fraud had been perpetrated by the owners of M/s Planet Overseas, by forging KYC, IEC, as well as Pan Card and Election Commission Card, the fraud could not be detected by the Appellant – a Custom House Agent.

9. She lastly states that the Customs House Broker Licence of the Appellant was suspended on the same allegation and it was restored by the Tribunal.

10. Per contra, Mr. Harpreet Singh, learned senior standing counsel for the Respondent states that M/s Planet Overseas was a bogus company with a non-existent bank account. He states that if reasonable precautions had been taken by the Customs House Agent in accordance with the

statue, even the goods covered under Bill of Entry No.6078993 dated 23rd February, 2012 should not have been cleared.

11. Mr. Singh, also draws this Court's attention to the statement made by the Appellant under Section 108 of the Customs Act dated 27th March, 2012. The relevant portion of the said statement reads as under:-

> *"Que8: did you make any queries about the shipment from Mr.Surinder?*
> *Ans: Yes. He told me that the consignment has been given to him by one of his friend, Sh. Ravish who is known to him for the last 7 years and there is no problem with the shipment.*
>
> *Que9: Did you verify the credentials of the party you were dealing for the first time in terms of the CHA obligations under the Customs Act, 1962.*
> *Ans: No, I did not do carry out any physical verification as Surinder is known to me for long time and Ravish is his friend. Both are present in office at this moment and would be presented before you as and when required. I have never met Karandeep Singh S/o Gurdeep Singh, the proprietor of the firm, M/s Planet overseas and do not possess any Authorisation letter for clearance of the goods from the said firm for the past consignment cleared by me.*
>
> *Que10: As per CHA obligations you were required to carry out the verification which you failed to meet. Do you admit your lapse?*
> *Ans: Yes, I admit that it is lapse on my part.*
>
> *Que11: Have you verified the credentials of all the other importers for whom you have made customs clearances in terms of the CHA obligations under the Customs Act, 1962 and are you in possession of the required documents as per CHA obligations?*
> *Ans: Yes. I will provide the same by Friday as the file containing those documents might be with my C.A. as many files for account purpose are with my C.A.*

Que:12 What you have to say regarding the Bill No.2011-12/309 raised by your firm to M/s Jai Vardhan Cargo A/C Planet Overseas?
Ans: I state that the firm namely M/S Jai Vardhan belongs to Sh. Surinder. Since, Sh.Surinder had provided the consignment to me, the Bill has been raised to him."

12. Having heard the learned counsel for the parties, this Court is of the view that a Customs House Agent's duty is that of a mere agent rather than as a Revenue officer who is empowered to investigate and enquire into the veracity of documents. As to whether in reality, such an exporter in a given case exists can hardly be the subject matter of "due diligence" expected of a Customs House Agent unless there are factors which ought to have alerted him/her to make a further inquiry. In other words, in the absence of any indication that the Customs House Agent concerned was complicit in the facts of a particular case, it cannot ordinarily be held liable. (See: ***Commissioner of Customs versus Shiva Khurana in CUSAA No. 45/2017 dated 14th January, 2019***)

13. However, in the present case, in view of the statement given by the Appellant under Section 108 of the Customs Act, which has not been retracted till date, this Court is of the view that the Appellant has admitted his lapse in not verifying essential facts.

14. Keeping in view the aforesaid, this Court is of the view that the end of justice would be met if a penalty equivalent to the duty involved in the present case is imposed upon the Appellant, that is Rs.1,77,401/-. Let the said amount be deposited by the Appellant within four weeks.

15. With the aforesaid direction, the present appeal stands disposed of.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

AUGUST 20, 2019

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