IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE R.SURESH KUMAR

C.M.A.No.1401 of 2017

M/s.Premax Logistics
No.243, Thambu Chetty Street
Chennai 600 001.
.. Appellant/ Appellant

..Vs..

The Commissioner of Customs (Chennai-II)
Customs House, No.60, Rajaji Salai
Chennai 600 001.
.. Respondent/ Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 35 G of the Customs Act, 1962, against the Final Order No.40588 of 2017 dated 30.03.2017 passed by the CESTAT, South Zonal Bench, Chennai.

For Appellant : Mr.S.Murugappan

For Respondent : Mr.S.Rajasekar
Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Assessee has filed the present appeal under Section 130 of the Customs Act, 1962 aggrieved by the order dated 30.03.2017, whereby the learned Tribunal set aside the penalty under Section 114AA of the Customs Act 1962 (hereinafter referred to as 'the Act') and reduced the penalty imposed upon the Assessee under Section 112(a) of the Act from Rs.10,00,000/- to Rs.5,00,000/-. The relevant observation of the learned Tribunal is quoted below.

"5.1. It is seen that the role of Shri.R.M.Nagasundaram Proprietor of the appellant has been discussed in para 10 of the SCN at Page 41 of the appeal papers wherein summary of his voluntary statement has been encapsulated. In his voluntary statement recorded on 31.07.2015 by Customs Officer only, Shri R.A.Nagasundaram has stated that he was approached by one Shri R.Suresh to function as CHA to his customers M/s.Sri Sai Enterprises for importing wooden doors from Malaysia and that the invoices, packing list, bill of lading etc., were brought by said Mr.Suresh only, and he used to file the documents online; that after this point, the remaining works were handled by Shri Suresh, who was the proprietor of Shri Swasthik Enterprises a freight forwarding agent; that he had never met Shri Dilli Babu; that he did not know about the concealment of cigarettes etc., and that he had never attended the examination and that Mr.Suresh was taking care of these affairs.

5.2. It is also seen from para-11 of SCN, where statement of Shri Suresh has been summarized, the said person also has deposed that Bills of Entry of Sri Sai Enterprises were filled by him only online in the premises of the appellants and that whenever Shri R.Nagasundaram was not available, he used to sign annexures himself. Shri Suresh also confirmed that he used to attend examination and clearance of the consignment.

5.3. Thus even from the statements which are relied in the notice, recorded under Section 108 of the Customs Act, 1962m the proprietor of Premax Logistics has disowned his role in the entire smuggling exercise and his protestations thereof are more or less corroborated in the statement of P.Suresh also relied in the notice.

5.4. Nonetheless, nowhere in the notice or even in the impugned order has there been any attempt made to demolish the depositions of said Shri Nagasundaram or Shri Suresh. Even more interestingly, in the entire impugned order spanning 16 pages in 31 paragraphs, there is just one (para-30), which even refers to the role of the appellant. Even this para which has been relied by Ld.A.R. comes to an abrupt conclusion without any discussions or findings, that the appellant has committed acts of "Omission and

Commission" and actively aided and abetted the main player. Having done this, adjudicating authority goes ahead to confirm the proposals made in the notice and inter alia impose the penalties appealed against. There is no reasoned analysis as to what was the part played by the appellant and how that has resulted in "acts of omission and commission". I do not find any basis for imposition of the penalty for the raison d'etre for the high quantum of the penalty imposed has also not been brought out. Viewed in this context, it is obvious that the adjudicating authority has been unjudicious and preemptory in imposition of the impugned penalty under Section 114AA, since, unless it is proved that the person to be penalized, has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under that section. This requirement has not been satisfactorily met either in the notice or in the impugned order and hence I do not have any hesitation in setting aside the same.

6. However coming to penalty under Section 112(a) ibid, notwithstanding the many protestations of the appellant, in an exercise involving import spanning 20 consignments, appellant as CHA cannot claim that they had no inkling of what was going on. No proof is adduced anywhere that he actively involved in the fabrication of false material, nonetheless the very fact that he was connected with the main player involved will definitely indicate some level of knowledge of the modus operandi, even though it may be to a smaller extent. In the event, penalty under Section 112(a) is therefore imposable in this case. However I am of the considered opnion that the penalty of Rs.10 lakhs imposed is unduly high and disproportionate vis-a-vis the role of the CHA as depicted in the notice and in the impugned order. I am of the opinion that the interests of justice in this case would be adequately served by reduction of penalty under Section 112(a) of the Customs Act, 1962 to Rs.5,00,000/- (Rupees Five Lakhs only). Appeal is therefore allowed in the above terms."

2. Learned counsel for the appellant Mr.Murugappan urged before us that the penalty under Section 114AA was rightly set aside by the learned Tribunal, finding that no offence was made out against the Proprietor of the said appellant Company

M/s.Premax Logistics, Chennai and the deposition of Shri.R.M.Nagasundaram (Proprietor) and Suresh, were not demolished by any cross examination by the Revenue authorities, but while doing so, the learned Tribunal has erred in holding that penalty is imposable under Section 112(a) which is meant for abetment of the smuggling activities by the concerned persons.

3. Learned counsel for the revenue Mr.S.Rajasekar, however supported the impugned order and submits that the appeal deserves to be dismissed.

4. The relevant provisions of the Act are quoted below for ready reference.

> "SECTION 112. Penalty for improper importation of goods, etc. - Any person, -
>
> (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.
>
> SECTION 114AA. Penalty for use of false and incorrect material. - 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 purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

5. Having heard the learned counsel for the parties and upon perusal of the provisions of the Customs Act, 1962, we are of the opinion that as a matter of fact, no question of law arises from the order of the learned Tribunal, much less substantial question of law, which is the requirement for maintaining the appeal under Section 130 of the Act. We are of the clear opinion that the matter relates to imposition, deletion or reduction of the amount of penalty are within the discretion of the fact finding bodies and the learned Tribunal being the highest fact finding body, in its fair exercise of discretion, has reduced the penalty under Section 112(a) of

the Act while setting aside the penalty under Section 114AA of the Act. The activity of the import of the prohibited goods by covering them with the help of some goods, which are declared and permitted under law, reflected the lack of bonafides on the part of the appellant and the three authorities have concurrently found against the appellant that there were imports made by the Assessee contrary to law.

6. We cannot re-examine the findings of facts at this stage under Section 130 of the Act and as far as the question of penalty is concerned as stated above, we are of the clear opinion that the reduction of penalty under Section 112(a) of the Act from Rs.10,00,000/- was rather a lenient approach taken by the Tribunal and the same does not require any interference by this Court. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KST
To
Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2.The Commissioner of Customs (Chennai-II)
Customs House, No.60, Rajaji Salai
Chennai 600 001.

+1cc to Mr.S.Rajasekar , Advocate SR.No. 2908
+1cc to Mr.S.Murugappan , Advocate SR.No. 2506

A.SK(20/02/2020)