BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)No.410 of 2018 &
C.M.P.(MD)No.5199 of 2018

M/s.SEC Services Ltd.,
Container Freight Services,
Plot No.8, Zone "C"
SIPCOT Industrial Complex,
Madurai Bye-Pass Road,
Tuticorin - 628 008. ...Appellant

vs.

The Commissioner of Customs,
Custom House, New Harbor Estate,
Tuticorin - 628 004. ... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 praying to set aside the impugned final Order No. 40015/2018 dated 04.01.2018 passed in Appeal No.C/40476/2017 by the Custom, Excise and Service Tax Appellate Tribunal.

For Appellant	:	Mr.Hari Radhakrishnan
For Respondent	:	Mr.N.Dilipkumar

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The appellant who is an CFS Agent was imposed with a penalty of Rs.2,00,000/- under Section 114 (1) read with 117 of the Customs Act, 1962 by the Joint Commissioner of Customs who is the original adjudicating authority. Aggrieved over the same, the appellant filed an appeal before the Commissioner (Appeals-II), who is the appellate authority, who in turn had confirmed the penalty imposed by the original authority. Challenging the same, the appellant approached the Customs, Excise and Service Tax Appellate Tribunal and the appellate Tribunal modified the penalty from Rs.2,00,000/- to Rs.50,000/-. Challenging the same, the appellant has preferred the present appeal.

2. The brief facts of the case are as follows.

2.1. On 02.03.2015, on information received from a reliable source that red sander logs which is prohibited to be exported from India, were stuffed inside the container for smuggling out of India, the Officer of the Special Intelligence and Investigation Branch (SIIB), Thoothukudi intercepted one container. On investigation, it was found that the declared goods namely cotton tufted floor mat was substituted with red sander woods. In pursuance thereof, search was conducted in a godown at Ettayapuram Road wherein pieces of red sander woods, other materials and tools were found. The said tools were suspected to be used for manipulating the doors of the container without breaking the seal put by customs and then smuggle red sander woods out of India. Further, the investigation revealed that a similar container loaded with red sander woods left for Jebel Ali Port, UAE. The same was also recalled and examined. The customs seal affixed in the container was found intact. Upon opening the container, it was found that the same was stuffed with red sander logs worth about Rs.1.81 Crores. The shipping bill dated 21.02.2015 was filed by M/s.Sam Impex, Coimbatore through their customs broker M/s.Pierce Leslie Agencies Ltd., Tuticorin for export of cotton tufted floor mats. Statements were also obtained by SIIB and as a result of the investigation, show cause notice was issued to the appellant and two others. After adjudication, the original adjudicating authority imposed a penalty of Rs.1,00,000/- on M/s.Bhavani Shipping Services

India Pvt. Ltd. under Section 114 of the Customs Act and confiscated the container under Sections 113 and 119 of the Customs Act. A redemption fine of Rs.2,00,000/- was imposed in lieu of confiscation. Separate penalties of Rs.1,00,000/- and Rs.2,00,000/- were imposed on M/s.Sea Port Lines (I) Pvt. Ltd., and the appellant herein respectively. On the appeal before the Commissioner (Appeals II), the order of the original adjudicating authority was upheld. Therefore, the appellant and two others filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal. The Appellate Tribunal after hearing the matter and after perusing the orders of the original adjudicating authority and the appellate authority, modified the penalties to the extent of setting aside the penalty imposed on M/s.Bhavani Shipping Services India Pvt. Ltd. and M/s.Sea Port Lines (I) Pvt. Ltd. The confiscation of the container and redemption fine imposed thereon were also set aside. The penalty imposed on the appellant herein was reduced to Rs.50,000/-. Challenging the said order of the Appellate Tribunal, the appellant has filed the present appeal.

3. The learned counsel appearing for the appellant fairly submitted that the appeal filed by the appellant before the Appellate Tribunal only relates to the penalty imposed for violation of provisions under the Customs Act. He would submit that already penalty was imposed for violation of Regulation 6(1)((k) of Handling of Cargo in Customs Areas Regulations [herein after referred as 'HCCAR'], 2009 and the appellant has also paid the same and hence, penalty cannot be imposed for violation of provisions under the Customs Act. Further, he would submit that there is no allegation of direct involvement of the appellant in the offence. Therefore, the Tribunal reduced the imposition of penalty from Rs.2,00,000/- to Rs.50,000/-. However, he stressed the point that once penalty was imposed for violation of Regulations and the appellant also paid the same, for the very same offence, the appellant cannot be mulcted with penalty under the provisions of the Customs Act. In support of his contentions, the learned counsel for the appellant referred to the decisions of various Tribunals.

4. The learned Standing Counsel appearing for the respondent would submit that as per the Regulation 6(1)((k) of HCCAR, 2009, it is mandatory to obtain KYC details of the clients. The appellant being an CFS Agent is responsible for securing goods from the customs area to any other customs area in accordance with the permission granted by DC / AC. The appellant had out sourced the function of transit of the container upto the Port to a customs broker without obtaining permission from the Commissioner as mandated under the Regulations. Therefore, the original authority, appellate authority and the appellate Tribunal imposed penalty on the appellant. The appellant is liable to pay penalty under Section 114 of the Customs Act, for the reason that the said provision would be attracted in the case where a person omits to do any act, if such omission would render the goods liable to confiscation. Further, he would submit that the adjudicating authority has imposed a penalty of Rs.2,00,000/- under Section 114(1) read with Section 117 of the Customs Act on the appellant. Though the same was upheld by the appellate authority, the Appellate Tribunal reduced the penalty. According to him, there is no perversity in the orders passed by the

Appellate Tribunal. In support of his contentions, he placed reliance on the decision of the Bombay High Court in the case of ***Container Corporation of India Limited vs. Commissioner of Customs, NHAVA SHEVA*** reported in ***(2023) 13 Centax 205 (Bom.).***

5. At this juncture, the learned counsel appearing for the appellant fairly conceded that the appellant failed to obtain KYC details from the client and that they have booked container on commission basis. However, he would submit that the appellant did not have any direct transaction with the exporter and booking of the container was done on behalf of their client and hence, the appellant cannot be found fault for not obtaining the KYC details of the exporters. The appellant has not denied the fact that they are the CFS Agent. The allegation against the appellant is that they have violated the Regulation 6(1)((k) of HCCAR, 2009 as they had out sourced the functions to transport the goods from CFS area to the port without obtaining permission from the Commissioner and they have violated the provisions of Section 114 (1) of the Customs Act as they have omitted to take due care of the transit of

the declared cargo. Though the learned counsel for the appellant admitted the violation of the Regulation 6(1)((k) of HCCAR, 2009 as well as Section 114 (1) of the Customs Act on the part of the appellant, his main contention is that once the appellant paid the penalty / already penalty was imposed on the appellant for the violation of the above said regulation, he cannot be imposed with the penalty once again for the violation of the Statute, because both are one and the same offence and that the appellant cannot be imposed with penalty twice, one for violation of Regulation and another for violation of provision of Statute.

6. The learned Standing Counsel for the respondent vehemently contended that mere imposing of fine and payment of penalty for violation of Regulations will not take away the power of the authority to impose penalty for violation of Statute established under Section 114 (1) read with Section 117 of the Customs Act, since the allegation of violation of Regulation and certain omissions are admitted by the appellant.

7. Heard both sides and perused the materials available on record.

8. The main contention of the appellant is that they are not directly involved in the smuggling of the goods and originally the declared goods were stuffed, subsequently, the same were tampered in some other place and hence, they are not the cause for that. There are no materials to show that they have directly or indirectly attempted to do the same or abet with the same. Therefore, the penalty imposed under Section 114 (1) read with 117 of the Customs Act is unwarranted and the orders of the original and appellate authority and Appellate Tribunal are liable to be set aside. However, the duty and responsibility of the appellant and violation of the Regulations are admitted. For better clarity Section 114 (1) and Section 117 of the Customs Act are extracted hereunder.

"114. Penalty for attempt to export goods improperly, etc.—Any person 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 113, or abets the doing or omission of such an act, shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three

times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

117. Penalties for contravention, etc., not expressly mentioned.—
Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."

9. Section 114 of the Customs Act has two limbs. One is any person 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 113. Other one is any person who abets to do or omission of such an act.

10. In the instant case, as could be seen from the materials on record and from the elaborate discussions made in all the proceedings right from the original authority to the appellate Tribunal, there is no direct involvement of the appellant in the offence. However, the appellant failed to do certain duties or omitted to do duties and responsibilities cast on them, for which act, they have to pay penalty. Though there is no attempt on the part of the appellant to export goods improperly, the offence of omitting to do an act has been made out. Therefore, the appellant is liable to pay penalty under the provisions of Customs Act and mere imposing penalty for violation of Regulation 6(1)((k) of HCCAR, 2009 will not take away the power of the authority to impose penalty for the offence under the Customs Act. The relevant portion of the Judgment relied on by the learned counsel for the respondent in ***Container Corporation of India Limited vs.***

Commissioner of Customs, NHAVA SHEVA (cited supra) is extracted hereunder.

"27. On a plain reading of Section 117 of the Customs Act, it is quite clear that the provision pertains to penalties for contravention of the provisions of the Act or in the event of abetment of any such contravention and /or failure to comply with the provisions of the Act, with which the person was under a duty to comply and where no express penalty elsewhere is provided for such contravention or failure, it is only in that event, Section 117 can be invoked. Thus, Section 117 of the Customs Act is an independent provision inter alia dealing with the contravention of the provisions of the Act.

28. In the facts and circumstances of the present case, the Commissioner was justified in imposing a penalty for contravention of the provisions of Customs Act by the appellant in relation to the goods in question. Also the appellant has not raised a dispute, as the contention of the appellant is that there cannot be a simultaneous penalty under Section 117 of the Customs Act and Regulation 12(8) of the 2009 Regulations. Thus, no fault can be found on the penalty of Rs. 4,00,000/- as imposed under Section 117.

29. Insofar as the imposition of penalty under Regulation 12(8) is concerned, Regulation 12(8) of the 2009 Regulation mandates that if the Custom Cargo Service Provider (appellant in the present case) contravenes any of the provisions of the said Regulations or abets such contravention or fails to comply with any provisions of the regulation with which it was his duty to comply, then he shall be liable to a penalty which may extend to fifty thousand *rupees. In the present case, there is a clear contravention of Regulation 5 and Regulation 6, as noted above, hence, the penalty under Regulation 12(8) cannot be faulted."*

11. All the authorities have imposed penalty based on the facts of the present case. Though the appellate Tribunal confirmed the imposition of penalty, it modified the penalty imposed on the appellant by the original authority and the appellate authority. All the authorities have considered the materials and found that there is violation of Regulations and Statute and that the scope and object of the Regulation and the Customs Act are entirely different. Therefore, imposing of penalty for violation of Regulations will not prevent the authorities from imposing penalty for violation of Statute namely the Customs Act. In these facts and circumstances, there is no illegality or perversity in the orders passed by the Appellate Tribunal. There are no merits in the appeal and hence the appeal is liable to be dismissed.

12. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(P.V., J.) (K.K.R.K., J.)
22.08.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

mbi

To

The Custom, Excise and Service Tax Appellate Tribunal,
Chennai

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

mbi

C.M.A.(MD)No.410 of 2018

22.08.2024