IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40189 of 2022

(Arising out of Order-in-Appeal Seaport C.Cus. II No. 38/2022 dated 07.01.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Chaithanya Projects Private Limited **: Appellant**
No. 104, Prestige Omega, 3rd Floor, EPIP Zone,
Whitefield, Bengaluru – 560 066

VERSUS

The Commissioner of Customs **: Respondent**
Chennai-II Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri Abilash R., Chartered Accountant for the Appellant

Shri S. Balakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40285 / 2022

DATE OF HEARING: 08.07.2022

DATE OF DECISION: **21.07.2022**

Order :

By this appeal, the appellant is challenging the impugned Order-in-Appeal Seaport C.Cus. II No. 38/2022 dated 07.01.2022 passed by the Commissioner of Customs (Appeals-II), Chennai whereby the penalty imposed under Section 114A of the Customs Act, 1962, as imposed by the Original Authority, came to be sustained. Therefore, the only issue to be decided is: whether the above penalty imposed on the appellant, as sustained in the First Appeal, is correct or not?

2. Brief facts leading to the present dispute and which are relevant, *inter alia*, are that the appellant filed a Bill-of-Entry for clearance of goods declared as "Engineered Wood Floorings – Qak-Earth / Hickory-Clove / Hickory-Pepper", after classifying the same under CTH 44079990; that the above Bill-of-Entry was facilitated by RMS and the appellant paid the duty at the self-assessed rate; that the Revenue alleged to have found during Audit that the imported engineered wood was real wood, which was not one solid piece, but consisted of two or more layers of wood, which were assembled and glued in a cross-ply construction; that in view of the above, the imported goods were required to be classified under the sub-heading 441232, i.e., under CTH 44123290 – Other, which was assessable to Basic Customs Duty (BCD) at the rate of 10% plus Countervailing Duty (CVD) at the rate of 12% plus Education Cess on Cus at the rate of 3% plus Special Additional Duty (SAD) at the rate of 4%; that for the above reasons, there was short collection of duty, which resulted in issuance of the Show Cause Notice No. 139/2014 dated 17.06.2014; that thereafter, after considering the reply of the appellant, the Adjudicating Authority passed Order-in-Original No. 36046/2015 dated 27.03.2015 wherein the additional duty demand was confirmed, but however, since the appellant had paid the balance tax along with interest, the same was appropriated in the Order-in-Original and that the Adjudicating Authority also imposed a penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 114A of the Customs Act, 1962 on the appellant.

3. Feeling aggrieved by the imposition of penalty of Rs.1,00,000/- under Section 114A ibid. on the appellant, the Revenue preferred an appeal before the First Appellate Authority namely, the Commissioner of Customs (Appeals-II), Chennai, who vide Order-in-Appeal C.Cus. II No. 88/2015 dated 03.09.2015 set aside a portion of the order imposing the penalty under Section 114A ibid. with a further direction to the Adjudicating Authority to correctly

quantify the penalty amount in terms of Section 114A read with the provisos thereto. The reasons given by the First Appellate Authority *inter alia* are that the penalty under Section 114A ibid. should be equivalent to the differential duty along with interest; that in terms of the first proviso, the penalty shall be twenty five per cent of the duty or interest, which works out to Rs.6,32,298/- and that the Adjudicating Authority had imposed a penalty of only Rs.1,00,000/-, which was against the provisions of Section 114A read with the first proviso.

4. Thereafter, the Adjudicating Authority, vide Order-in-Original No.764606/2020 dated 08.10.2020 imposed a penalty of Rs.36,97,501/- under Section 114A ibid. on the appellant. The appellant agitated the above imposition of enhanced penalty before the First Appellate Authority, who vide impugned Order-in-Appeal Seaport C.Cus. II No. 38/2022 dated 07.01.2022 having rejected the appeal, has sustained the enhanced penalty imposed by the Adjudicating Authority and against the said order, the present appeal is preferred before this forum.

5. Section 114A of the Customs Act, 1962 deals with the penalty for short levy or non-levy of duty in certain cases.

6.1 From the various orders of the lower authorities placed on record, I find that the initial dispute was with regard to classification which, as canvassed by the appellant, was debatable, but however, having not disputed, they chose to accept the classification adopted by the Adjudicating Authority and also paid the differential duty along with applicable interest even before the completion of adjudication. It is precisely for this reason that in the Order-in-Original dated 27.03.2015 there is an order appropriating these amounts towards the differential duty and interest. Hence, declaring a wrong classification *per se* would not amount to collusion or any wilful mis-statement or suppression of facts and other than mere

allegation, the Revenue has not placed on record any supporting document/s nor has it established the existence of collusion, etc.

6.2 It is the settled position of law that mere acceptance and payment of differential duty would not *ipso facto* attract any penalty under the statute. Hence, the fact of payment of differential duty along with interest by the appellant and the order of appropriation reflected in the Order-in-Original is a sufficient ground to disbelieve the "mala fides" on the part of the appellant.

7. The lower authorities have given much importance to the first proviso to Section 114A ibid.: the first proviso is applicable only if an assessee chooses to avail the benefit of reduced penalty of twenty five per cent, if the duty or interest determined is paid within thirty days from the date of communication of the order, which is not the case of the appellant here, in the case on hand. The first test of collusion, etc., has to be established and only then could the penalty be imposed. Having not satisfactorily established collusion or any wilful mis-statement or suppression of facts, the penalty under Section 114A of the Customs Act, 1962 appears to have been imposed mechanically by the Adjudicating Authority, which is not in accordance with the statute.

8. Accordingly, the same is not sustainable, for which reason the impugned order becomes liable to be set aside.

9. The impugned order is therefore set aside and the appeal is allowed.

(Order pronounced in the open court on **21.07.2022**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd