

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12352 of 2018-DB

[Arising out of Order-in-Original/Appeal No AHM-CUSTM-000-COM-003-18-19 dated 20.04.2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD]

Shobha Plastics Pvt Limited

.... Appellant

C/o Mr. Harshad Vadodaria,
29-b, Roopkamal, S.v. Road, Kandivali (w),
MUMBAI, MAHARASHTRA-400067

VERSUS

Commissioner of Customs, Ahmedabad

.... Respondent

Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

CUSTOMS Appeal No. 12353 of 2018-DB

[Arising out of Order-in-Original/Appeal No AHM-CUSTM-000-COM-003-18-19 dated 20.04.2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD]

Mr. Harshad Vadodaria

.... Appellant

Director Of M/s. Shobha Plastics Pvt Ltd.,
29-b, Roopkamal, S.v. Road, Kandivali (w),
MUMBAI, MAHARASHTRA-400067

VERSUS

Commissioner of Customs, Ahmedabad

.... Respondent

Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

AND

CUSTOMS Appeal No. 12416 of 2018-DB

[Arising out of Order-in-Original/Appeal No AHM-CUSTM-000-COM-003-18-19 dated 20.04.2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD]

Jayesh Mehta

.... Appellant

A/2/8,quarter, Near Jain Derasar, First Floor, Near
Gunjan Garden, GIDC, VAPI, GUJARAT-396195

VERSUS

Commissioner of Customs, Ahmedabad

.... Respondent

Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE :

Shri Rahul Gajera, Advocate for the Appellanta
Shri Dinesh M. Prithiani, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING : 16.03.2022

DATE OF DECISION : **27.06.2022**

FINAL ORDER NO. A/10736-10738 / 2022

RAMESH NAIR :

The appellants herein have preferred the appeals against the impugned Order-In-Original No. AHM-CUSTOM-000-COM-003-18-19 dated 20.04.2018 of the Principal Commissioner of Customs, Ahmedabad. Mr. Jayesh Mehta and Mr. Harshad Vadodaria have preferred the appeals against imposition of penalties under section 112(a) of the Customs Act, 1962 whereas Shobha Plastics Private Limited has preferred appeal against appropriation of amounts deposited during investigation. Mr. Harshad Vadodaria is the Director of Shobha Plastics Private Limited.

2. Facts relevant to the matter are that, DRI booked a case as against one Mr. Nalin Mehta, Director of M/s Mehta Impex Pvt. Ltd., Mumbai alleging that he evaded anti-dumping duty on vitrified tiles imported by mis-declaring the country of origin as Malaysia, instead of China. Consequently, three Show Cause Notices viz. SCN No. DRI/AZU/INV/-13/2006 dated 29.11.2007, SCN No. DRI/AZU/INV-14/2006 dated 13.08.2007 and SCN No. DRI/AZU/IV-15/2006 dated 31.1.2008 were issued inter-alia raising demand of anti-dumping duty jointly and severally on Nalin Mehta and Shobha Plastics Private Limited, which culminated into Order dated 05.11.2008 of the Commissioner of Customs, Ahmedabad. However, the said Order dated 5.11.2008 was set aside by Tribunal vide its Order dated 15.04.2009 with a

direction to the Commissioner to fix responsibilities of each and every individual separately. Thereafter Commissioner vide his common Order dated 19.01.2011 held Nalin Mehta to be the real importer of the goods and fixed duty liability upon him along with interest and penalties. He further imposed penalty of Rs. 10,00,000/- under section 112(b) of the Act on Mr. Jayesh Mehta and penalty of Rs. 5,00,000/- under section 112(b) of the Act upon Mr. Harshad Vadodaria and further appropriated amounts deposited during investigation on behalf of Shobha Plastics Pvt Limited against the duty and interest liabilities which was fixed upon the importer namely Nalin Mehta.

3. All three appellants aggrieved by the Order dated 19.1.2011 of Commissioner preferred Appeal before this Tribunal and vide Order No. A13758-13760/2017 dated 13/06/2017 this Tribunal allowed the appeals by way of remand to the adjudicating authority for fresh adjudication keeping all issues open including the issue of DRI jurisdiction to issue show cause notice. However, the Principal Commissioner of Customs proceeded to pass the Order pending DRI jurisdiction issue, and vide her Order dated 20.04.2018 imposed the penalty Rs. 10,00,000 on Jayesh Mehta under section 112 (a) of the Act and penalty of Rs. 16,86,880/- on Harshad Vadodaria under section 112 (a) of the Act. As regards, Shobha Plastics the Principal Commissioner ordered appropriation of amounts deposited during investigation against the duty and interest liabilities fixed on Nalin Mehta. It is against this Order dated 20.04.2018 of the Principal Commissioner of Customs, Ahmedabad, the Appellants have preferred the present Appeals.

4. Shri Rahul Gajera, Learned Counsel appearing for the appellants pointed out that Commissioner in second round of litigation vide Order dated

19.01.2011 has held Nalin Mehta as the importer of the goods and accordingly he was held liable to pay duty, department has not preferred appeal against the said order and hence the said position has attained finality. He further submitted that it was vide Order dated 27.01.2014 of this Tribunal, the appeal of Nalin Mehta was allowed on the ground that he has not filed bills of entry and hence cannot be held as importer of goods under section 2 (26) of the Act. He submitted that if that be so then there is no duty liability on the imported goods held on any of the persons named in the show cause notice. In that view, question of imposition of penalty on the present appellants do not arise. He further goes on to submit that the whole case of the department that goods have been imported by way of mis-declaring the country of origin cannot be said to have been established as the main appellant Mr. Nalin Mehta who contested the said allegation in the show cause notice has not been held liable to pay anti-dumping duty on the imported goods. In that event, goods cannot be said to be held liable to confiscation under section 111 (m) of the Act in absence of allegation of mis-declaration of goods by the importer having not been proved. He further submitted that present appellants admittedly had no role as regard the transaction that was entered by importer with the supplier of the goods nor is there any evidence to show that present appellants were in any way aware of the fact that anti-dumping duty was sought to be evaded by the importer of the goods. In view of above, penalty under section 112 (a) imposed upon the present appellants is not sustainable. He further submitted that in any event, impugned order imposed penalty under section 112 (a) of the Act whereas show cause notice proposed penalty under section 112 (b) of the Act. He submitted that imposition of penalty under provision not invoked in show cause notice is bad in law and in this behalf reliance was placed on the following judgements:

- (a) Amrit Foods vs. Commissioner – 2005 (190) ELT 433 (SC)
- (b) Noble Moulds Pvt Ltd vs. Commissioner – 2010 (259) ELT 228 (Del)
- (c) CC vs. Prisma Polyfabs Pvt Ltd – 2003 (162) ELT 381 (Tri. Del.)

5. Shri Dinesh M. Prithiani, learned Assistant Commissioner (AR) appearing for the Revenue submitted that this Hon'ble Tribunal has dropped the demand of duty as against Shri Nalin@ Bakul Zaverilal Mehta holding that he is not the importer in terms of section 2 (26) of the Customs Act,, 1962; that although department's appeal against the said order is pending, if Shri Nalin Mehta is not the importer in the case then Shobha Plastics who has filed seven Bills of Entry should be considered as importer in the case. He submitted that role of Harshad Vadodaria, Director of Shobha Plastics, Jayesh Mehta in relation to incorrect declaration for clearance of imported cargo is mentioned at para 14, 23 and 25 of the show cause notice. He further requested that the matter be kept pending in view of the issue relating to DRI jurisdiction and appeal of Nalin Mehta pending before the higher courts.

6. We have carefully considered the submissions made by both the sides and perused the records. The Principal Commissioner of Customs Ahmedabad vide impugned order has imposed penalty under section 112 (a) of the Act upon the appellants Jayesh Mehta and Harshad Vadodaria on the ground that appellants herein have aided and abetted the importer in importing the goods by way of mis-declaring the country of origin. The appellants said role in relation to import of goods is not borne out of facts on record. Significantly, the case of the department of mis-declaration of Chinese origin goods for evading anti-dumping duty is wholly directed against Nalin Mehta. Jayesh Mehta has stated in his statement that he

attended the work of customs clearance as representative of CHA and acted upon the direction of Nalin Mehta. There is no evidence to show that at the time of imports he was aware that goods were allegedly being mis-declared by Nalin Mehta to customs. Harshad Vadodaria has specifically stated in his statement that he was not aware that by using his factory's name and IEC Nalin Mehta and Jayesh Mehta indulged in evasion of anti-dumping duty by mis-declaring the country of origin. There is no other reliable and corroborative evidence to establish that appellants herein had knowledge that goods imported were of Chinese Origin, in that view it cannot be said that appellants herein have committed any act or omission, which rendered the goods liable to confiscation, accordingly penalty under section 112 (a) cannot be sustained. Further, impugned order imposed penalty under section 112 (a) whereas show cause notice invoked section 112 (b) of the Act, appellants herein were not put to notice under section 112 (a), the same cannot sustain in view of judgement in the case of Amrit Foods V. Commissioner - 2005 (190) ELT 433 (SC).

7. As regards, Shobha Plastics, it is seen that vide Order dated 05.11.2008 the Commissioner of Customs, Ahmedabad fastened duty liability jointly and severally upon Shobha Plastics and Nalin Mehta. However, the said Order dated 05.11.2008 was set aside by Tribunal vide its Order dated 15.04.2009 with a direction to the Commissioner to fix duty liabilities on each and every individual separately. Accordingly, Commissioner vide his common Order dated 19.01.2011 held Nalin Mehta to be the importer of the goods and fixed duty liability upon him along with interest and penalties. The present appellant, Shobha Plastics was not held liable to duty. Department has not preferred appeal against that order dated 19.01.2011 and hence the same has attained finality. In that view,

appropriation of amounts deposited by or on behalf of Shobha Plastics during investigation towards duty and interest liability in the impugned order cannot be sustained.

8. As per our above discussion and findings, the impugned order to the extent it is against the present appellants is not sustainable, hence the same is set aside. All the appeals are allowed with consequential reliefs.

*(Pronounced in the open court on **27.06.2022**)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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