

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 87397 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-74 dated 30.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.)

M/s Meghna Clearing and Forwarding P. Ltd.Appellant
Customs Broker No. 11/456,
119, 1st Floor, Hindustan Kohinoor,
Indl. Complex, LBS Marg,
Vikroli (W), Mumbai – 400 083

VERSUS

Commissioner of Customs (Export), MumbaiRespondent
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai- 400 099

APPERANCE:

Shri A.K. Prabhakar, Advocate for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative
for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85858 / 2022

Date of Hearing: 23.06.2022
Date of Decision: 15.09.2022

Confirmation of penalty of Rs.50,000/- at the reduced rate by the Commissioner (Appeals) that was imposed for Rs.2,00,000/- on the Appellant under Section 114(iii) of the Customs Act, 1962 is assailed in this appeal.

2. Factual backdrop of the case, in brief, is that two manual shipping bills dated 23.07.2015 and 24.07.2015 were filed by the Appellant as CHA for M/s. Mesto India Pvt. Ltd. at SEZ, Panvel through M/s. DHL Logistics Pvt. Ltd., an authorised Appellant as C & F Agency engaged to complete the formalities and clearance at ACC, Sahar, Mumbai. Ground Handling Agency (GHA) M/s. Cambata Aviation Pvt. Ltd. handled the same for export but it did so without the examination and endorsement of the EFO and without Let Export Order from the proper Officer of Customs. Matter was referred to SIIB (Export), ACC, Mumbai for further investigation that resulted in holding the goods liable for confiscation under Section 113(g) of the Customs Act with imposition of penalty on Appellant CHA and the GHA by the adjudicating authority namely Assistant Commissioner of Customs (Export), ACC, Mumbai. In the appeal filed by the Appellant before the Commissioner of Customs (Appeals), Mumbai, Zone-III imposition of penalty was confirmed under Section 114(iii) of the Customs Act but it was reduced from Rs.2,00,000/- to Rs.50,000/- on the ground that no intentional action was forthcoming on the part of Appellant in such an act of export without Let Export Order.

3. During the course of hearing of the Appeal learned Counsel for the Appellant Mr. A.K. Prabhakar, in drawing attention of this Bench to para 5 & 6 of the order passed by the learned Commissioner (Appeals), argued that there was a clear finding by the Commissioner (Appeals) that the GHA namely M/s. Cambata Aviation Pvt. Ltd. faulted in their responsibility to ensure that the documents

were cleared by the Customs before removal of goods and Appellant's only fault was that it had not informed the Customs Authorities and it failed to stop loading of the consignment even after informing the GHA. In citing case laws reported in 2017 (351) E.L.T. 86 (Mad.) in the case of *Villavarayar & Sons V/s. Commissioner of Customs, Tuticorin*, 2015 (320) E.L.T. 264 (Mad.) in the case of *Commissioner of Customs (Export), Chennai V/s. Sahaya Edin Prabhu*, 2014 (312) E.L.T. 694 (Tri. – Mumbai) in the case of *Ryal Logistics V/s. Commissioner of Customs (Export), Nhava Sheva*, 2019 (365) E.L.T. 453 (Tri. – Bang.) in the case of *N.S. Mahesh V/s. Commissioner of Customs, Cochin*, 2019 (369) E.L.T. 1560 (Tri. – Mumbai) in the case of *P. N. Shipping Agency V/s. Commissioner of Customs, Nhava Sheva-I*, 2018 (362) E.L.T. 184 (Tri. – Del.) in the case of *Fast Cargo Movers V/s. Commissioner of Customs, Jodhpur*. Learned Counsel further submitted that even the penalty is less the appeal is required to be entertained by the Tribunal on point of law alone as there is clear finding of the Hon'ble Madras High Court that when penalties are provided in CHA Licence Regulation, 2004 for failure to discharge its function, CHA can't be penalised under Section 114(i) of the Customs Act, for which the order passed by the Commissioner (Appeals) is liable to be set aside.

5. In response to such submissions, learned Authorised Representative for the Respondent-Department Mr. Bhushan Kamble, in placing reliance on the judicial decisions reported in 2010 (251) E.L.T 147 (Tri. – Mumbai) in the case of *Nichrome India Ltd. V/s.*

Commissioner of Customs (Export), Nhava Sheva, 2011 (273) E.L.T. 571 (Tri. – Mumbai) in the case of LCL Logistics (India) Pvt. Ltd. V/s. Commissioner of Customs (Export), Nhava Sheva, 2013 (288) E.L.T. 107 (Tri. – Mumbai) in the case of D. P. Logistics Pvt. Ltd. V/s. Commissioner of Customs (Export), Mumbai-II, 2013 (294) E.L.T. 630 (Tri. – Mumbai) in the case of Inox India Ltd. V/s. Commissioner of Customs (Export), Nhava Sheva, 2014 (302) E.L.T. 267 (Tri. – Mumbai) in the case of Blossom Grocery & Food India Pvt. Ltd. V/s. Commissioner of Customs (Export), Nhava Sheva, 2015 (317) E.L.T. 525 (Tri. – Mumbai) in the case of Nandu Raghunath Shinde V/s. Commissioner of Customs (Export), Nhava Sheva, 2015 (328) E.L.T. 478 (Tri. – Mumbai) in the case of Sylvester & Co. V/s. Commissioner of Customs (Export), Mumbai, 2016 (334) E.L.T. 141 (Tri. – Mumbai) in the case of Kusters Calico Machinery Ltd. V/s. Commissioner of Customs (Export), Nhava Sheva, 2016 (337) E.L.T. 569 (Tri. – Mumbai) in the case of Patkar & Sons Shipping Agency Pvt. Ltd. V/s. Commissioner of Customs (Export), Nhava Sheva argued that intention is immaterial for the purpose of imposition of penalty since Section 114 clearly states that for both act of omission and commission, that would render goods liable for confiscation under Section 113, penalty is imposable. He further submitted that in the present case there was also wrong statement made by the Director of the Appellant Company to the effect that after completion of Customs formalities, goods were directed to be loaded by the GHA, as could be revealed from para 4.1 of order of the Adjudicating Authority. Further, there is an admission of the concern clerk of the

Appellant Company that he inadvertently handed over those two shipping bills to M/s. Cambata Aviation Pvt. Ltd (GHA) due to heavy workload in the particular night and that he admitted his guilt as well as requested for a lenient view, for which learned Commissioner (Appeals) had reduced the penalty that needs no interference by the Tribunal.

5. I have heard submissions from both the sides at length and perused the relevant provisions as well as case laws relied upon by both the parties. At the outset, it must be stated that observation of the Hon'ble Madras High Court that penalty provision is available under the CHA License Regulation, for which CHA could not be penalised under the provision of Customs Act, 1962 for failure to discharge its function was passed on a different set of facts. With due respect to the Hon'ble Courts findings, it can be said that penalties are provided under the CHA Licencing Regulation in case of violation of the obligations by the Customs Broker as contemplated in para 10 of the said Regulation. CHA Licencing Regulation is an offshoot of the Customs Act and Customs Act is broad enough to encompass all kinds of violations. Further Section 114 starts with the word 'any person' and there is no non-obstinate clause in the Customs Broker Licencing Regulation at para 10 to exclude application of the Customs Act. Therefore, it can be said that the *ratio* of the judgment of the Hon'ble Madras High Court passed in *Nichrome India Ltd. (supra)* is confined to the violations/obligations enumerated in the Customs Licencing Regulations. Moreover neither

Article 20 Clause (ii) of the Constitution of India nor Article Section 300 of the Cr.PC restricts two parallel proceedings, the only prohibition contained in both the provisions of the Constitution of India and Cr.PC relates to subsequent prosecution after a conviction/acquittal for the same offence and it is, therefore, a settled principle of law as developed by the Hon'ble Supreme Court of India, one of which reported in *[1953 Cri L.J. 1432 : 2010 ALL SCR (O.C.C.) 294]* in the case of *Maqbool Hussain Vs. State of Bombay*, that there must be a prosecution and punishment in both the proceedings. Therefore, I am of the considered opinion that ratio set by the judgement of the Hon'ble Madras High Court remains confined to the violation enumerated in the CHA Licencing Regulation, 2004 in which similar provisions as contemplated in Section 114 of the Customs Act, 1962 is not available.

6. On perusal of the other judgements cited by the learned Counsel, it is noticed that there is all along denial on the part of the offenders concerning their involvement in the alleged act but in the present case the concern clerk himself had admitted his mistake and sought for a lenient view in the matter. As per Section 58 of the Indian Evidence Act facts admitted by the parties or their agents are not required to be proved in any proceedings. In this regard in citing judicial decisions reported in *2007 (212) ELT 112 (Tri.-Bang.)* in the case of *A.S. Gopinath Vs. Commissioner of Customs, Cochin* learned Counsel for the Appellant had argued that master cannot be held liable for Acts committed by servant beyond the scope of authority

and therefore, for laches on the part of employee of Mr. Bidhan R Parida in mistakenly handing over the goods to GHA without Let Export Order, CHA can't be held liable. However, the ratio of this judgement can't be applied here since the same has been passed without appreciation of para 13(12) of the CHA Licencing Regulation, 2004. It reads:

"The Customs broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts and omissions of his employees during their employment."

(underlined to emphasise)

7. Therefore, for act of the employee direct responsibility is fixed on the Customs broker for which the findings of the Tribunal at Bangalore in the case of *A.S. Gopinath* (supra) cannot help the Appellant in getting the desired remedy. Hence the order.

ORDER

8. The appeal is dismissed and the order passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III vide Order-in-Appeal No. MUM-CUSTM-AXP-APP-74 dated 30.04.2019 in imposing penalty under Section 114(1) of the Customs Act for Rs.50,000/- on the Appellant CHA is hereby confirmed.

(Order pronounced in the open court on 15.09.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)