

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40398 of 2021

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 96/2021 dated 24.2.2021 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Oceanic Enterprises India Pvt. Ltd.

Appellant

No. 52 (Old No. 87) 2nd Floor
Moore Street, Mannady,
Chennai – 600 001.

Vs.

Commissioner of Customs

Respondent

Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Dr. S. Krishnanandh, Advocate for the Appellant
Ms. Sridevi Tritula, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No.40316/2022

Date of Hearing : 06.09.2022

Date of Decision: 08.09.2022

Brief facts are that the appellant who is a Customs Broker filed Bill of Entry dated 1.12.2017 on behalf of the importer namely M/s. Collection Garden for clearance of imported goods declared as "metal Frame, building material accessories, building material gutter, screw etc." in 717 carton. The supplier was shown as M/s. HK Easytrade Trading Co. Ltd. China and the declared value was Rs.4,87,682/-. The duty payable was Rs.1,38,644/-. Based on specific intelligence, SIIB examined the goods and found that the declared goods like metal gutters and tiles were contained only in 25 cartons. Though the importer had

declared 717 cartons, there were 775 cartons and also undeclared goods such as mobile batteries, spectacles, frames, USB cable, mobile chargers, earphones, LED bulb, battery stickers, T-shirts, briefs, swimming costumes, paper material etc. Some of the imported goods carried brand names in the nature of Samsung, Apple, HTC, Nike, Adidas, Armani, Tommy Hilfiger and Calvin Klein which were registered with the Customs under Intellectual Properties Rights. The Bill of Entry was referred to IPC Cell for verification. Except Nokia and Armani brands, the representatives of other IPR holders joined the proceedings and confirmed that the imported goods of their respective brands were counterfeit goods. They requested for destruction under IPR (Imported Goods) Enforcement Rules, 2007 as the goods were undeclared and infringed IPR of the above owners. A Show Cause Notice dated 12.7.2018 was issued to the importer as well as proposing inter alia to redetermine the value of the goods, confiscate the goods under sec. 111(d), (i) and (m) of the Customs Act, 1962 r/w allied Acts and also for imposing penalties under sec. 112(a) and 114AA of the Act *ibid*. After due process of law, the original authority passed the following order:-

"28(A). *For the declared goods as detailed in the Annexure – 1 of SCN:-*

(i) I order that the declared value of 2,63,509/- for the goods declared as Tiles and Metal Gutter be redetermined as Rs.2,72,122/- under Rule 9 of CVR, 2007.

(ii) I order for confiscation of declared goods Tiles, Metal Gutter under sec. 111(m) of Customs Act, 1962 for misdeclaration and under section 119 for using items for concealing undeclared goods.

(B). For the undeclared goods as detailed in the Annexure-2 of SCN:

(i) I determine the value of the goods at Rs.48,24,418/- under Rule 9 of CVR, 2007

(ii) I order for confiscation of undeclared goods under sec. 111(l) of Customs Act, 1962.

(iii) I give an option under Rule 125(1) of the Customs Act, 1962 to the importer to pay in lieu of confiscation redemption fine of Rs.4,80,000/- (Rupees four lakhs eighty thousand only). Once the option to redeem the goods is exercised by the importer, the importer shall, in addition, as per provisions of sub-section (2) of section 125 of the Customs Act, 1962 pay applicable duty and charges payable in respect of such goods.

(C). For the undeclared and Non-BIS complying goods as detailed in the Annexure-3 of SCN:

(i) I determine the value of the goods at Rs.37,93,308/- under Rule 9 of CVR, 2007

(ii) I absolutely confiscate the goods under section 111(d) and 111(l) of Customs Act, 1962 r/w Rule 3(1) of Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 and order for disposal of the same as per the provision said rules.

(D). For the undeclared and IPR infringing goods as detailed in the Annexure-4 of SCN:

(i) I determine the value of the goods as mentioned in the Annexure 4 bearing the brand names, Samsung, Apple, Nike, Adidas, Nokia (for battery sticker and packing material), Calvin Klein and tommy Hilfiger at Rs.26,23,172/-

(ii) I order that the goods as mentioned in the Annexure-4 be treated as prohibited goods under section 11 of the Customs Act, 1962 read with Trade Marks Act, 1999 and Intellectual Property (Imported Goods) Enforcement Rules, 2007 and section 3(3) of Foreign Trade (Development & Regulation) Act, 1992 and absolutely confiscate the same under section 111(d) and (l) of Customs Act, 1962.

(iii) I order that these goods be dealt in the manner prescribed under IPR Rules, 2007 notified vide Notification No. 47/2007-Cus dated 8.5.2007 read with Circular No. 41/2007-Cus dated 29.10.2007

(D)(i) I impose a penalty of Rs.15,00,000/- (Rupees fifteen lakhs only) on the importer under section 112(a) of the Customs Act, 1962

(ii) I impose a penalty of Rs.15,00,000/- (Rupees fifteen lakhs only) on the importer under sec. 114AA of the Customs Act, 1962

(E) I impose a penalty of Rs.5,00,000/- (Rupees five lakhs only) on M/s. Oceanic Enterprises, the Customs Broker of M/s.

Collection Garden imported under sec. 112(a) of the Customs Act, 1962."

2. Against the order passed by the original authority imposing penalty on the appellant under sec. 112(a) of the Customs Act, 1962, the appellant preferred appeal before Commissioner of Customs (Appeals), who vide order impugned herein has rejected the appeal. Hence the appellant is now before the Tribunal.

3. The learned counsel for appellant submitted that the appellant is a Customs Broker holding a valid Customs Broker license. During the course of the business, they filed the subject Bill of Entry on behalf of M/s. Collection Garden wherein the goods were declared as "Metal frame, building material – Accessories, building material – gutter, screw etc.". After examination of the goods, it was found that the consignment contained undeclared goods and also goods which infringed IPR. A penalty of Rs.5,00,000/- has been imposed on the appellant under sec. 112(a) of the Customs Act, 1962. He submitted that the allegation against the appellant is forthcoming from paragraph 27(n) in which it is merely stated that the appellant has violated the provisions of CBLR, 2018 as he did not verify the antecedents of the importer, correctness of the IEC number and identity of the importer. It is alleged by the department that the appellant ought to have verified the details of the importer instead of relying upon the information given by the third party and also should not have accepted the documents handed over by a third party. He argued

that all these allegations / violations if any would fall only under the CBLR, 2018 and are not grounds for imposing penalty under sec. 112(a) of the Customs Act, 1962. A separate Show Cause Notice was issued to the appellant alleging violation under CBLR, 2018 on the very same incident and Order in Original No. 76003/2020 dated 8.9.2020 was passed wherein a penalty of Rs.50,000/- was imposed upon the appellant under Rule 18(1) of CBLR 2018. In the said order, the adjudicating authority refrained from revoking the license and has confined to imposing penalty only. When the appellant has been penalized under CBLR, 2018, the penalty imposed under section 112(a) of the Customs Act, 1962 on the very same allegation cannot sustain. Further, the findings of the authorities below that the appellant ought to have contacted with the importer directly and that the document ought to have been collected from the importer itself are against the decisions rendered by various forums in the following cases:-

- (a) Kunal Travels (Cargo) Vs. Commissioner of Customs, (I&G), New Delhi reported in 2017 (354) ELT 447 (Del.)
- (b) PN Shipping Agency Vs. Commissioner of Customs, Nhava Sheva reported in 2019 (369) ELT 1560 (Tri. Mum.)
- (c) Commissioner of Customs Vs. Trinetra Impex Pvt. Ltd. reported in 2020 (372) ELT 332 (Del.)
- (d) WCI Shipping Pvt. Ltd. Vs. Commissioner of Customs, Chennai reported in 2020 (372) ELT 369 (Tri. Chen.)

He relied upon the above decisions to argue that it has been held that the Customs Broker is not required to look into the genuineness or correctness of declaration made by the importers.

4. It is submitted by the learned counsel that the appellant as a Customs Broker has merely filed document for clearance of the imported goods based on the documents received by them notwithstanding that the documents were received from a third party. Further the Bill of Entry was registered in the EDI system, examination was carried out in respect of the said goods would prove that the importer was in existence. Merely because their GST registration or other particulars did not match or were non-existence would not establish that the importer themselves were not an existing entity.

5. It is argued by the learned counsel that as separate proceedings were initiated against the appellant under CBLR, 2018, which culminated by imposing penalty of Rs.50,000/- a further penalty under the Customs Act, 1962 cannot be imposed. He prayed that the appeal may be allowed.

6. The learned AR Smt. Sridevi Tritula supported the findings in the impugned order. She submitted that the misdeclaration of goods would not have come to light if the SIIB did not examine the consignment. Further, though goods were declared as "metal frame and building material etc.", only 25 cartons contained goods in the nature of which were declared. The appellant had declared 717 cartons in 140 feet container. However, on examination there were 775 cartons and 90% of the cartons contained undeclared goods. Most of these goods were branded items and counterfeit in nature. Besides misdeclaration of goods,

there was infringement of IPR. The misdeclaration of goods is not minor as huge quantity of the goods are undeclared and also infringed IPR. The intention was to clear the prohibited goods and to evade higher customs duty. In the statement given by Shri S.P.R. Bhanuprasad, Managing Director of M/s. Oceanic Enterprises India Pvt. Ltd. (appellant herein) under section 108 of the Customs Act, 1962, it is stated by him that the Bill of Entry was filed on behalf of M/s. Collection Garden and the owner of the company is Shri Mohammed Alameen. He stated that he has not seen the owner and has received the documents and authorization letter from one Srinivasan. That whereabouts of the importer was verified from Srinivasan and the goods were declared and the documents were filed as entrusted and informed by Srinivasan.

7. Though summons was issued to Mohammed Alameen as per the address given by the appellant, the same was returned with the marking 'addressee left'. To find out the genuineness of the importer, verification was done by the department. It was found that no such company existed in the given address. The department made efforts to locate the address in GST registration certificate of the importer which was also in vain as there was no such address or company located in the given address. Though a summons was issued to Shri Mohammed Alameen to appear for recording of the statement, summons was returned undelivered as no such person in the given address. Further a letter dated

9.5.2017 was issued to liner M/s. Gold Star Line Ltd. calling him to produce the load port documents for filing the bill of lading for import of goods. There was no reply to such letter. All these would establish that the appellant has not taken sufficient care while filing the bill of entry. The document had been filed for a person who is untraceable. If the SIIB had not intercepted and examined the goods, it would have led to clearance of prohibited goods / undeclared goods.

8. Countering the argument of the learned counsel that the allegation is under the provisions of CBLR, 2018 for which penalty cannot be imposed under the provisions of Customs Act, 1962, she relied upon the judgment of the jurisdictional High Court in the case of Shri Rama Thenna Thayalan reported in 2021 (12) TMI 47 – Madras High Court and that of this Tribunal in the case of R.S. Arunachalam and Anr. Vs. Commissioner of Customs, Chennai reported in 2022 (3) TMI 287 – CESTAT, Chennai. She prayed that the appeal may be dismissed.

9. Heard both sides.

10. From the facts narrated above, it can be seen that although the goods were declared as “metal Frame, building material accessories, building material gutter, screw etc.” in the Bill of Entry, on examination it was seen that more than 90% of the goods were undeclared items. Only 25 cartons out of 717 cartons contained the goods described in the Bill of Entry. The total number of cartons also exceeded the declared number of cartons

and were found to be 775 cartons. There is misdeclaration and undeclaration of goods. Further, most of the undeclared goods bear the brand of reputed companies and they were found to be counterfeit products. Thus, there is infringement of IPR laws also. Though it can be seen that the appellant who is a Customs Broker has filed the Bill of Entry on the basis of the documents handed over to him by a person representing the importer, in the present case, it has to be seen that the importer is not traceable as the company's address and GST registration shown in the documents are fake. The importer did not care to appear or attend the proceedings. He has not come forward to claim the goods.

11. The main argument put forward by the learned counsel for appellant is that the allegations would only be violation of CBLR, 2018 and that the Customs Broker cannot be held responsible under sec. 112(a) of the Customs Act, 1962. Though it may be true that the Customs Broker acts as per the instructions of the importer, in the present case, as the importer himself is not traceable and the address as well as GST registration reflected in the documents are found to be fake, the act of the Customs Broker in filing the Bill of Entry acquires deep introspection. The Customs Broker has a very important position and has to safeguard the interest of both the importer and the Customs. The Regulations ensure that the Customs Broker discharges his duties in such a way that he safeguards the interest of customs by not importing prohibited goods. The undeclared goods were found to

be counterfeit products of major brand. It is unbelievable to assume that the Customs Broker had no knowledge that the address of the importer or his company's address and GST registration were fake. He ought to have verified all these before filing the Bill of Entry. Though there are duties stated in the CBLR, the said Regulation has to be read along with the provisions of Customs Act, 1962. The Regulation is intended to make the clearance of export and import in a hassle-free manner for both importer/exporter and the customs. The trust embedded in the Customs Broker who has been issued a licence cannot be used in a negligent manner so as to permit undeclared / prohibited goods in large quantities.

12. The Hon'ble jurisdictional High Court in the case of Shri Rama Thenna Thayalan (supra) observed as under:-

"9. Further, it is contended that as a Customs House Agent, his role is limited and for the declaration and mis-declaration of the goods, he cannot be liable for any contravention of Section 50(2) of the Customs Act, 1962. When the goods was stuffed in the container, it was only Coco Peats and the container was sealed by the Central Excise Officers. Only on verifying the Cargo, the Customs Officer has allowed the export and made an endorsement in the Shipping Bill as Let Export. During the investigation, it was established that when Red Sander was substituted for Coco Peat, without appreciating the facts and law properly, the Additional Commissioner had imposed penalty of Rs.10,00,000/-, which was interfered by the Commissioner of Customs and reduced to Rs.3,00,000/-. Whereas, on further appeal by the Department, the same has to be enhanced to Rs.5,00,000/-, which is nothing but non-application of mind and improper application of the provisions of law.

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19. From the records and the own admission of the appellant, it is clear that the appellant had not discharged these obligations, which cast on him. It is a case where under the guise of Coco Peats, prohibited goods namely, Red Sanders weighing 10.760 MTs. has been transported. The DRI based on the intelligence gathered, had rescued the goods and found the Cargo was transported based on the Annexure - A containing the signature of the appellant Customs House Agent. Customs House Agent is governed by the Regulations framed by the

Government in exercise of the powers conferred under the Customs Act, 1962. Therefore, misdeclaration of goods and attempt to export such goods is punishable under Section 114 of the Customs Act. A Customs House Agent, who is a party to the mis-declaration, is liable to pay penalty not exceeding three times of the value of the goods mis-declared. The first respondent Tribunal is empowered to enhance the penalty imposed, if the penalty imposed is not adequate. Further, the provisions under the Regulations to punish the Customs House Agent for violation and contravention of the Regulations is in addition to the penal provisions prescribed under the parent act, namely, the Customs Act. It is incorrect to say that the Customs House Agent is liable only under the Regulations for any violation and contravention. The licence issued to the Customs House Agent under conditions not to commit any grave offence. If action under the Regulations not sufficient for the grave offence, the Customs House Agent is liable also to be proceeded under the Customs Act. There is no legal impediment to proceed against the Customs House Agent under the Customs Act besides action under the Regulations.”

13. from the discussions made above, I am of the view that there are no grounds to set aside the penalty imposed under sec. 112(a) of the Customs Act, 1962 on the appellant. I do note that penalty of Rs.50,000/- has been imposed on the appellant as per Order in Original dated 8.9.2020 under CBLR, 2018. Taking this into consideration, I am of the view that the penalty of Rs. 5,00,000/- imposed under section 112(a) of the Customs Act, 1962 is high and requires to be reduced. I hold that reducing the penalty to Rs.1,50,000/- (Rupees one lakh fifty thousand only) would meet the ends of justice. The impugned order is modified to the extent of reducing the penalty to Rs.1,50,000/- (Rupees one lakh fifty thousand only). The appeal is partly allowed with consequential relief, if any.

(Pronounced in open court on 8.9.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)