

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85318 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-564/18-19 dated 25.09.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III)

**M/s Rishad Shipping And Clearing
Agency Pvt. Ltd.**

Wardhaman Chember, Room No.403, 4th Floor,
Kalyan Street, Masjid Bunder (E), Mumbai-400009.

Versus

.... Appellant

**Commissioner of Customs (Export)-Mumbai Respondent
(Air Cargo Export)**

Air Cargo Complex, Sahar, Andheri (E), Mumbai

Appearance:

Shri Vinay Ansurkar, Advocate for the Appellant

Shri D. S. Mann, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85256/2023

Date of Hearing: 10. 02.2023

Date of Decision: 27.02.2023

Per: Anil G. Shakkarwar

Brief facts of the case are that the appellant is engaged in the business of customs clearance. The appellant had filed two shipping bills bearing No. 6089489 and 6089490 both dated 11.08.2006 on behalf of M/s Shaina Enterprises and the check-list and the Annexure-C were signed by Shri Sunil Nagvekar, who was "G" category pass holder of the appellant. An investigation was carried out in respect three shipping bills including the above stated two shipping bills and it was revealed that the said shipping bills were under the claim of drawback and drawback was allowed

to the exporter. The investigation revealed that foreign inward remittance was not received against the export of goods exported through the above said two shipping bills. Therefore, the drawback paid was recovered to the tune of Rs.1,44,075/- and the same was deposited to the Exchequer on 29.12.2010. A show-cause notice was issued to the exporter, the appellant another Custom House Agent. The Order-in-Original was passed on 26.06.2014 through which *inter alia*, the appellant was imposed with penalty of Rs. 02 lakhs under Section 114(i) of the Customs Act, 1962 and another penalty of Rs.1.0 lakh under Section 117 of the Customs Act, 1962. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) did not interfere in the Order-in-Original. Therefore, the appellant is before this Tribunal.

2. Learned Counsel for the appellant submitted that penalty under said Section 114 is imposed for contravention of provisions of Section 113 of the Customs Act, 1962. The appellant could not produce any authority letter received from the exporter and, therefore, it cannot be held that appellant was reasonable for confiscation of goods. They have submitted that respondent had not produced any corroborative evidence to show that the appellant had abated the exporter.

3. The learned AR has submitted that the appellant was found to have filed export documents on behalf of a person without obtaining authorization from the exporter. He further submitted that verifying the authenticity of the exporter was prime responsibility of the appellant and they have failed to do the same.

4. I have carefully gone through the case records and submissions made by both the sides. I have also gone through the discussions and finding in the Order-in-Original. I find that in para 29 of the Order-in-Original, the original authority has held that the appellant were liable for penalty under Section 117 of the Customs Act, 1962 and subsequently ordered imposition of penalty of Rs.2.0 lakhs under Section 114(i) of the Customs Act, 1962 and penalty of Rs. 1.0 lakh under Section 117 of the Customs Act, 1962 and the said penalties sustained through Order-in-Appeal. I find that there is no finding recorded by the original authority as to why the original authority had imposed penalty under Section 114(i) of the Customs Act, 1962 in the original order. The original authority without giving any reason why penalty under Section 114(i) of the Customs Act, 1962 is liable to be imposed on the appellant, has imposed the said penalty. Therefore, the said part of the Order-in-Original is not sustainable. I, therefore, set aside the penalty of Rs. 2.0 lakhs imposed on appellant under Section 114(i) of the Customs Act, 1962 through the said Order-in-Original dated 26.06.2014.

5. In the above terms, the appeal is partially allowed.

(Order pronounced in open court on 27.02.2023)

(Anil G. Shakkarwar)
Member (Technical)