

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40352 of 2022

(Arising out of Order-in-Appeal Seaport C.Cus. II No. 250/2022 dated 10.05.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Sri Velavan Logistics Services Private Limited : Appellant
No. 1396, 18th East Cross Street,
M.K.B. Nagar, Chennai – 600 039

VERSUS

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

APPEARANCE:

Shri S. Murugappan, Learned Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Learned Superintendent for the Respondent

CORAM:

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

FINAL ORDER NO. 40382/ 2022

DATE OF HEARING: 01.12.2022

DATE OF DECISION: 21.12.2022

Order :

This appeal is filed by the Customs Broker against the imposition of penalty under Section 114 of the Customs Act, 1962 by the Adjudicating Authority, as sustained by the First Appellate Authority vide impugned Order-in-Appeal Seaport C.Cus. II No. 250/2022 dated 10.05.2022.

2. I have heard Shri S. Murugappan, Learned Advocate, appearing for the appellant and Smt.

Anandalakshmi Ganeshram, Learned Superintendent, appearing for the Revenue.

3. The only issue to be decided by me is: whether the Revenue was justified in imposing penalty under Section 114 of the Customs Act, 1962 on the Customs Broker for an alleged violation of Regulations 11(n) and 11(d) of the Customs Brokers Licensing Regulations, 2013?

4. I have considered the rival contentions, have perused the written submissions and have also gone through the judgements referred to during the course of arguments.

5. The Show Cause Notice dated 03.08.2019 was issued on four co-noticees, including the appellant before this forum, and the crux of the Show Cause Notice, *inter alia*, is that there was an attempt to export goods which were undervalued; that the market survey carried out on a single day, i.e. on 15.02.2019, revealed that an exactly similar looking product to the one which was attempted to be exported costed Rs.59/- (M.R.P.) per piece including G.S.T.; that therefore, the value of the goods in question was computed at Rs.115/- per piece in terms of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and that the same was accepted by the authorized representative of the importer. In the said Show Cause Notice, at paragraph 16, the Customs Broker was alleged to have rendered themselves liable for action under the Customs Broker Licensing Regulations (CBLR), 2013 for contravening the provisions of Regulations 11(n) and 11(d) *ibid.* and thereafter, it was proposed in the Show Cause Notice as to the imposition of penalty under Section 114 of the Customs Act, 1962. It appears that none of the co-noticees having replied, except this appellant, to the Show Cause Notice, the Adjudicating Authority vide Order-in-Original No. 80744/2021 dated 08.03.2021 rejected the FOB in terms of Rule 8(1) of the Customs Valuation (Determination of Value of Export

Goods) Rules, 2007 read with Rule 7 *ibid.* and *inter alia* also imposed a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on this appellant under Section 114 *ibid.* Being aggrieved by the above imposition of penalty, the appellant preferred an appeal before the First Appellate Authority, who vide impugned Order-in-Appeal Seaport C.Cus. II No. 250/2022 dated 10.05.2022 accepted the violation to Regulation 10(n) of the CBLR and having rejected the appeal, the present appeal has been filed before this forum.

6.1 The very foundation of this case appears to be very shaky since there is an allegation as to the violation of Regulations 11(n) and 11(d) of the CBLR against which the proposal issued was to penalize the appellant / Customs Broker under the provisions of the Customs Act. It is not as though the consequences of violation of the CBLR are not provided under the CBLR, 2013. Further, Section 114 of the Customs Act, 1962 prescribes imposition of penalty on any person who, in relation to any goods, does or omits to do any act, which act or omission would render such goods liable for confiscation under Section 113, or abets the doing or omission of such an act. Unfortunately, in the case on hand, the only allegation is undervaluation of the goods for which the same were held liable for confiscation under Section 113(i) and 113(ia) of the Customs Act.

6.2 Here, in the case on hand, in the guise of re-determination of value of goods, the Adjudicating Authority has not given any justifiable reasons except adopting the valuation in terms of Rule 6 *ibid.* after rejecting the FOB value in terms of Rule 8(1) *ibid.* Rule 8 authorizes the proper officer to reject the declared value **when he has the reason to doubt the truth or accuracy** of the same and from a reading of the Adjudication Order, I do not see any reasons brought on record as to the doubts about the truth or accuracy of the value declared in relation to the export of goods.

6.3 In any case, the valuation of any goods could never be the domain of a Customs Broker as the same depends upon the contract between the exporter and the importer wherein no Customs Broker would have any say. Further, nowhere in the Order-in-Original or even in the impugned Order-in-Appeal has the respective authority revealed the role of the Customs Broker in either fixing the value at the time of entering into the contract by the exporter with the importer or at the time of declaring the same.

7. Hence, the Customs Broker, in the facts of this case as discussed above, cannot be fastened with a liability under the Customs Act, more so having alleged a different violation altogether.

8. The Hon'ble High Court of Delhi in the case of *M/s. Kunal Travels (Cargo) v. C.C. (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.) has exhaustively dealt with the issue, which also supports my above view. The other judgements relied upon are also in support of my above view. In view of the above, the order of the co-ordinate Bench of the CESTAT is not considered as the decision of the Hon'ble High Court would prevail.

9. Consequently, I am of the view that the imposition of penalty on the appellant / Customs Broker is bad in law. For the above reasons, the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on 21.12.2022)

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