

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

REGIONAL BENCH – COURT NO. I

**Customs Appeal No. 40545 of 2021**

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 345-346/2021 dated 31.03.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**Mr. Thirumalai Thiyagarajan**

**: Appellant**

Managing Director of M/s. Raj Brothers Shipping Pvt. Ltd.,  
S/o. Mr. T.T. Manohara Boopathy,  
No. 64/23, Jeevarathinam Salai, Tondiarpet, Chennai – 600 081

**VERSUS**

**The Commissioner of Customs**

**: Respondent**

Chennai-II Commissionerate,  
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

**WITH**

**Customs Appeal No. 40612 of 2021**

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 345-346/2021 dated 31.03.2021 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**Mr. Hari Prabhu**

**: Appellant**

Director of M/s. Raj Brothers Shipping Pvt. Ltd.,  
S/o. Mr. T.T. Manohara Boopathy,  
No. 64/23, Jeevarathinam Salai, Tondiarpet, Chennai – 600 081

**VERSUS**

**The Commissioner of Customs**

**: Respondent**

Chennai-II Commissionerate,  
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

**APPEARANCE:**

Shri N. Viswanathan, Advocate for the Appellants

Shri R. Rajaraman, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NOS. 40310-40311 / 2022**

DATE OF HEARING: 22.08.2022

DATE OF DECISION: 24.08.2022

**Order :**

These two appeals are filed against the common impugned Order-in-Appeal Seaport C.Cus. II No. 345-346/2021 dated 31.03.2021 passed by the Commissioner of Customs (Appeals-II), Chennai.

2. The only issue before me is: whether the penalty under Sections 112(a) and 114AA of the Customs Act, 1962, levied by the Adjudicating Authority, which came to be upheld in the impugned Order-in-Appeal, is correct?

3. Brief facts, as could be gathered from the impugned order as well as the Order-in-Original and Show Cause Notice, which are relevant for my consideration, *inter alia*, are that the Bill-of-Entry No. 9553735 dated 04.05.2017 was filed by the importer M/s. Ekdant Enterprises, Maharashtra (IEC No. 0316508951) through their Customs Broker M/s. Map Shipping and Co. for the clearance of goods declared as "Furniture, Plastic Buttons, Porcelain Tiles, etc." supplied by M/s. Zhejiang Beiyi Imp. & Exp. Co. Ltd., China vide Invoice No. YHD201706158 dated 29.03.2017 with the declared value of USD 6047.17; that the SIIB, on being referred to by the Shed Officers, examined the goods at Kences Container Terminal CFS and found plastic beads as against the above declared goods; that during the investigation, it came to light that the IEC holder was not the actual importer; that the container covered under the said Bill-of-Entry was removed from the Kences CFS by using forged documents; that a Show Cause Notice was issued to the concerned parties, which included the appellants for their act of arranging the forged OOC documents and removing the container from the Customs Area without proper permission; that a First Information Report (FIR) was lodged against one Mr. Prabhu; that common Order-in-Original was passed vide Order-in-Original No. 73743/2020 dated 13.02.2020 against all the notices wherein penalty of Rs.1,40,000/- was imposed under Section 112(a) *ibid.* and a further penalty of

Rs.30,00,000/- was imposed under Section 114AA *ibid.* on both these appellants; that the appellants preferred appeal before the First Appellate Authority, who having rejected the appeals of these appellants, the present appeals have been filed before this forum.

4.1 Shri N. Viswanathan, Learned Advocate appearing for both the appellants, submitted *inter alia* that the Show Cause Notice does not specifically attribute any act or omission on the part of these appellants; that the appellants were in no way connected with or interested in the consignment in question; that the confiscation of goods proposed under Section 111(l) and 111(m) *ibid.* relate only to an importer of goods; that since theft of the detained goods was involved against which a police complaint had already been filed by the Container Freight Station (CFS), the same would not justify imposition of penalty under the Customs Act on these appellants; that even there is no whisper or finding that these appellants were the beneficial owners of the goods imported and that the Revenue had also not established that the act or omission on the part of these appellants had rendered the goods in question liable for confiscation.

4.2 In support, he relied on the judgement of the Hon'ble High Court of Madras in the case of *Commissioner v. Sushil Kumar Kanodia [2015 (319) E.L.T. A73 (Mad.)]* in *Civil Miscellaneous Appeal No. 1920 of 2011 dated 11.08.2011* to contend that the authorities below have levied/confirmed the penalties solely on the basis of statements of co-noticees and that there is no other corroborative evidence brought on record by the Revenue in support, to justify the imposition of penalty.

5. *Per contra*, Shri R. Rajaraman, Learned Assistant Commissioner appearing for the Revenue, while relying on the findings of the lower authorities, also submitted that the penalty was imposed on the appellants based on the statement of one Mr. M.D. Karthikeyan, whose statement

was also corroborated by the statement of one Mr. U. Magesh.

6. I have considered the rival contentions and have gone through the orders of the lower authorities as also the judgement of the Hon'ble High Court of Madras.

7.1 The argument of the Learned Departmental Representative that the penalty on the appellants was imposed/confirmed, firstly, based on the statement of Mr. M.D. Karthikeyan and secondly, that of Mr. Magesh, only points out that the penal action in question has been taken solely based on the statements of co-noticees, which is directly contrary to the judgement of the Hon'ble Madras High Court (supra). From a perusal of the Show Cause Notice as well as the orders of the lower authorities, I do not find reliance on any corroborative piece of evidence other than mere statements.

7.2 Further, that the Preventive Officer Mr. G. Raghava is said to have stated that he came to know only in November 2017 that the said container was removed illegally from the CFS when such illegal removal had happened on 16.09.2017, is a matter of serious concern since the consignment was admittedly in the custody of the CFS and for nearly two months (from 16.09.2017 to November 2017), the Preventive Officer was not even aware of the alleged illegal removal. In any case, Mr. Karthikeyan has only pointed out that documents pertaining to M/s. Sky and Sea Exports were given by these appellants, which were to be filed with the Department. The Revenue has not brought on record as to how the above fact was relevant for the alleged illegal removal of the consignment and as to how these unconnected facts were used to penalize the appellants.

8. In view of the above, I am of the view that the Revenue has failed to bring on record any material evidence to justify the imposition of penalty, more so when they did not even allege that the act or omission on the

part of these appellants has led to confiscation of the goods.

9. Accordingly, the penalty imposed, as confirmed in the impugned order, cannot be sustained, for which reason the impugned order is set aside and the appeals are allowed.

(Order pronounced in the open court on **24.08.2022**)

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

Sdd