**(2011) 06 KAR CK 0007**

**In the Karnataka High Court**

**Case No :** C.S.T.A. No. 29 of 2007

Commissioner of Customs, Bangalore — APPELLANT

Vs

M.N.S. Exports (P) Ltd. — RESPONDENT

**Date of Decision :** 16-06-2011

**Acts Referred:**
Customs Act, 1962 — Section 108, 112, 147 (2)

**Citation :** (2012) 281 ELT 524 : (2013) 20 GSTR 394

**Hon'ble Judges :** V.G. Sabhahit, J;Ravi Malimath, J

**Bench :** Division Bench

**Advocate :** T.M. Venkata Reddy, for the Appellant; V. Lakshmikumaran and Sridharan, for the Respondent

**Final Decision :** Dismissed

## Judgement

V.G. Sabhahit, J.—This appeal is filed by the Commissioner of Customs being aggrieved by the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Appeal Nos. 412-414/2007 dated 3-4-2007 [2007 (219) E.L.T. 649 (Tribunal)] wherein the Tribunal has set aside the order passed by the Commissioner in original order No. 31/2000, dated 13-9-2000. The material facts necessary for disposal of this appeal are as follows :

This appeal was admitted for consideration of the following substantial question of law :-

Whether the Tribunal was right in holding that the 1st respondent-company was not responsible for the acts and omission of the authorised representative contrary to the provisions of Section 147(2) of the Customs Act?

The detailed facts leading up-to the above said substantial question of law are as follows :-

M/s. MNS Exports Private Limited., situated at 19/3, Konanakunte Village, Bikasipura Cross Road was licensed as 100% Export-Oriented Unit (Licence No. 55/96) having Exporters Code No. LM 001175 issued by RBI, and was allotted Importer and Exporter Code No. 0791006107 issued by JDDGFT, Bangalore, are engaged in the manufacture of ready-made garments.

2. On gathering specific information from the officers of Headquarters, Preventive, Bangalore that the said M/s. MNS Exporters Private Limited, had cleared without payment of duty certain goods and had been diverted into the domestic market in violation of the provisions of the Customs Act, 1962, accordingly, the officers visited all the premises of M/s. MNS Exporters Private Limited, on 26-4-1999 and verified the physical stock of the duty free imported materials and also the Bond Register maintained with the Bills of Entry. It was noticed that certain discrepancies with reference to the physical stock at Unit No. 4, No. 46/1, Jaraganahalli, Kanakapura Road, Bangalore-78, as the same did not tally with the imports made, as well as the Bond Register. During the course of verification it was informed by the said firm that the said discrepancies noticed by the officers were on account of removal of certain duty free goods by them outside the 100%, EOU premises and was stored in adjoining premises situated at 68/2, Jaraganahalli, Kanakapura Main Road, Bangalore-78. Immediately the officers visited the said adjoining premises and took stock of the goods stored and noticed that duty free imported fabric of different varieties, polywadding material, fleece, lining material, etc., totaling to Rs. 11,17,674/- and on enquiry it was informed that there was no permission granted by the Customs authorities and they had clandestinely removed from the 100% licenced premises and had stored the same in the adjoining premises. The value of the goods were assessed on 26-4-1999 and handed over to M/s. MNS Exporters Private Limited., for safe custody after obtaining necessary undertaking. Thereafter the investigation began and that the said goods had been received inside the factory and stocked at the instance of Sri H. Bhaskar, the Customs Inspector who was incharge of their Unit EOU-III at Bangalore, during the year 1997-98, since they were regularly importing goods and every month about 30 to 40 bills of entry were filed. Sri H. Bhaskar requested that he wanted a consignment to be cleared in the name of M/s. MNS Exporters Limited and in collusion with employees Raviprakash, D. Prasanna and Sri B. Pramod along with Vikram Jain who was also a licensee for 100% EOU certain goods were brought under the Code Importer in the name of M/s. MNS Exporters Private Limited and the said Bhaskar, along with three employees and Vikram Jain conspired and were made to see that the said goods were released in the name of M/s. MNS Exporters Private Limited and the same was re-exported in the name of M/s. Texworth International Limited., the Company owned by Sri Vikram Jain. On enquiry the Commissioner held and passed the following order :-

(i) ] demand duty amounting to Rs. 7,29,572/- under Sec. 72 of the Customs Act, 1962, from M/s. MNS Exports, in respect of the goods seized on 26-4-1999, which were clandestinely removed and kept outside the licence premises.

 

(ii) I demand a duty of Rs. 34,54,338/- from M/s. MNS Exports, under Sec. 28 of the Customs Act, 1962, in respect of the consignments imported under the cover of 12 AWBs and the related Bills of Entry which have been communicated to them in the SCN.

(iii) 1 impose a penalty of Rs. 7,00,000/- (Rupees Seven lakhs only) on M/s. MNS Exports Pvt. Ltd., Bangalore, under Sec. 112 of the Customs Act, 1962.

(iv) I order cancellation of EOU licence bearing No. 55/96 granted to M/s. MNS Exports Pvt. Ltd., in terms of sub-section (3) of Section 58 of the Customs Act, 1962.

(v) I impose a penalty of Rs. 1,00,000/- (Rupees one lakh only) on Shri Narayan Bhatt, Managing Director of M/s. MNS Exports., Bangalore, under Sec. 112 of the Customs Act, 1962.

(vi) I impose a penalty of Rs. 10,00,000/- (Rupees ten lakhs only) on Sri. H. Bhaskar, Inspector of Customs, under Sec. 112 (b)(ii) of the Customs Act, 1962.

(vii) I impose a penalty of Rs. 50,000/- (Rupees fifty thousand only) on Smt. Shilla Shree, w/o Shri H. Bhaskar, under Sec. 112 of the Customs Act, 1962.

(viii) I impose a penalty of Rs. 5,00,000/- (Rupees five lakhs only) on Shri Vikram Jain of M/s. Texworth International, Bangalore, under Sec. 112(b)(ii) of the Customs Act, 1962.

(ix) I impose a penalty of Rs. 5,00,000/- (Rupees five lakhs only) each on Shri Raviprakash, Shri B. Prasad and Shri Sreenivasa Rao, employees of M/s. MNS Exports Pvt. Ltd., Bangalore under Sec. 112(b)(ii) of the Customs Act, 1962.

Being aggrieved by the same, M/s. MNS Exporters Private Limited., and its Managing Director and also Sri Vikram Jain, field appeals on the file of the Customs, Excise and Service Tax Appellate Tribunal and the Tribunal by the order dated 3-4-2007 passed the final order and the appeals were disposed of. Being aggrieved by the same, an appeal was filed before this Court and this Court remitted the matter to the CESTAT, without considering the questions of law, after setting aside the order dated 8-4-2005 with a direction to pass orders in accordance with law. The Tribunal found that the employees of the respondent-company Sri Raviprakash, Sri B. Pramod and Sri N.B. Prakash had not informed the company or Sri Narayana Bhatt regarding their activity. The entire transaction was carried out without the knowledge of the company and the Invoices were manipulated at the instance of Sri Bhaskar, who was an employee in the Customs Department and Sri Vikram Jain. Even in the complaint filed before the Criminal Court the Managing Director was not made a party and no material was collected whatever against the Managing Director and no nexus was established between the disputed transactions of M/s. MNS Exporters Private Limited, or Managing Director. Accordingly the Commissioner set aside the order imposing duty and penalty imposed upon the M/s. MNS Exporters Private Limited, and its Managing Director u/s 112 of the Customs Act. Being aggrieved by the said order insofar as the imposition of penalty against Sri Vikram Jain by the Tribunal this appeal is filed.

3. This appeal is admitted for considering the aforesaid substantial question of law. The learned counsel appearing for the appellant submitted that the employees of the respondent-company and its Managing Director Vikram Jain is liable along with the Company employees and they have not filed any appeal and their statement u/s 108 shows that the same was done without the knowledge of the Company. Even though no complaint was filed against the Managing Director of the respondent-company the finding of the Commissioner that there was nexus between the transaction and that company was aware of the same in view of the presumption u/s 147(2) and no rebuttable material is produced and therefore the decision of the Tribunal is contrary to 147(2) and (3) and therefore not sustainable.

4. The learned counsel appearing for the respondents submitted that the order passed by the Tribunal on the finding of fact is justified and does not suffer from any illegality and substantial question of law has to be answered against the appellant.

5. We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinized the material on record.

6. Section 147 of the Customs Act, 1962 (hereinafter called as ''the Act'') deals with the liability of principal and agent. Section 147(2) reads as follows :-

(2) Any such thing done by an agent of the owner, importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

Further Section 147(3) reads as under:-

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter of such goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any willful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of Assistant Commissioner of Customs or Deputy Commissioner of Customs the same cannot be recovered from the owner, importer or exporter.

It is clear on the scrutiny of the material that, apart from the statement given by the employees who are also held guilty of liability to make payment of penalty there is no other material whatever to connect the company M/s. MNS Exports Private Limited and its Managing Director. This disputed transaction has been carried out by collusion with three employees of the respondent-company and Sri Bhaskar who was an employee in the Customs Department and Sri Vikram Jain. The Tribunal also reasoned that the fact that in the criminal case no allegation was made against the respondent, it clearly shows that there was no nexus between M/s. MNS Exports Private Limited or its Managing Director and the finding is vitiated. The contention taken by the respondents in the reply to the show cause notice and the material on record a presumption u/s 114(2) is rebutted and the respondents cannot be made liable to pay duty or penalty and accordingly set aside the order passed by the Commissioner of Customs. The Tribunal has relied upon the various decisions regarding the liability of the Company and its Managing Director to arrive at a finding that certainly it was within the knowledge of the Company or its Managing Director we hold that the finding of the Tribunal which is the final authority on the question of finding of fact is based upon the material on record and cannot be said to be perverse or arbitrary so as to call for any interference. Accordingly, we answer the substantial question of law against the appellant pass the following order :-

The appeal is dismissed.