(2021) 06 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40005, 40006, 40007 Of 2020

M/s. Green Port Shipping Agencies — APPELLANT

Vs

Commissioner Of Customs — RESPONDENT

Date of Decision : 23-06-2021

Acts Referred:
Customs Act, 1962 — Section 111, 111(d), 112, 112(b)

Citation : (2021) 06 CESTAT CK 0028

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : K. Murugan, Arul C. Durairaj

Final Decision : Allowed

Judgement

1. By these appeals, the appellant is seeking the deletion of penalty under Section 112 (b) of the Customs Act levied on it, which came to be confirmed

by the Adjudicating Authority.

2. Admittedly, the appellant is a shipping liner; it is the case of the appellant that it is neither the importer nor the owner of the consignments in

question. Three Show Cause Notices all dated 14.02.2013 were issued alleging that based on specific intelligence that fake items of leading brands

were being imported into India in the Container Nos. APHU6552003, APHU6378118 and APHU6243030, the said containers lying at CONCOR

Container Freight Station was detained by the Directorate of Revenue Intelligence (DRI), Tuticorin Unit for detailed examination; that upon

examination, in respect of APHU6552003, it was found that there were 1143 cartons as against the declared 1165 cartons and the cartons stuffed in

the front portion of the container contained mobile accessories of various models and that the cartons stuffed behind these mobile accessories were found to contain branded cosmetic items of various brands viz., Revlon, Olay, Nivea, Lakme, Ponds and Loreal, as prescribed in the Order-in-Original

TUT-CUSTM-PRV-COM005-19-20 dated 18.09.2019, which were not declared in the Bill-of-Lading; that in respect of Container No.

APHU6378118, shoes packed in carton boxes which were covered in PP bags were found and the shoes bore marks of various leading brands such

as Nike, Adidas, Reebok, Polo and Lacoste apart from other brands, as prescribed in the Order-in-Original TUT-CUSTM-PRV-COM-006-19-20

dated 18.09.2019; that in respect of Container No. APHU6243030, it was found that there were 712 cartons as against the declared 715 cartons and

the cartons stuffed in the front portion of the container contained mobile accessories of various models and that the cartons stuffed behind these

mobile accessories were found to contain 198 cartons of â??Olayâ?? branded natural white cream, each carton containing 864 small packs of 20 gm,

as prescribed in the Order-in-Original TUT-CUSTM-PRVCOM-007-19-20 dated 18.09.2019.

3. After putting the appellant on Show Cause, the impugned Orders-in-Original came to be passed, wherein the Adjudicating Authority, after getting

details/replies from the various brands, has proceeded to conclude that the mobile accessories and branded cosmetic items were imported in

contravention of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and also provisions of Legal Metrology Act,

2009 and that there was no declaration as prescribed in the Legal Metrology (Packaged Commodities) Rules, 2011 read with the Drugs and

Cosmetics Act, 1940 and that branded shoes were imported in contravention of the Intellectual Property Rights (Imported Goods) Enforcement Rules,

2007; that the replies to the Show Cause Notices were sufficient to hold that the items in question were liable for confiscation under Section 111 (d) of

the Customs Act, 1962; that despite the replies of the appellant that the IGMs were filed with wrong description of goods showing the appellant as the

notified party and forwarding agency, the appellant had dealt with goods which they knew or had reasons to believe were liable to confiscation under

Section 111, etc., and inter alia proceeded to levy penalty of Rs. 25,00,000/-, Rs. 10,00,000/- and Rs. 25,00,000/- respectively, in respect of both IGMs,

on the appellant under Section 112 (b) of the Customs Act, 1962.

4. When the matter was taken up for hearing, Shri K. Murugan, Learned Advocate, appeared for the appellant and Shri Arul C. Durairaj, Learned

Departmental Representative, appeared for the Revenue.

5. Heard both sides and perused the documents placed on record.

6. The appellant, while arguing, has referred to an Order of the Honâ??ble High Court of Madras in W.P. (MD) No. 11043 of 2019 and W.M.P.

(MD) No. 8406 of 2019 dated 30.04.2019; this Writ Petition was filed by the appellant upon receipt of the Show Cause Notice and the Honâ??ble

High Court, without going into the merits of the legality of the Show Cause Notice, has directed the Revenue to inter alia furnish a copy of the Import

General Manifest (IGM) referred to in the Show Cause Notice dated 14.02.2013 and then pass final adjudication orders.

7. From the above, it appears that the appellant did not file the IGMs in question. It is also not the case of the Revenue that it was the appellant who

filed the Bill-ofLading. From the documents placed on record, this aspect also becomes clear since the appellant has maintained all along that it did not

file the IGMs in question which fact not denied by the Revenue.

8.1 Section 112 deals with penalty for improper importation of goods, etc. Clause (b) of the said Section reads as under:

â??Section 112. Penalty for improper importation of goods, etc. â?

Any person, -

(a) â?¦

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or

purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under

Section 111 â?¦â??

8.2 So, the above Section has wide amplitude to cover any person dealing with any goods which he knows or has reason to believe are liable to

confiscation under Section 111 ibid. This implies that the requirement of mens rea is sine qua non to fasten the impugned penalty. Admittedly, the

appellant is only a shipping liner who not only did not file the IGMs in question, but also did not file even the Bill-of-Lading. Facts borne on record

reveal that the appellant has maintained all along that it never had the possession of the impugned goods nor was in any way concerned with the

carrying, removing, etc., of the consignments in question and hence, it was beyond their comprehension that the goods in question were per se liable

for confiscation under Section 111 (d) ibid. It is nowhere on record that the appellant, in its capacity, was knowingly involved in applying for or getting

the customs clearance of the goods in question. Section embodies the phrase â??...which he knows or has reason to believe are liable to confiscation

under Section 111...â? which is of specific importance in this situation. Revenue has nowhere ascertained as to the knowledge of the appellant

whether it knew or had reason to believe that the goods in question were liable for confiscation.

9. Undisputed peculiar facts of the case are that the appellant is neither the importer nor the owner who had acquired possession nor in any way

concerned with the carrying, removing, etc., of the goods in question, and Revenue has nowhere ascribed knowledge of the appellant as to the

confiscation.

10. Further, the Revenue has also nowhere offered redemption in lieu of the confiscation in so far as the appellant is concerned, which establishes that

the appellant is in no way concerned nor was it responsible in any way for carrying, removing, etc., of the goods in question.

11. In view of the above, I am of the opinion that the penalties, as levied under Section 112 (b) of the Customs Act, 1962, are not justified and

accordingly, the impugned orders levying the penalties are set aside.

12. The appeals are allowed.

(Order pronounced in the open court on 23.06.2021)

