

Liability cannot be imposed on the customs broker for undervaluation of exported goods

The CESTAT, Chennai in *M/s. Sri Velavan Logistics Services Private Limited v. The Commissioner of Customs [Customs Appeal No. 40352 of 2022 dated December 21, 2022]* has held that 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, therefore, the penalty imposition on Custom Broker is bad in law.

Facts:

M/s Sri Velavan Logistics Services Private Limited (“**the Appellant**”) is a Customs Broker.

A Show Cause Notice (“**SCN**”) dated August 3, 2019 was issued to the Appellant, for alleged attempt to export goods which were undervalued. The market survey revealed the price of similar product as exported to be INR 59/- per piece including the Goods and Services Tax (“**GST**”) whereas, the actual value of exported goods was computed at INR 119/- per piece in terms of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 (“**CV Rules**”) which was accepted by the importer. Further, the Appellant was held liable for action under Regulations 11(n) and 11(d) of Customs Broker Licensing Regulations, 2013 (“**CBLR**”) and imposition of penalty under Section 114 of the Customs Act, 1962 (“**the Customs Act**”).

Subsequently, the Adjudicating Authority (“**the Respondent**”) vide order dated March 8, 2021 (“**the Order-in-Original**”) rejected the Free on Board (“**FOB**”) in terms of Rule 8(1) read with Rule 7 of the CV Rules and imposed a penalty of INR 10,00,000/- on the Appellant. The Appellant then filed an appeal before the first Appellate Authority wherein vide order dated May 10, 2022 (“**the Order-in-Appeal**”) it was held that the Appellant is in violation of Regulation 11(n) of the CBLR, therefore the appeal was rejected.

Being aggrieved, the Appellant filed this appeal.

Issue:

Whether the Revenue was justified in imposing penalty under Section 114 of the Customs Act on the Appellant for an alleged violation of Regulations 11(n) and 11(d) of the CBLR?

Held:

The CESTAT, Chennai in ***Customs Appeal No. 40352 of 2022*** held as under:

- Noted that, the only allegation is undervaluation of the goods for which the goods were liable to be confiscated under Section 113(i) and 113(ia) of the Customs Act.
- Stated that, 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 stated that, the Order-in-Original and Order-in-Appeal never revealed the role of the Appellant 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.
- Held that, the imposition of penalty on the Appellant under Section 114 of the Customs Act is bad in law and thus, needs to be set aside.

Relevant Provisions:

Section 113 of the Customs Act:

“Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:-

(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;

(b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;

(c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

(ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;

(j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;

(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;

(k) any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;

(l) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened”

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