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Date: 18.06.2025

CESTAT Chennai Rejects Allegations of Misdeclaration Involvement

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai Bench has set aside penalties totaling ₹60 lakh imposed under Section 112(b) of the Customs Act, 1962, for alleged involvement in the import of counterfeit branded goods.

The Tribunal held that the appellant, being merely a shipping liner and not an importer or declarant, had neither custody nor knowledge of the goods' contents, and hence could not be held liable for alleged misdeclaration or intellectual property violations.

Background of the Case

The Directorate of Revenue Intelligence (DRI), Tuticorin, intercepted three shipping containers based on intelligence inputs and discovered:

- Mobile accessories and branded cosmetics (Olay, Lakme, Loreal, etc.) undeclared in the Bill of Lading
- Branded shoes (Nike, Adidas, Reebok, etc.) suspected of violating IPR laws

The goods were allegedly misdeclared in violation of:

- Section 111(d) of the Customs Act
- Legal Metrology Act, 2009
- Drugs and Cosmetics Act, 1940

- Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

Subsequently, the Commissioner levied penalties of ₹25 lakh, ₹10 lakh, and ₹25 lakh in three separate orders against Green Port Shipping Agencies under Section 112(b) for "dealing with goods liable to confiscation."

Appellant's Arguments

The appellant contended:

- It was neither the importer nor owner of the goods.
- It had no role in filing the Bill of Lading or Import General Manifest (IGM).
- The goods were never in their possession, control, or knowledge.
- There was no proof of mens rea (intent), a requirement under Section 112(b).

They also cited a Madras High Court order directing Customs to furnish copies of the IGM to Green Port and adjudicate based on evidence.

Tribunal's Observations & Findings

The Tribunal held:

- Section 112(b) requires actual or constructive knowledge of the liability to confiscation.
- Green Port was not involved in filing the IGM or Bill of Lading.
- No evidence showed that Green Port was knowingly concerned with the goods.
- Revenue failed to prove that the appellant had any reason to believe the goods were misdeclared.
- No redemption option was offered—an indication that the party had no ownership interest.

Final Verdict

“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.”

Legal Takeaway

This ruling reinforces key principles in customs adjudication:

- Knowledge and intent are essential for penalties under Section 112(b).
- Mere name inclusion in shipping documents does not imply culpability.
- Enforcement authorities must establish nexus and conscious involvement before imposing penalties.

Conclusion: The CESTAT Chennai's decision protects logistics service providers and shipping liners from undue penal action when no active role or knowledge in the import of prohibited goods is established.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Chennai

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40005 of 2020

(Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-005-19-20 dated 18.09.2019 passed by the Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

M/s. Green Port Shipping Agencies : **Appellant**
No. 26E/7A, Kamaraj Nagar, Third Mile,
Tuticorin – 628 008

VERSUS

The Commissioner of Customs : **Respondent**
Custom House, New Harbour Estate, Tuticorin – 628 004

WITH

Customs Appeal No. 40006 of 2020

(Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-006-19-20 dated 18.09.2019 passed by the Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

M/s. Green Port Shipping Agencies : **Appellant**
No. 26E/7A, Kamaraj Nagar, Third Mile,
Tuticorin – 628 008

VERSUS

The Commissioner of Customs : **Respondent**
Custom House, New Harbour Estate, Tuticorin – 628 004

AND

Customs Appeal No. 40007 of 2020

(Arising out of Order-in-Original TUT-CUSTOM-PRV-COM-007-19-20 dated 18.09.2019 passed by the Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin – 628 004)

M/s. Green Port Shipping Agencies : **Appellant**
No. 26E/7A, Kamaraj Nagar, Third Mile,
Tuticorin – 628 008

VERSUS

The Commissioner of Customs : **Respondent**
Custom House, New Harbour Estate, Tuticorin – 628 004

APPEARANCE:

Shri K. Murugan, Advocate for the Appellant

Shri Arul C. Durairaj, Authorized Representative (A.R.) for the Respondent

CORAM:

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

FINAL ORDER NOS. 41604-41606 / 2021

DATE OF HEARING: 12.04.2021

DATE OF DECISION: **23.06.2021**

Order :

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-CUSTOM-PRV-COM-005-19-20 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-CUSTOM-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 'Olay' branded natural white cream, each carton containing 864 small packs of 20 gm, as prescribed in the Order-in-Original TUT-CUSTOM-PRV-COM-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 Hon'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 Hon'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-of-Lading. 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:

"Section 112. Penalty for improper importation of goods, etc. —

Any person, -

(a) ...

(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 ..."

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 "...which he knows or has reason to believe are liable to confiscation under Section 111..." 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**)

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