IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 78795 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/57/2018 dated 30.07.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. GSP Shipping & Logistics Agency **: Appellant**
4, Fairlie Place, 1st Floor, Room No. 130,
Kolkata – 700 001

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 78796 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/57/2018 dated 30.07.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Prakash Jha **: Appellant**
M/s. GSP Shipping & Logistics Agency
4, Fairlie Place, 1st Floor, Room No. 130,
Kolkata – 700 001

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Nilotpal Chowdhury, Advocate, for the Appellant(s)

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75959-75960 / 2026

DATE OF HEARING: 27.07.2026

DATE OF DECISION: 30.07.2026

ORDER: [PER SHRI ASHOK JINDAL]

The present appeals have been preferred by M/s. GSP Shipping & Logistics Agency, a licensed Customs Broker, and Shri Prakash Jha, its G-Card holder, against the impugned Order-in-Original No. KOL/CUS/Commissioner/PORT/57/2018 dated 30.07.2018 passed by the Commissioner of Customs (Port), Kolkata, whereby penalties of Rs.1,00,000/- each were imposed upon them under Section 112(a)(ii) of the Customs Act, 1962 for their role in the alleged mis-declaration and fraudulent importation of consignments of Baby Vests and Baby Track Pants imported in the name of M/s. M.A. Traders.

2. The facts of the case are that the appellant-Customs Broker, acting through its G-Card holder Shri Prakash Jha, had filed Bills of Entry Nos. 8488827 dated 09.02.2017, 8488826 dated 09.02.2017, 8508188 dated 10.02.2017 and 8508187 dated 10.02.2017 covering four consignments imported under Container Nos. TEMU7234460, TEMU6877409, GESU4646267 and TEMU6877420 respectively, wherein the declared goods were Baby Track Pants and Baby Vests. Upon arrival of the consignments at CFS-JJP, Kolkata, officers of the Directorate of Revenue Intelligence, Kolkata initiated investigation and alleged mis-declaration with respect to the quantity of the declared goods. During investigation of the above consignments, it was further alleged that the imports were made in the name of M/s. M.A. Traders, while one Md. Abid Ali alias Raju was acting as its representative and was instrumental in the subject imports. His statement

was recorded during investigation and he was subsequently arrested.

2.2. The investigation also extended to another Container No. JFSU0227586 pertaining to imports made in the name of M/s. Z.S. Trade Com Pvt. Ltd., of which the said Md. Abid Ali was the Director, wherein it was alleged that foreign-brand cigarettes had been concealed behind readymade garments. However, it is an admitted position that no Bill of Entry in respect of the said container had been filed in case of the said container containing cigarettes.

3. Subsequently, a Show Cause Notice dated 11.08.2017 was issued proposing, inter alia, penal action against the appellants herein under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 in relation to both the alleged mis-declaration of baby garments and the attempted smuggling of cigarettes, for their alleged acts of omission and commission in connection with the purported fraudulent imports in question.

3.1. The appellants contested the allegations by filing separate replies dated 13.09.2017 and 17.10.2017 respectively, contending that they had merely discharged their functions as Customs Broker by processing the import documents and filing the Bills of Entry on the basis of documents furnished by the importer. It was specifically asserted that they had neither any role in nor prior knowledge of the alleged mis-declaration, the contents and correctness of the declarations being matters within the exclusive knowledge and domain of the importer. Reliance was also placed on various judicial precedents in support of their defence.

3.2. The matter was adjudicated by way of the impugned order wherein the ld. adjudicating authority, inter alia, in so far as the present appellants are concerned, dropped the proceedings initiated in respect of the cigarette-laden container bearing No. JFSU0227586 since no Bill of Entry had been filed in that case, but held them liable for the alleged fraudulent imports relating to Baby Vests and Baby Track Pants and, for their failure to verify the identity, antecedents and credentials of the importer as required under Regulation 11 of the Customs Brokers Licensing Regulations, 2013 (CBLR, 2013) in such cases, imposed penalties of Rs.1,00,000/- each under Section 112(a)(ii) of the Customs Act, 1962.

3.3. Aggrieved by such imposition of penalties on them, the appellants are before us.

4. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant-Customs Broker, namely, M/s. GSP Shipping Logistics Agency and its G-Card Holder, namely, Shri Prakash Jha, prayed for dropping the penalties imposed on them vide the impugned order. He made various submissions, which inter alia are as under: -

(i) From the impugned order and the manner of imposition of penalty, it would be evident that the entirety of the case relates to mis-declaration of goods wherein the appellant CB firm and its 'G' Card holder acted as the CB for processing the documents and for processing the clearance of goods by filing the Bills of Entry and at the penultimate paragraph, the appellants herein have been held liable for imposition of penalty under Section 112(a)(ii) of the Customs Act, 1962 which relates to imposition of penalty in case of dutiable goods, other than prohibited goods, for the duty sought to be evaded. It is trite law that in case of importation of goods, duty, if any, i.e. required to be paid is the sole domain and responsibility of the importer. All throughout, the representative of the importer firm was present for the purpose of importation, the appellants were provided with documents with the information provided therein and as per the said documents, the appellant had also advised the importer or its representative for payment of the appropriate duty. There is no dispute that the said duty was admittedly paid. The reason for the present proceeding is the aspect of mis-declaration in respect of quantity and weight of the goods as per paragraph 10 readwith paragraph 17.2 of the Order impugned herein. The appellants being mere processors of documents cannot be held to be in possession of knowledge about the existence of mis-declaration in respect of quantity and/or weight of the goods therein. Throughout the entire proceeding, neither the importer nor the representative of the importer had made any whisper regarding the CB or its 'G' Card holder to be possessed of any prior knowledge regarding the purported mis-declaration. It has also been held by the Ld. Adjudicating Authority that the appellants herein had no role in connection with the smuggling of cigarettes. Under such circumstance, the penalty imposed under Section 112(a)(ii) on both the appellants cannot be sustained.

(ii) It is further submitted that in so far as the appellant CB is concerned, for the very same investigation and on the same set of allegations, the appellant's CB Licence was suspended vide CB Circular no. 113/2017 with effect from 11.10.2017 under Regulation 19(1) of the Customs Brokers Licencing Regulations, 2013 (in short 'CBLR' for brevity). Subsequently, Show Cause Notice under the CBLR , 2013 was issued which culminated into Order-in-Original No. Kol/Cus/Airport/Admn/ 23/2017 dated 25.10.2017, continuing the suspension. Since the order was passed ex-parte the appellant CB preferred and appeal before this Tribunal when vide Final Order No. 75073/2019 dated 07.01.2019, the said Order dated 25.10.2017 was set-aside and remanded back to the Ld. Commissioner with direction to allow cross-examination of Abid Ali and Maswood Ahmed. In course of denovo proceedings, Show Cause Notice dated 22.12.2017 was issued seeking continuation of suspension, revocation of licence and forfeiture of security deposit. During the Inquiry proceeding, the Ld. Inquiry Officer while upholding the charges of Regulation 11(a), 11(d) and 17(9) of the CBLR, 2013. Accordingly, the Ld. Adjudicating Authority passed Order-in-Original, revoking the CB Licence and forfeiting the security deposit. Aggrieved therefrom, the CB appellant, preferred an appeal before the CESTAT in Customs Appeal No. 77455 and 2019 wherein this Tribunal vide Final Order no. 75621/2020 dated 19.11.2020, partly allowed the appeal by setting-aside the revocation of the CB Licence and upholding the forfeiture of the security deposit.

(iii) It is submitted that there is no evidence that the appellant and importer were sharing benefits out of fraudulent imports. In fact, from the Final Order no 75621/2020 dated 19.11.2020 passed by the CESTAT in the appellant's own case had held that "though there was lapse on the part of the Customs Broker, the same has not caused the commission of offence by the importer." And the CB has already suffered a plenary consequence by way of forfeiture of the security deposit, a further penalty on the very same allegations under Section 112(a) of Customs Act. 1962 would amount to double jeopardy and cannot be sustained. The Ld. Commissioner at paragraph 18.3.1 of the impugned Order herein has rested his case only on the cause of violation of Regulation 11(n) of the CBLR, for which the appellant CB herein has already suffered a consequence and therefore the imposition of penalty is not sustainable. In various decisions it has been that a Customs House Agent / Customs Broker are only processing agents of documents for clearance of goods and they are not inspectors to weigh the genuineness of transactions therefore, has no obligations to look into the information from the exporter/importer.

(iv) Reliance is placed on the decisions in the case of:

- *GSP Shipping & Logistics Agency (Final Order no.75621/2020 dated 19.11.2020) [2021 (376) ELT 527]*

- *Kunal Travels (Cargo) V.CC(I&G), IGI(Airport), New Delhi [2017 (354) ELT 447]*
- *Perfect Cargo & Logistics V.C.C (Airport), New Delhi [2021 (376) ELT 469 (Tri Cal.)]*
- *Sinha Shipping Agency V. Commissioner of Customs [(2024) 14 CENTAX 17 (Tri Cal.)]*
- *Sun Sea Shipping Agency V. The Commissioner of Customs Chennai-III Final Order NOs 40200-40201 /2022 dated 19.05.2022 passed by the CESTAT, Chennai in Customs Appeal No. 40356 of 2021*

4.1. He accordingly prayed that, taking a lenient view of the matter and considering the facts and circumstances of the case, the penalties imposed upon the appellants under Section 112(a)(ii) of the Customs Act, 1962 be set aside.

5. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

6. Heard the parties and considered their submissions.

7. On going through the records placed before us and the arguments advanced by the parties, we find that penalties have been imposed on the appellants on account of alleged mis-declaration in respect of quantity of the declared goods imported by one M/s. M.A. Traders, through its Representative, Md. Abid Ali alias Raju. The appellants herein being the Customs Broker and the G-Card Holder of the Customs Broker, it has been alleged that they have aided and abetted the import of the said consignment of baby garments by mis-declaring the actual quantity of the goods as procured by the importer, to evade payment of customs duty.

8. Admittedly, the role of the Customs Broker and its G-Card Holder was to get clearance of the consignment by processing the import documents and filing Bills of Entry on the basis of documents furnished by the importer. In the present case, it is not coming records that the appellants were having prior knowledge about mis-declaration of the quantity of the goods in question. The Revenue has also failed to bring on record any corroborative evidence with regard to the appellants having prior information as to mis-declaration of the quantity of the goods imported by the importer.

9. In the absence of the above said facts, it cannot be alleged that the appellants were involved in aiding and abetting customs duty evasion by mis-declaring the quantity of goods imported by the importer. In these circumstances, we do not find any merit in the impugned order to come to the conclusion of imposition of penalties upon the appellants under Section 112(a)(ii) of the Customs Act, 1962. Therefore, we set aside the penalties imposed on the appellants.

10. Consequently, the appeals are allowed, with consequential reliefs, if any.

(Order pronounced in the open court on **30.07.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd