

## **No penalty in case of commission of illegal act without mens rea**

The Hon'ble Delhi High Court in ***Rajeev Khatri v. Commissioner of Customs [(Export) (CUSAA 3/2021 & CM APPL. 5517/2021 dated July 4, 2023)]*** set aside the penalty order passed under Section 112(a) of the Customs Act, 1962 ("**the Customs Act**") and held that assessee cannot be penalized for abetting the illegal import as there is no evidence that assessee has knowledge of the import of prohibited goods.

### **Facts:**

Rajeev Khatri ("**the Appellant**") was a G-Card holder of M/s GND Cargo Movers, a licensed Customs Broker, the Appellant had filed the Bill of Entry for importing goods, which were later found illegally imported.

A Show Cause Notice dated September 26, 2013 ("**the SCN**") was issued to the importers as well as to the Appellant. The Adjudication authority found that the goods had been mis-declared and the import of such goods was prohibited and thus such goods were liable for confiscation. Apart from directing confiscation Adjudicating Authority, inter alia, imposed penalties on the Appellant including penalty under section 112(a) of the Customs Act.

Accordingly, the Adjudicating Authority passed an order dated January 02, 2018 ("**the Order-in Original**") inter alia imposing penalty under section 112(a) of the Customs Act.

The Appellant filled an appeal before the CESTAT, New Delhi challenging the Order-in Original. The CESTAT vide order dated June 4, 2020 ("**the Impugned Order**"), held that the penalty imposed was disproportionate and reduced the quantum of penalty.

Aggrieved with the Impugned order the Appellant filed the writ before the Hon'ble Delhi High Court.

### **Issue:**

Whether a person who imports goods without knowing that such goods are prohibited for import, could be penalized under the Customs Act for abetting such import?

**Held:**

The Hon'ble Delhi High Court in ***CUSAA 3/2021 & CM APPL. 5517/2021*** held as under:

- Relied upon the judgement of ***M/s. Amritlakshmi Machine Works & Another v. The Commissioner of Customs [2016(335) E.L.T.225]*** wherein the Hon'ble Bombay High court held that imposing penalty upon an abettor without any mens rea on his part would bring all business to a half, as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty.
- Observed that, *mens rea* is necessary element for imposing penalty under section 112(a) of the Customs Act, the penalty imposed for failure to perform a civil obligation is required to be distinguished from penalty imposed as a punishment for committing a crime.
- Held that, the penalty cannot be imposed on the Appellant as he had no knowledge of the act committed by him and the act was done without mens rea.

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