

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, BANGALORE**

**Appeal Nos. C/20721/2018-SM, C/20722/2018-SM &
C/20723/2018**

**All Arising out of Order-in-Original No. 01/2018-COMMR, Dated:
07.02.2018**

Passed by Commissioner of CUSTOMS , MANGALORE

Date of Hearing: 21.01.2019

Date of Decision: 26.02.2019

**KAMAL KISHORE PAREKH
PARTNER RIDDHI ENTERPRISES
CENTURY BHAVAN, III FLOOR, DR. A.B.ROAD,WORLI MUMBAI
MUMBAI MAHARASHTRA - 400025**

**RIDDHI ENTERPRISES
THRO PARTNER KAMAL K PAREKH
CENTURY BHAVAN, III FLOOR, DR. A.B.ROAD,WORLI,MUMBAI
MUMBAI MAHARASHTRA - 400025**

**ASHOK P MANIYAR
PROPRIETER D J IMPEX
7-B,AMRTARU,12 TH FLOOR,FLAT NO,1201,OFF NEW
NAGARDAS ROAD,OPP PINKI THEATRE/CHENNAI
COLLEGE,ANDHERI(EAST)MUMBA
I MUMBAI MAHARASHTRA 400069**

Vs

**COMMISSIONER OF CUSTOMS
MANGALORE-CUS NEW CUSTOMS HOUSE PANAMBUR
MANGALORE KARNATAKA - 575010**

Appellant Rep by: Sathya Vageeswaran, Adv.

Respondent Rep by: Mr Gopa Kumar, AR

CORAM: S S Garg Member (J)

Cus - The appellants have filed these appeals directed against the common impugned order whereby the Commissioner has imposed penalties on the firm i.e. Riddhi Enterprises and its partner Sh. Kamal Kishore Parekh and also penalties on Sh. Ashok P Maniyar, Proprietor, M/s. D J Impex under Section 112(a), Section 114 (iii) & Section 114AA of Customs Act, 1962 - Since the appellant, Sh. Ashok P Muniyar has died during the pendency of appeal, therefore in view of judgment of Supreme Court in case of *Shabina Abraham 2015-TIOL-159-SC-CX*, penalty proceedings against deceased stand abated - As far as various penalties imposed under Section 112(a), Section 114(iii) & Section 114AA all under the Customs Act, 1962 on the appellant, M/s. Riddhi Enterprises and its partner, Sh. Kamal Kishore

Parekh is concerned, the main notice who has mis-used the EPCG License on the basis of exports made by assessee and has also obtained EODC certificate from the DGFT, they have gone to the Settlement Commission and have settled the matter before the Settlement Commission and have paid the liability along with interest - The Original Authority has imposed the penalty on partner as well as Partnership firm on the very same transaction which is not permitted under law - The said sections have also not been brought out specifically in the impugned order - In view of all these infirmities, this case needs to be remanded back to the Original Authority to pass a de novo order - Consequently, the impugned order is set aside: CESTAT

Matter remanded

Case law cited:

Shabina Abraham Vs. CCE - 2015-TIOL-159-SC-CX... Para 4

FINAL ORDER NOS. 20207-20209/2019

Per: S S Garg:

The appellants have filed these three appeals directed against the common impugned order dated 07.02.2018 passed by the Commissioner of Customs, Mangalore whereby the Commissioner has imposed penalties on the firm i.e. Riddhi Enterprises and its partner Sh. Kamal Kishore Parekh and also penalties on Sh. Ashok P Maniyar, Proprietor, M/s. D J Impex under Section 112(a), Section 114 (iii) & Section 114AA of the Customs Act, 1962. Since the allegation and the findings against the appellants are identical, therefore all the three appeals are taken up together for disposal.

2. Briefly the facts of the present case are that the appellant is a partnership firm M/s. Riddhi Enterprises with Sh. Kamal Kishore Parekh as the main partner and his wife another partner and they are manufacturer of notebooks and other products of printing industry. They export the goods to North and South American countries, M/s. Prakash Offset Printers (M/s. POP), Mangalore, the main noticee approached the appellant through one Sh. Ashok P Maniyar of M/s. D J Impex, Mumbai seeking help to fulfill the export obligation under EPCG License, held in the name of M/s. POP, Mangalore. The appellant who was into regular export agreed to lend his export to M/s. POP, Mangalore, however, as the appellant was not aware of the EPCG License procedure acted on bona fide belief and assurances given by the main noticee i.e. M/s. POP, Mangalore. The appellant, at the time of export, indicated in their export documents the name of M/s. POP, Mangalore and EPCG License details and exported the goods as a 'third party export'. The DGFT authorities based upon the documents submitted by the EPCG License holder i.e. M/s. POP issued EODC dated 28.03.2013 to M/s. POP. Thereafter a SCN dated 01.01.2016 issued to the appellant by the Customs authorities in connection with the EODC dated 28.03.2013 issued to M/s. POP by the DGFT alleging that the appellant had lent his shipping

bills so as to enable M/s. POP, Mangalore to count such exports towards export obligation fulfillment under EPCG License of the main noticee i.e. M/s. POP, Mangalore under 'third party exporter category'. The SCN proposed to impose penalty on the appellant under Section 112(a), Section 114 (iii) & Section 114AA of the Customs Act, 1962, the appellant filed detailed reply to the SCN inter alia submitted that appellants have, in fact, exported the goods and were under bona fide belief that the exports made by them was covered under the 'third party exports' and the export obligation, under the EPCG License of the main noticee, has been fulfilled. They have also stated that the Customs authorities on the basis of valid EODC have cancelled the Bond/Bank Guarantee upon fulfillment of the EPCG License conditions. They have also stated that the duty was paid by the main noticee before the issue of SCN; therefore the appellants are not liable to pay any penalty. After following the due process, the Original Authority imposed penalties under Section 112(a), Section 114(iii) & Section 114AA all under the Customs Act, 1962. Aggrieved by the said order, the appellants have filed these three appeals.

3. Heard both sides and perused the records of the case.

4. Ld. Counsel for the appellants submitted that as far as Appeal No. C/20723/2018 filed by Sh. Ashok P. Muniyar, M/s. D J Impex wherein he has been imposed penalties under various sections of the Customs Act, has died during the pendency of the appeal and he has placed Death Certificate of Sh. Ashok P Maniyar. As per the Death Certificate, the death of Sh. Ashok P Maniyar took place on 06.09.2018. He further submitted that since the appellant has died and therefore, the penalty proceeding against the deceased stand abated in view of the judgment of the Hon'ble Supreme Court in the case of *Shabina Abraham Vs. CCE, 2017 (50) STR 241 (SC) = 2015-TIOL-159-SC-CX*. He further submitted that in the appeal filed by the firm M/s. Riddhi Enterprises, Appeal No. C/20722/2018 and its partner's Appeal No. C/20721/2018, the Original Authority has failed to take into consideration that the main noticee i.e. M/s. POP has settled the matter before the Settlement Commission and the case has been fully settled and the main noticee has paid the full duty demanded before the issuance of SCN and all other liabilities are also satisfied before the Settlement Commission. He further submitted that in view of various decisions, the decision of Settlement Commission is binding on the co-noticee also. He further submitted that the Original Authority has penalized the co-noticee/appellant more than the main noticee whereas the main noticee has been granted immunity from all penal actions by the Settlement Commission. He further submitted that no material evidences have been given, all the documents, acts and omissions done by the appellant before Customs authorities which attracts penal provision of the Customs Act, 1962. He further submitted that EODC issued by the DGFT Authority is valid till date and has neither been cancelled nor withdrawn by the Licensing Authorities/DGFT Authorities. He further submitted that in the absence of any duty demand under the Customs Act, 1962 on the appellant or on the

main noticee, the Original Authority should not have imposed penalty under various Sections of the Customs Act on the appellant. Further, the Original Authority has traversed beyond the SCN to impose penalty under Section 112(a) inasmuch as there is no role of the appellant made out in the SCN in connection with the import of capital goods without a valid EPCG License. Further, the requirement of Section 114(iii) has not been fulfilled as the SCN has not made out any case against the appellant before the Customs authorities in connection with any documents or any other goods. He further submitted that the Original Authority has imposed penalty both on the partner and the Partnership firm on the very same transaction which is in violation of the various decisions of the Courts.

5. On the other hand, the Ld. AR defended the impugned order and submitted that the Commissioner has passed a detailed order after considering the various statements made by the main noticee as well as the appellants. He further submitted that in respect of the settlements made by the main noticee before the Settlement Commission, the penalties on the co-noticee can still be imposed and the same has been imposed after considering their act and conduct.

6. After considering the submissions of both the parties and perusal of the material on record, I find that as far as Appeal No. C/20723/2018 is concerned, since the appellant, Sh. Ashok P Muniyar has died during the pendency of the appeal, therefore in view of the judgment of the Hon'ble Supreme Court in the case of *Shabina Abraham Vs. CCE, 2017 (50) STR 241 (SC) = 2015-TIOL-159-SC-CX*. penalty proceedings against the deceased stand abated. By following the ratio of the Apex Court, I hold that the penalty proceeding against the deceased stands awaited. As far as various penalties imposed under Section 112(a), Section 114(iii) & Section 114AA all under the Customs Act, 1962 on the appellant, M/s. Riddhi Enterprises and its partner, Sh. Kamal Kishore Parekh is concerned, I find that the main notice who has mis-used the EPCG License on the basis of the exports made by the appellant and has also obtained EODC certificate from the DGFT. They have gone to the Settlement Commission and have settled the matter before the Settlement Commission and have paid the liability along with interest. Further, I find that the Original Authority has not considered that once the settlement is permitted by the Settlement Commission by the main notice then can penalties be imposed on the co-noticee who bona fide believe that the export made by them were covered under 'third party exports' and counted towards export obligation fulfillment of the EPCG License holder. Further, I find that the Original Authority has imposed the penalty on the partner as well as Partnership firm on the same very transaction which is not permitted under law as the Partnership is not a separate legal entity and all the partners collectively known as firm and therefore, the imposition of penalty on the partner as well as Partnership firm is not legally sustainable. Further, I also find that the Original Authority has not discussed about the role, acts and omission on the part of the appellant in the SCN which necessitated the imposition of penalties

under Section 112(a), Section 114(iii) & Section 114AA all under the Customs Act, 1962 and the requirement to be fulfilled for imposition of penalty. The said sections have also not been brought out specifically in the impugned order. In view of all these infirmities, I am of the considered view that this case needs to be remanded back to the Original Authority to pass a denovo order after considering the various submissions made by the appellant and also consider the various decisions which may be relied upon by the appellant in support of their submissions. Consequently, I set aside the impugned order and remand the Appeals No. C/20721/2018 and C/20722/2018 to the Original Authority to pass a fresh order after giving reasonable opportunity to the appellants to present their case. Further, I make it clear that all the issues are kept open.

(Order was pronounced in Open Court on 26.02.2019)