

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH – COURT NO. II**

**Customs Appeal No.51119 of 2022 (SM)**

(Arising out of Order-in-Original No.01/2021/MKS/Commr/Export/ICD/TKD dated 18/19.02.2021 passed by the Principal Commissioner of Customs (Export), ICD, TKD, New Delhi).

**M/s.Evergreen Shipping Agency India Pvt. Ltd.**                      **Appellant**  
51, 1<sup>st</sup> Floor, Okhla Industrial Estate,  
New Delhi.

Versus

**Commissioner of Customs**    **Respondent**  
Inland Container Depot (Export),  
Tughlakabad,  
Delhi-110 020.

**APPEARANCE:**

Dr. G.K. Sarkar and Shri Prashant Srivastava, Advocates for the appellant.  
Shri Divey Sethi, Authorised Representative for the respondent.

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 50635/2023**

**DATE OF HEARING:10.11.2022**  
**DATE OF DECISION:10.05.2023**

**Anil Choudhary:**

The issue in this appeal is whether the penalty of Rs.3,00,000/- under Section 114 (iii) of the Customs Act, 1962 and Rs.4,50,000/- under Section 114 AA of the Act have been rightly imposed, vide impugned order-in-original dated 18/19.02.2021.

2. The brief facts are that a common show cause notice was issued No.C.No.VIII/ICD/10/TKD/SIIB-Exp/Inv./AKS Apparels/52/15 on 14.08.2017 to the exporter - M/s. AKS Apparels, New Delhi proposing to

hold the goods liable to confiscation in respect of 321 shipping bills as per Annexure B to the show cause notice, with further proposal to deny the benefit under 'Focus Market Scheme' to recover the amount already disbursed of Rs.4,13,99,583/- with further proposal to recover the amount of duty draw back of Rs.10,53,63,846/- with further proposal to impose penalty. Further, the present appellant - M/s. Evergreen Shipping Agency India Pvt. Ltd. was made a co-noticee along with three others viz. i) Shri Imran Mirza, ii) Shri Nitin Gupta and iii) M/s. APL India Pvt. Ltd. It is recorded in the impugned order-in-original, the main noticee - M/s.AKS Apparels and Shri Nitin Gupta approached the Settlement Commission, New Delhi. The Settlement Commission vide its Final Order No.F-3331-3332/Cus/2018-SC(PB) dated 20.04.2018 issued vide F.No.C-3521-22/CUS/2017-SC(PB) dated 20.04.2018, settled the dispute finally giving immunity from prosecution, etc. This fact has been taken notice by the Court below in para 1.1 of the impugned order. However, the Adjudicating Authority considered that the dispute is settled vide the aforementioned order of the Settlement Commission only in respect of M/s. AKS Apparels and Shri Nitin Gupta, and is not settled with respect to other co-noticees including this appellant in the show cause notice no.C.No.VIII/ICD/10/TKD/SIIB-Exp/Inv./AKS Apparels/52/15 dated 14.08.2017. Accordingly, vide impugned order-in-original, penalty was imposed on this appeal and two other co-noticees viz. Mr. Imran Mirza and M/s. APL India Pvt. Ltd.

3. Assailing the impugned order, Id. Counsel for the appellant, Dr. G.K. Sarkar, *inter alia*, urges that a settlement order ends the dispute not only with respect to the applicant before the Commission, but also qua-other co-noticees. Hence, the impugned order is bad and fit to be set aside.

4. Where the importers/exporters have been granted immunity from prosecution, fine and penalty and proceedings against them have come to an end, it is discriminatory and unfair to continue the proceedings against the co-noticees, particularly, this appellant, which is a global container carrier (shipping line) and provides liner shipping services worldwide.

5. Ld. Advocate relies on the ruling of the Apex Court in the case of **Union Of India Vs. Onkar S. Kanwar – 2002 (145) ELT 226 (SC)** and also on the ruling of the Madras High Court in **A.M. Ahamed & Co. Vs. Commissioner - 2014 (309) ELT 433 (Madras)**. Accordingly, prays for allowing the appeal, in view of the judicial precedents.

6. Ld. Authorised Representative, Shri Divey Sethi for the respondent/Revenue relies on the impugned order.

7. Having considered the rival contentions, I find that the dispute against the present appellant (co-noticee) stands settled in view of the aforementioned rulings of the High Court and the Hon'ble Supreme Court. I further find that in a recent decision, the Hon'ble Madras High Court in **A.M. Ahamed & Co. Vs. Commissioner – 2023 (383) ELT 416/2 = Centax 212 (Madras)**, under similar facts and circumstances, where show cause notice was issued to the importer and the CHA, the importer had settled the dispute before the Settlement Commission and paid the Additional Duty of Customs and was granted immunity from prosecution, fine and penalty. Under such circumstances, allowing the Civil Misc. Appeal of the A.M.Ahamed and Co. (CHA), the Hon'ble High Court recorded the findings as follows:-

“16. It is clear from the above that where the benefit has been granted under the Samadhan Scheme to the main party, that benefit must also enure in favour of the other co-noticees and it would be unreasonable and discriminatory if the benefit is not extended.

17. Once an order of settlement is passed by the Settlement Commission, the entire dispute comes to an end and thereafter, the case cannot be adjudicated qua the other co-noticees. The effect of the settlement mechanism that has been provided in the Samadhan Scheme that was dealt with by the Apex Court in the judgement referred supra, will equally apply when an order is passed by the Settlement Commission. The very purpose of approaching the Settlement Commission is to bring to an end proceedings initiated by the authorities. While passing the order, the Settlement Commission takes into consideration the offer/ disclosure made by the importer and also the submissions of the department and finally, a decision is taken. In this case, the Settlement Commission found that the importer had made true and full disclosure of all the facts relating to imported goods. The Commission also took into consideration the additional amount of Customs duty and interest paid by the importer. Accordingly, the importer was granted immunity from prosecution, fine and penalty. If the proceedings against the importer has thus come to an end, it will be discriminatory and unfair to continue the proceedings as against the CHA in relation to the very same transaction. The order of the Customs and Central Excise Settlement Commission, dated 30.11.2010 granting immunity to the importer from prosecution, fine and penalty, will also enure to the benefit of the appellant. The Second substantial question of law is answered accordingly.

18. In view of the above discussion and the substantial questions of law having been answered in favour of the appellant, this Court holds that the appellant is not liable to pay any penalty. Accordingly, the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (CESTAT), dated 16.2.2016 is hereby set aside and consequently the orders passed by the Commissioner (Appeals), dated 31.1.2011 is also set aside.”

8. Following the rulings of the Apex Court and the Hon'ble Madras High Court, as aforementioned, I allow this appeal and hold that the impugned order is bad. The appellant is also entitled to immunity granted by the Settlement Commission, to the main noticee, as mentioned hereinabove. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

[Order pronounced on 10.05.2023]

(Anil Choudhary)  
Member (Judicial)

Ckp.

