

Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 11906 of 2017

(Arising out of OIO-AHM-CUSTM-000-COM-015-16-17 dated 07/03/2017 passed by Commissioner of CUSTOMS-AHMEDABAD)

Shri Manoj Gadhiya

.....Appellant

C/O M/S Exim Connect Pvt Ltd.

608-609-610, 6th Floor, Ampc Building, Krushi Babar, Sahara Gate, Ring Road, Surat, Gujarat

VERSUS

C.C.-Ahmedabad

.....Respondent

Custom House, Near All India Radio Navrangpura, Ahmedabad, Gujarat

APPEARANCE:

Ms Ruhi Jhota, Advocate for the Appellant

Shri Sanjiv Kinker, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 12245 /2021

DATE OF HEARING: 08.03.2021

DATE OF DECISION: 17.06. 2021

RAJU

This appeal has been filed by Shri Manoj Gadhiya against imposition of penalty under customs Act.

2. The case was booked against M/s Rudrani Impex Pvt Ltd. and others including the present appellant in a case involving a proper claim of export benefits. The appellant Shri Manoj Gadhiya was earlier a manager of M/s Ukinex Commercial Services. Shri Amit C Khatu was a "G" Card Holder of M/s Ukinex Commercial Services, Mumbai. In the said proceedings notice was issued to 85 noticee and the present appellant was one of them.

2.1 The appellant approached the tribunal for early disposal of his appeal as he wishes to apply for Custom Broker License. As per Regulation 5 of the Customs Broker Licensing Regulation, 2018 (Notification no 31/2018-Customs(MT) 14.05.2018), a person becomes eligible to appear for F-Card Holder exam only if he has not been penalised for any offences under the customs act and various other act. Since the appellant has been penalised in the customs act he becomes ineligible to appear for the said exam in terms of Regulation 5 of the CBLR 2018. In above background earlier hearing was allowed to the appellant.

2.2 The appellant is co-noticee in the case wherein the large number of Embroidery Machines were imported using EPCG License in the names of fictitious non existing entities. The charge against the appellant was that he facilitated for import of these machines in fictitious names, by failing to verify the documents, by failing to conduct KYC of these fictitious importers. It was also held in the impugned order that the appellant used G Card details of Shri Amit Khatu in the import documents and also signed for Mr khatu. It was also held that the appellant signed import documents in the name of N.B Agarwal who had already died. Para 52.5 of the impugned order records as follows:

"52.5. I find that Mr. Manoj Gadhiya in his depositions recorded on 13.02.2014 has accepted that they did not have any KYC in respect of the importers where RIPL was the high sea seller and they had accepted the genuineness of the documents supplied to them. He has further stated that they had not verified the antecedents, correctness of the IEC Code Nos, identity and functioning of the dummy Units at the declared address, as required under Regulation No 11(n) of the CBLR. He had not verified the photocopies of the rent deeds and electricity bills with the original ones. Mr Haresh Gadhiya in his statement dated 28.03.2014 has also made identical depositions as Mr Manoj Gadhiya. He has further admitted that he and Mr Manoj Gadhiya, after the death of N.B Agarwal (earlier Proprietor, used the "G" Card Details of Mr Amit Khatu in the import documents and also signed for Mr Khatu. They both had further signed import documents in the name of Mr N B Agarwal who had already expired. From the above facts, it is clear that both Mr Haresh Ghadiya and Mr Manoj Gadhiya have not acted in due diligence as they had not verified the antecedents identity and functioning of the dummy units at their declared address. Both Mr Haresh Gadhiya and Mr Manoj Gadhiya knew that the import documents were being filed by them on behalf of dummy units without verifying their existence. By the above acts, they have abetted RIPL in filing false documents and also dealt with the goods in a manner which they knew were offending in nature and

would be liable to confiscation,. Therefore, Mr Haresh Gadhiya and Mr Manoj Gadhiya cannot escape their liability for penal action under Section 112 (a) of the Act. I also find that Mr Haresh Gadhiya and Mr Manoj Gadhiya had forged the signatures of Mr N B Agarwal , the earlier proprietor under section 114 AA of the Act as they used forged documents for import of the computerized embroidery machines."

3. Learned Counsel for the appellant argued that the appellant was the holder of "H" Card issued by the Assistant Commissioner of Customs Surat and he was looking after import and export work of M/s Ukinex Commercial Services, Surat which is a custom house agent (Custom broker). M/s Ukinex Commercial Services was engaged in import of capital goods like Embroidery Machines for which traders/dealers use to contact along with relevant required documents for import. M/s Ukinex Commercial Services would file bill of entry online and thereafter submitted hard copies of the relevant documents like PAN Card , IEC, RCMC, SSI, Factory address proof, electricity bill, municipal tax bill along with leave and licence agreement and residence address proof of the importer which are all self attested documents by the importer DRI booked case against M/s Rudrani Impex Pvt Ltd, Surat, alleging diversion of imported computerised Embroidery Machines Computerized against dummy IEC and EPCG Licence holder or payment of zero duty or 3% concessional Custom duty. The notice alleged that imported these machines from china and shown said machines as sold on High Sea Sales Basis to the dummy/fictitious IECs holder firms and got cleared the said machines against EPCG Licenses of these firms. In this case the bill of entry was filed by M/s Ukinex Commercial Services.

3.1 In this regard, statement of the present appellant was recorded on 13.02.2014 wherein the appellant had explained to the officers of investigating agency, the method and manner in which he used to undertake the task on behalf of CHA firm. The appellant had explained in general terms in regards to all the importers that they had not maintained any records in respects of KYC of their customers, however, they were verifying the

genuineness of the IEC and PAN card of the customers online from the website of DGFT and income tax department respectively before submitting the documents to customs.

3.2 The appellant had submitted that their main customer was M/s Rudrani Impex Pvt. Ltd. & others who were mostly all high sea sellers of different type of textile machinery. The appellant had informed the officers that they had taken authorization letters, permission letter for seal cutting of container from importers for the clearance of the goods from Customs and after online assessment of bill of entry, the 2nd & 3rd copy of bill of entry obtained from CMC were sent to head office at Mumbai and Shri Amit C. Khatu, G Card holder signed the same and returned it to them and thereafter they submitted the same to Customs at ICD, Sachin for their signature, the appellant informed that on behalf of the importers either his office staff or he himself remained present during inspection/examination of cargo. The importers were never present when the imports were of M/s Rudrani Impex Pvt Ltd.

3.3 The appellant also informed the officers that he used to do verification of electricity bills of Torrent power from the website as well as Vera (tax) Bill issued by Surat Municipal Corporation from SMC website and did not find any incorrect bills during such verification of the said documents through these official websites. The appellant informed that for the clients of Surat they had taken KYCs and authorization letters from the respective High Sea Sellers and submitted to the Customs authority and they did not have KYCs and authorization letters in their records. It was also informed that the appellant had taken KYCs from M/S Rudrani Impex in respect of importers who had imported the embroidery machines on high sea sale basis from them and submitted the same to the Customs authorities.

3.4 The appellant says and submit that the penalty under section 112 (a) of the Customs Act, 1962 has been imposed for violation of provisions of Rule 11(n) of the Customs Brokers Licensing Regulations, 2013 (CBLR, 2013) which requires the Customs Brokers to verify antecedent, correctness

of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The appellant submits that antecedents of documents are confirmed when the person has submitted self attested documents to be submitted before the Government department. The self attestation of a document puts responsibility of genuineness of photocopy of document on the person attesting it. The Importer Exporter Code has been verified from website of DGFT.

3.5 The appellant has submitted that they have verified the electricity bills from Torrent Power website and Surat Municipal Tax bills produced by importers from surat Vera (tax) website. No discrepancy has been found and the information given in the self attested documents were found matching with the details available on respective website.

3.6 Thus all the reasonable steps were taken by the appellants before submitting documents to the customs. It cannot therefore be said the appellant has contravened the provisions of Rule 11(n) of CBLR, 2013. In the first statement itself the appellant had disposed before the investigating officers that this type of procedure was being followed in respect of all the importers and Rs. 8,000/- per container was charged for which bills were raised. There is no allegation of the department that the appellant had charged any extra money from M/s Rudrani Impex in respect of the present consignment of embroidery machine in dispute. The appellant had taken authorization letter, permission letter for seal cutting of container from importers from the clearance of the goods from customs and after online assessment of bill of entry, the 2nd& 3rd copy of bill of entry obtained from CMC were sent to head office or at Mumbai and Shri Amit C. Khatu, G. Card Holder signed the same and returned it to them and thereafter they submitted the same to Customs at ICD Sachin for their signature.

3.7 The appellant submits that due diligence to the possible extent has been taken by the appellant and there is no reason available on record or proved by the adjudicating authority to show that the appellant had prior

knowledge about the importer firms begin dummy. The appellant submits that all KYCs of the importers which were self-attested and submitted by M/s Rudrani Impex who was regular client of the appellant and Mobile number of its Director and Employee were available with the appellant, these KYC documents were also submitted to the custom department without retaining the copy of the same.

The appellant relied on the following cases:

- V. Esakia Pillai Vs CC Chennai 2001 (138) ELT 802 (Tri. Chennai)
- Hindustan Steel Ltd. Vs State of Orrisa 1978 (2) ELT J159(SC)
- Union of India (UOI) and Ors. Vs Raja Agencies 1993 (42) ECC 166 which has been confirmed by the Hon'ble Supreme Court reported in 1998 (102) ELT A154
- U. Shivasubramanianv. CC Trichy reported in 2004 (165) ELT 97 (Tri. Chennai)

There is no allegation in this case that the appellant as CB had received any extra benefit or additional amounts from M/s Rudrani Impex for which the forged or fake documents would have been produced by the appellant.

3.8 Learned Counsel argued that penalty under Section 114AA of the Customs Act, 1962, has been imposed on the ground that the appellant had forged the signature of Shri N.B. Agarwal, earlier proprietor of CHA firm and Mr. Amit Khatu, G Card Holder. The appellant submits that this finding is erroneous. Shri Amit Khatu has admitted that he had given his G Card to be used by the appellant for clearance of Cargo at ICD, Sachin. There is no evidence that the appellant had forged signature of Shri Amit Khatu in the import documents. Shri Baldev Jadhav, Branch Manager of the said CHA firm in his statement recorded on 27.03.2014 (Copy of Statement is at Exhibit 'C') has confirmed in his statement that bills of entry and examination orders were signed by Shri Nirmal Kumar Agarwal and after the death of Shri Nirmal, one Shri Amit C. Khatu, employee of the said firm and G card holder who sits in Mumbai Office signed on the said documents for

imports and exports at the ports of Mumbai as well as at Surat. He has also stated in the same statement at the other place that after online assessment of bill of entry the 2nd and 3rd copy of bill of entry obtained from CMC was sent to their head office at Mumbai by Shri Haresh Gadhiya from Surat and Shri Nirmal Kumar Agarwal signed these documents and after the death of Shri Nirmal, one Shri Amit C. Khatu used to sign these documents. Except the version of Shri Amit C. Khatu that he had never gone to Surat to sign import documents, it cannot be concluded that signature of Shri Amit C. Khatu was being forged by the appellant. If the department believes version of Shri Amit C. Khatu, the department shall also have to believe the version of Shri Baldev, as both the statements have been recorded under Section 108 of the Customs Act, 1962 and evidentiary value of both the statements is same. As regards, forging signature of Shri N.B. Agarwal, earlier proprietor of CHA Firm, the appellant having done any forged signature of Shri Agarwal.

4. Learned DR relied on the impugned order, he pointed out that appeal of the main appellant is pending. Learned Authorized Representative pointed out that Shri Haresh Gadhiya manager of M/s Ukinex Commercial Services as in statement dated 28.03.2014 (RUD -141) has stated that Shri Manoj Gadhiya has signed as Shri Amit C Khatu G Card Holder or as Shri N. B Agarwal, proprietor of M/S Ukinex Commercial Service.

4.1 He further pointed out that Shri Kaushal D Shukla director of RIPL as in statement dated 16.01.2014 (RUD -144) has stated that when buyers approached them for importation of the machinery, they asked them to provide the documents viz. Photo Identity Proof, PAN Card, Electricity Bill for residence, Factory Electricity Bill, Factory Rent Agreement, original SSI Certificate, original EPCG License (both copies), that after getting all the said documents, one Xerox set of all the Said documents were handed over to their CHA wherein **Shri Manojbhai Gadhiya,** partner of Seacamp Exim Services Pvt. Ltd., their CHA firm made the requisite corrections, if required,

by manipulating in the documents required for submission to Customs authorities at ICD Sachin, Surat for imports of machines and also get notarized the such mended/ created documents and completed all formalities ; Learned Authorized Representative relied on the following portion of the notice

- that he was shown File No. 1 of Annexure –A containing 68 pages, seized under the Panchnama dated 29.11.2013 drawn at their office situated at 309, Union Trade Centre, Surat and after carefully gone through the same, he stated that the said file was in respect of 2 Computerized Embroidery Machines imported by M/s. Narayan Muni Fashion, Surat, an actual buyer and the said file was prepared and maintained by him as they prepared and maintained such files for all the importers who import computerized Embroidery Machines from them on High Sea Sale Basis and the said file containing original photo copies of the SRTEPC fee payment & Membership Certificates, Chartered Engineer Bill for certificate and Chartered Engineer's Certificate, copy of IEC and EPCG Licences issued by the DGFT Authorities , SSI Certificates issued by the DIC Authorities , Factory Rent Agreements, documents in respect of ownership of the premises of landlord , Copy of Electricity Bill, copy of EPCG Bond etc, that pages nos. 37 to 46 of the said File No. 1 was original rent deed made between Shri Maheshbhai Karshanbhai Patel, owner of plot No.1, Tapi Industrial Co-op. Society, Ved Road, Surat and Shri Dilipbhai h. Gabani, Prop. of Narayan Muni Fashion, Surat made for 11 months, that pages nos. 60to 64 o the said File No. 1 was Photo copy of above said rent deed, that he was shown page no. 62 of said file wherein at sl. No. 2 it was mentioned that the said rent deed was made for 60 months and in this regard, he stated that the said manipulation of 60 months instead of 11 months was done by **Shri Manojbhai Gadhiya**, that in case of original buyers manipulations were made mostly in Rent deeds, as normally rent deed for any premises was made for 11

months only and for imports under EPCG they have to submit a rent deed made for 60 months before customs and therefore in such cases;

- that to illustrate the above modus operandi he was shown File No. 7 of Annexure –A, containing 62 pages , seized under the panchnama dated 29.11.2013 drawn at their respective office situated at 309, Union Trade Centre, Surat, that the said file was in respect of 9 Computerized Embroidery Machines imported by M/s. Mahadev Creation, Surat, a created IEC holder & EPCG Licence holder and the said file containing original and photo copies of the SRTEPC fee payment & Membership Certificates, Chartered Engineer Bill for certificate and chartered Engineer's Certificate, copy of IEC and EPCG Licences issued by the DGFT Authorities, SSI Certificates issued by the DIC Authorities, Factory Rent Agreements, Documents in respect of ownership of the premises landlord, Copy of Electricity Bill, Copy of EPCG Bond etc, that pages nos 3 and 4 of the said File No. 7 were copies of Electricity Bill in respect of Service No. 500230756 and in one copy at page no. 3, name of consumer was mentioned as Shri Rajeshkumar Uttamram Prajapati and in the second bill at page no 4, name of consumer was mentioned as Shri Narayan Mallaraddy Patel, that the correct name of the Consumer was Shri Rajeshkumar Uttamram Prajapati as per Bill placed at page 3 , though the certain alteration in address i.e. P.No. 187/A had been made by altering as P187-188, that the said Electricity Bill had been fabricated by altering the name of the consumer and address as mentioned above, that the said fabrication in name and address had been done by **Shri Manoj Gadhiya**;

- That page nos.9 to 12 of the said File No.7 were original copy rent deed made between Shri Rajeshkumar Uttamram Prajapati, Prop. of M/s Mahadev Creation, Surat and Shri Narayan Mallaraddy Patel,

created owner of the premises i.e. Plot no.187 to 188, Ambika Ind. Estate, U.M Road, Surat made for 11 months and page Nos 53 to 54 were photo copy of manipulated rent deed wherein manipulation in the said rent deed was made for 60 months, in this regard I state that the said manipulation of 60 months instead of 11 months was done by **Shri Manojbhai Gadhiya**.

- That thus there were 23 created IECs, out of which in 6 created IECs, no import of machines had been done as mentioned above.

4.2 Learned AR also relied on the decision of Hon'ble Apex Court in the case of Naresh J Sukhwani Vs. Union Of India-1996 (83) ELT 258 (S.C) reproduced below: -

"4 I t must be remembered that the statements made before the Customs Officials is not a statement recorded under section 161 of the Criminal Procedure code, 1973. Therefore it is a material piece of evidence collected by customs officials under section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the customs act, The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statements clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

4.3 Learned AR argued that the statement of Co- Accused can be relied upon in terms of the aforesaid decision. He also relied on the decision of tribunal in the case of Noble Agency V.s Commissioner of Customs, Mumbai-2002 (142) E.L.T. 84 (Tri.-Mumbai) In para 12 of the said decision following has been observed: -

"12. The CHA occupies a very important position in the Custom House. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies Viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government Agencies. To ensure appropriate discharge of such trust, the relevant regulations

are framed. Regulation 14 of the CHA Licensing Regulating lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations. Any deliberate contravention of the law has to be dealt with most seriously. Regulations 13 makes it very clear that CHA license cannot be sold or transferred. The proceedings in the case show and establish that by his action Shri. Maru had in fact transferred the license to several people for pecuniary benefits. Such contraventions have to be viewed seriously and hence the order of the Commissioner is correct."

5. We have considered rival submission. The charge raised by appellant that he fabricated documents and forged the signature thereby allowing import of machines by fictitious non existing importers leading to loss of custom duty. This evidence is essentially in the shape of the statement of co accused. It is noticed that Shri Manoj Gadhiya has admitted in his statement dated 13.02.2014 that he was looking after over all custom clearance work of this RIPL till he resigned on 1st October 2013. He also admitted that he was looking after the work related to DGFT office viz. IEC , EPCG license etc. He admitted That M/s. Ukinex Commercial Services filed Bill of Entry online in EDI system through ICEGate for Customs, ICD Sachin, Surat (INSAC6) and the work of filing EDI bill of entry thorough ICEGate was done at their office by one employee of Seacamp Exim Services Pvt. Ltd under his direct instructions and supervision. He has stated that they submitted all the hard copy of the relevant documents like copy of PAN car, IEC, RCMC, SSI factory address proof electricity bill, municipal tax bill along with leave and licence agreement and resident address proof of the importer which were all self attest by the importer. That they facilitated clearing and forwarding of imported goods. He stated that M/s RIPL was one of their main customers and was engaged in High Sea Sale of the machinery to the various parties. He stated that the said high sea sellers gave them the work of customs clearing and forwarding for their buyers who were the importers and that they did not have direct contract with such importers and they filed the bill of entry for the said importers on the basis of the High Sea Seller's instructions and submission of different documents required for customs clearance. He also stated that they had received the authorization various importers from respective High

Sea Seller/Dealer. These documents received from High Sea Seller were submitted to the customs authorities. He also stated that they had not kept copy of the said authorization with them and hence they did not have any such authorization with them. He also stated that they did not have any KYC in respect of importers wherein M/s RIPL was the High Sea Seller. He clarified that Shri Kaushal Shukla and Shri Shailesh both employees of M/s RIPL used to come along with all the relevant documents from M/s RIPL. All the consignments of M/s RIPL imported through ICD, Sachin, Surat were sold on High Seas Sale basis to various importer in Surat. He stated that they had not maintained with them KYCs of importers where High Sea Seller was M/s RIPL and they had accepted the documents as supplied by the M/s RIPL. He clarified that they verified the genuineness of the IEC and PAN card of the Customers online from the website of DGFT and income tax respectively before submitting the documents in customs and that he had started verification of Electricity bills of Torrent Power from the website as well as Vera bill issued by Surat Municipal Corporation from SMC website. He stated that he had not found any incorrect bills during such verification of the said documents through the website of Torrent Power And Surat Municipal Corporation. This is an incorrect assertion. He was shown page no. 2 of file no. 13 which was photo copy of Torrent Power Bill in respect of service member 500599418 and meter no. 83300329 for the month of June, 2013 wherein the name of the consumer was mentioned as Shri. Vijaybhai odhavbhai Virani, Plot no. 689-691, 1st floor, new GIDC, fulpada road, katargam, Surat, that he was also shown letter Ref. BDM/AP/13631 dated 13.01.2014 of the assistant General manager (A.P). Torrent Power Limited, Surat and original bill of Service No. 500599418 and Meter No. 83300329 bearing the name of consumer Bhaveshbhai Vallabhbhai Bharodiya. As per the electricity bill of Torrent Power Ltd., owner of the said Plot no. 689, 1st floor, New GIDC, fulpada road, katargam, Surat, was Bhaveshbhai Vallabhbhai Bharodiya where as the rent agreement palced on page nos. 4 to 7 of said file no 13 for the premises Plot no. 689-691, 1st floor, new GIDC, fulpada road, katargam, Surat, showing the owner of the said plot was as Shri. Vijaybhai odhavbhai Virani. He admitted that he had not verified the said

electricity bill regarding authenticity of the same with the website of Torrent Power Ltd., though he had attended the said EPCG Licence No 5230012440 dated 23.08.2013 for the registration and clearances of Embroidery Machines under zero duty EPCG Scheme made there under in the month of September 2013. He admitted that they had filed bill of entry in the name of said importers without verifying their antecedent and their genuineness as required under Customs Brokers Licensing Regulations, 2013 /or CHA Regulation, 2004 as the work was entrusted by the High Sea Seller M/s RIPL through their directors Shri Salil Shah and Shri Kaushal Shukla. He was also shown the statement dated 10.02.2014 of Shri Sureshchandra Zariwala, Proprietor of M/s Ambika Fashion, Surat. He had gone through the said statement of Shri Sureshchandra Zariwala dated 10.02.2014 and agreed with the same. On being asked about the signature appearing on the statement of Shri Sureshchandra Zariwala and signature appearing on letter dated 03.09.2013 M/s Ambika Fashion, Surat; addressed to the Assistant Commissioner Of Customs, ICD Sachin, Surat and on High Sea Sale Agreement he stated that, the signature on the said letter and high sea sale Agreements were not matching with the signature on the said statement recorded under section 108 of the Customs Act, 1962 wherein he stated that they had neither taken any IEC or EPCG Licence nor they had imported any Computerized Embroidery Machines and did not have any factory premises. He stated that the signature on the said letter and High Sea Sale Agreements appears to be forged one; that the said documents was submitted by them before the customs as supplied by the High Sea Seller and they had not verified its authenticity and he was not aware who had signed on the said documents.

5.1 After the hearing, written submissions were submitted by the appellant on 10th March, 2021 wherein the appellant has submitted:

1. An employee of M/s Ukinex Commercial Services, CHA firm he was required to verify details and assist in filing of Bills of Entry. All the more the documents were self- attested therefore responsibility of any manipulation as alleged by the said SCN and queries of the Learned DR would be totally fall on the client i.e. M/s Rudrani Impex Pvt Ltd. It is to submitted there been drastic manipulation for assisting in alleged evasion the employers would definitely come to have noticed

since prior to April 2013 the documents were sent to be signed by the G-Card holders of /s Ukinex Commercial Services as there were no regulations as to prior signing of the documents like Bills of Entry and verification.

2. As regard forgery of signatures of Amit khatu , G- Card Holder and the proprietor NB Agarwal , it was submitted that as per the instruction of the new custom officials the signed bills of Entry and Verification were required to be provided beforehand . therefore Amit Khatu, G- Card Holder and the proprietor NB Agarwal instructed Shri Manoj Gadhiya, the appellant to sign on their behalf and proceed with timely filing as they were stationed at Mumbai and the to and fro courier of documents would take around a weeks' time delaying filing of Bills of Entries. In connection with forgery post death of proprietor of M/s Ukinex Commercial Services, Shri NB Agarwal, it is to submitted that they were not informed of his death until they appellant himself called in the order to ask for signed cheque books of Shri NB Agarwal, for payment of administrative expenses and informing of his leave owing to his eye surgery in coming weeks.

3. It is further submitted that this was the prevalent trade practice followed at that time so the appellant simply followed orders of the employer and seniors. He also submitted that the deceased employer and the G- C are holder Amit Khatu were unaware of the happenings and were able to somehow escape the allegations and levy of penalty imposed upon them and all the blame was pushed further below on their employees who had nothing to gain from anyone in the circumstances.

4. Nowhere in the show cause notice or in the impugned order the Department have alleged or proved that the appellant is beneficiary to any gains from the alleged acts.

5.2 From the above it is apparent that the appellant was fully aware about the fictitious nature of the importers as the documents were being fabricated with his knowledge. He also admitted that he had never met the importer

but solely relied on the documents submitted by High Sea Seller. His defense seems to be that once document is self certified he does not have any responsibility. This is just an excuse. The entire responsibility of KYC has been placed on the Customs Brokers. If just self attestation was enough than there was no need to put of responsibility of KYC on Customs Broker. He also admitted to forging of signatures. His only defense seems to be that he was merely an employee following direction of superior and that the Superior Shri Amit Khatu was let off.

6. In view of the above it is apparent that the appellant has failed in his duty as H- Cardholder and actively involved himself in facilitating evasion of customs duty. The appellant was given specific responsibility by revenue by making him an H- Card Holder. He cannot simply pass the blame to his superior G- Card Holder. In this background the charges under section 112(a) of the customs act as well as 114A of the customs act are upheld.

7. Appeal is therefore dismissed.

(Pronounced in open court 17.06.2021)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

