Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 11166 of 2017 - DB

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

Shri Brij Kishore Goel ....**Appellant**
Survey No. 635,
Galpadar-Anjar Road,
Anjar, Kutch, Gujarat

VERSUS

Commissioner of Customs -Ahmedabad ......**Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Devashish K Trivedi, Advocate for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) the Respondent

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

Final Order No. 10641/2024

DATE OF HEARING: 21.11.2023
DATE OF DECISION:20.03.2024

RAMESH NAIR

Brief facts of the case leading to the present appeal are that the Appellant M/s. Brij Kishore Goel being a Chartered Engineer issued a Certificate based on documents so submitted for installation and use of such imported embroidery machine under EPCG without first verifying whether the machine in question were installed or not. The Department vide Order–in–Original No. AHM/CUSTM/000/COM-015–16-17 dated 07.03.2017 imposed penalty amounting to Rs. 1,00,000/- and Rs. 10,000/- under section 112(a) and Section 114AA respectively, for the reason that while issuing the Certificate the Appellant has not complied with the requirement of verifying whether the machines are installed or otherwise.

02. Shri Devashish K. Trivedi, Learned Counsel appearing on behalf of the Appellant submits that the Appellant has issued the Chartered Engineer Certificate on a bonafide belief that the applications so made were in furtherance of machines being installed in the factory. He submits that the

Appellant placed reliance on the documents submitted to him and believing that what is told to him to be true and correct issued the said Certificate without any knowledge whether the machines were diverted or otherwise as the purpose for which the certificate is issued only pertains to installation and use and not in furtherance of business transaction under the Customs Act, therefore it cannot be presumed by the Department that he was directly involved in the evasion of duty by the importer. He further submits that due to this case the Appellant's registration was cancelled and that he was barred from conducting his profession for three years that he has served his punishment since then by not being able to carry out business for three years. He has placed reliance on the following judgments in support of his claim:-

- I. Sahaya Edin Prabhu 2008 (222) ELT 308 (Tri. Chen.)
- C. Ashok Kumar 2010 (262) ELT 321
- Neptune Cargo Movers Pvt. Ltd. 2007 (219) ELT 673

03. Shri H.P. Shrimali, Learned Superintendent (AR) appearing on behalf of the Department reiterates findings of the impugned order.

04. We have heard both the sides and perused the records. We find that there is no dispute as regards the fact that the Appellant had issued such Certificate for installation and use of machinery which is a mandatory requirement under the EPCG Scheme without verifying the installation of machine in the premises of the factory of the importer. The purpose of such certificate issued by a Chartered Engineer is not only to facilitate installation of machinery as imported under the EPCG Scheme but the installed machine also acts as a precursor for the importer to avail benefit of EPCG exemption therefore to fulfill purpose of installation it is imperative that the presence of machinery on the premises be verified. To issue such Certificate without verification of the fact that machines are installed in the factory, the appellant has facilitated to evade custom duty by the importer which under the application of law is construed to be a serious offence on the part of the Appellant. Accordingly, in our considered view the Appellant is liable for penalty under Section 112(a) and Section 114 AA. However, considering the fact that the Appellant under bonafide belief relied on the documents to issue certificate due to which his registration was cancelled

and his business suffered for three years, we are of the view that the Appellant deserves leniency as regards the quantum of penalty imposed.

05. Accordingly, we reduce the penalty under section 112(a) from Rs.1,00,000/- to Rs. 50,000/- and that under section 114AA from Rs.10,000/- to Rs. 5,000/-. The impugned order is modified to the above extent. Appeal is partly allowed in the above terms.

(Pronounced in the open court on 20.03.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha