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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 11925 of 2019- DB

(Arising out of OIO-KDL-CUSTM-000-COM-04-19-20 dated 14.05.2019 passed by Commissioner of Central Excise, Customs& Service Tax- Kandla)

M/s Sanmar Shipping Limited ....**Appellant**
'Venkatagiri' Flat No.8/3 And 8/4, Ground Floor, No. 8(Old No. 9),
Sivaprakasam Street, T. Nagar
Chennai-Tamil Nadu

VERSUS

C.C.–Kandla ......**Respondent**
Custom House,
Near Balaji Temple,
Kandla-Gujarat

APPEARANCE:
Smt. Radhika Chandra Shekhar, Advocate for the Appellant
Shri P. Ganesan, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO. 11061 /2024

DATE OF HEARING: 01.05.2024
DATE OF DECISION:15.05.2024

RAMESH NAIR

The Appellant imported a vessel MT Sanmar Soprano Ex Jenny along with bunkers and standard accessories. The Appellant declared the value as USD 98,60,000. The value was certified by a Chartered Engineer empanelled as per Public Notice 16/2008 dated 03.06.2008 issued by Customs House, Kandla. The department during the scrutiny of import documents by SIIB found that the Appellant have not included the freight and insurance in the value and thereby the value declared by the importer is not correct. The department was of the view that the value declared by the Appellant is incorrect in terms of Rule 10 of Customs Valuation (Determination of value of Goods) Rules, 2007. The department observed that 20%of the FOB value has to be added as freight apart from insurance at 1.125% of the FOB value.Statement under Section 108 was taken on 12.10.2017 from the employee of the Appellant. Thereafter the authorised officer vide letter dated 07.02.2018 calculated the differential duty and directed the Appellant to pay the differential duty of Rs.68,52,979/-. The Appellant vide letter dated 10.02.2018 requested the department to arrange the facilitation of re-processing of the subject Bill of Entry to upload the differential IGST in the ICEGATE portal to make the payment. However the department vide letter dated 14.02.2018 rejected the Appellant's request and directed the Appellant to make payment through Demand Draft. The Appellant made the payment and the same was communicated vide letter dated 05.03.2018.The Appellant also requested for waiver of Show Cause Notice as the Appellant had deposited the duty along with interest. The Deputy Commissioner of Customs vide letter dated 16.03.2018 intimated the Appellant that waiver of Show Cause Notice is possible only when 15% of the duty is paid as penalty along with duty and interest by referring to Circular dated 10.03.2017.The department issued Show Cause Notice proposing to impose penalty under Section 112 and 114A after appropriating the payment of differential duty to the extent of Rs.68,52,979/- along with interest of Rs.5,46,361/-.The Principal Commissioner of Customs vide Order in Original No. KND-Custm-00-OM-04-2019-20 dated 14.05.2019 has confirmed the proposals in the Show Cause Notice along with penalty. The OIO has held that the Appellant has declared the value by suppressing the fact of freight and insurance and therefore the value declared by them is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Being aggrieved by the Order-in-Original, appellant filed present appeal.

2. Mrs. Radhika Chandra, learned Counsel appearing on behalf of the appellant submits that the appellant have without contesting the differential duty liability paid the same along with interest, therefore, there is no question of issuing any show cause notice in terms of Section 28(2) of Customs Act. It is submitted that Section 28(5) will come into play only when there is a proceeding under Section 24(4) is initiated. In the instant case, the objection raised by the appellant is that the department should not have issued a show cause notice when the differential duty is paid based on an assessment by a proper officer. This submission has not been rebutted in the impugned order. She submits that the valuation of the goods have been arrived at on the basis of Chartered Engineer Certificate as a basis of valuation as laid down in Circular No. 25/2015-Cus dated 15.10.2015, therefore there cannot be a charge of suppression of fact or wilful misstatement. Hence the show cause notice ought not to have been issued as per Section 28(2) of Customs Act. She placed reliance on the decision of this Tribunal in the case of Biovita Labs 2016 (336) ELT 688. She also placed reliance on the following judgments:

- National Power Engineering Co. Final Order No. 76011 of 2023 dated 06.07.2023
- Wockardt Ltd. (2022) 1 Centax 65 (Tri. Bom.)
- Komal offset 1996 (87) ELT 501
- Pearl Engineers 2006 (203) ELT 71
- Prince Marine Transport Services Private Limited 2014 TIOL 2438
- Pahwa Chemicals 2005 (189) ELT 257

3. Shri P. Ganesan, Learned (Superintendent) Authorised Representative, appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. There is no dispute that the appellant have paid the duty along with interest before issuance of Show Cause Notice and also requested for waiver of show cause notice. The charge

against the appellant is that they have violated the provision inasmuch as they have not included the cost of freight and insurance in the assessable value.

5. We find that the appellant have followed prescribed procedure under Circular 25/2015-Cus dated 15.10.2015 and arrived at the valuation of the vessel on the basis of Chartered Engineer Certificate. Therefore, the suppression, wilful misstatement or collusion cannot be alleged against the appellant. The addition of freight is on the notional basis, therefore, it cannot be said that the appellant have suppressed any fact for under valuing the vessel. Accordingly, since the appellant have paid the duty along with interest before issuance of show cause notice, under intimation to the department for waiver of show cause notice, the case of the appellant is squarely covered by section 28(2) according to which the department would not suppose to issue any show cause notice. Consequently, no penalty could have been imposed. Therefore, we are of the considered view that in the facts and circumstances of the present case, since no suppression of fact, wilful misstatement, collusion etc. exist, the case is covered by Section 28(2) of Customs Act, 1962. Therefore, the penalty imposed by the adjudicating authority is clearly not sustainable. Hence the same is set aside. Accordingly, appeal is allowed.

(Order pronounced in the open court on 15.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha