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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 11968 of 2014- DB

(Arising out of OIA-04/CHA/2014-15 dated 02.05.2014 passed by Commissioner of Customs-Kandla)

M/s Saarthee Shipping Co **........Appellant**
Shah Avenue -1, 2nd Floor,
Plot No. 211, Ward-12b,
GANDHIDHAM, GUJARAT

VERSUS

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

APPEARANCE:
Shri Shweta Garge, Advocate for the Appellant
Shri Anand Kumar, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO. 11092 /2024

DATE OF HEARING: 01.04.2024
DATE OF DECISION:16.05.2024

RAMESH NAIR

The appeal is directed against order-in-Appeal No. 04/CHA/2014-15 dated 02.05.2014 whereby a penalty of Rs. 50,000/- was imposed on the following Customs Broker in terms of Regulation 20(7) of the CBLR 2013. As per the fact of the case, the penalty was imposed on the appellant in connection with an offence case booked for import of Rubber Processing Oil (RPO) by the importer M/s Rajkamal Industrial Pvt Ltd.

2. Ms. Shweta Garge, learned counsel appearing on behalf of the appellant, at the outset submits that the root cause of imposing penalty on the present appellant being custom broker is a case of alleged illegal import of Rubber Processed Oil by the importer M/s Rajkamal Indsutries

Pvt Ltd through the present custom broker. She submits that the case of M/s Rajkamal Indsutrial Pvt Ltd including Shri Amit Bharwaj who is the proprietor of the broker firm (appellant) the entire proceedings have been dropped even the penalty imposed under Custom Act on Shri Amit Bhardwaj have also been dropped, therefore, after the order of this Tribunal, no offence remains against the present appellant. Therefore, the penalty imposed under CBLR may kindly be set aside and appeal be allowed.

3. Shri Anand Kumar, learned Superintendent (Authorised Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that the penalty on the present appellant under CBLR was imposed for an amount of Rs. 50,000/- exclusively in connection with an alleged illegal import of rubber processing oil by the importer M/s Rajkamal Industrial Pvt Ltd., a case was made out against M/s Rajkamal Industrial Pvt Ltd which travelled upto this Tribunal and this Tribunal vide Final Order No. 10304-10313/2024 dated 01.02.2024 allowed the appeals of not only M/s Rajkamal Industrial Pvt Ltd. but also the proprietor of the present appellant Shri Amit Bhardwaj. For ready reference, the relevant portion of the order is reproduced below:

> "This group of appeals are preferred against the common impugned Order-In-Appeal KDL/COSTM/000/APP/413-422-14-15 dated 03.12.2014 passed by the Learned Commissioner (Appeals) wherein he upheld the classification of Rubber Processing Oil (RPO) under Chapter heading 27079900 of Custom Tariff Act and enhancement the value of imported RPO. The Learned Commissioner (Appeals) further upheld that the appellant mis-declared the country of origin in the bills of entry. Consequently, the Learned Commissioner (Appeals) upheld the finding of the Adjudicating Authority and dismissed the appeal preferred by the appellant. Therefore, the present appeals.
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> 1.2 The following four issues involved in the present appeals:-

(i) Whether the Rubber Processing Oil imported by the Appellant is classifiable under Chapter Heading No. 27101990 as classified by the Appellants or under Chapter Heading No. 27079900 as classified by the Revenue.

(ii) Whether the value of the imported RPO can be enhanced based on the consent letters given by the directors of the Appellants at the time of release of the goods, without following the due process of law as contemplated under Section 14 of the Customs Act read with Customs (Determination of Value of imported value) Rules, 2017

(iii) Whether the Appellants mis- declared the Country of Origin in the Bills of entry filed by them.

(iv) Whether the quantum of penalties and redemption fine imposed disproportionate to differential duty involved in the matter"

On the above facts and the issue involved therein this Tribunal dropped the penalties on the co-appellants including the present appellant. The relevant portion of the order is reproduced below:

"4.8 As regard the appeals filed by individuals as observed by us above, since the impugned order against the main appellants is not sustainable , there is no reason to continue the personal penalty upon the individuals co-appellants."

From the above order, it can be seen that when the proprietor of the present appellant firm has been exonerated from all the charges under the Customs Act which clearly shows that there is no wrong doing on the part of the appellants broker firm, therefore, following the above order, we are of the view that the penalty under CBLR will also not sustain on the same line. Accordingly, we set aside the penalty and allow the appeal.

(Order pronounced in the open court on 16.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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