CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 10741 OF 2017

[Arising out of OIA-KDL-COMMR-PVRR-115-2016-17 dated 15/12/2016 passed by Principal Commissioner of Customs-Kandla]

MR SUBHASH CHOUDHARY **.....Appellant**
Hrushikesh E/006, Apna Ghar Society,
Swmi Samarth Nagar, Lokhandwala,
Andehri (West),
Mumbai - 400053

VERSUS

PRINCIPAL COMMISSIONER, CGST, CUSTOMS & CENTRAL EXCISE-KANDLA **.....Respondent**
Custom House,
Near Balaji Temple,
Kandla

APPEARANCE:
Shri Shweta Garge, Advocate for the Appellant
Shri Himanshu P. Shrimali, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 11141/2024

DATE OF HEARING: 01.04.2024
DATE OF DECISION: 04.06.2024

RAJU

This appeal has been filed by Mr. Subhash Chaudhary against imposition of penalty of Rs. 25,00,000/- under Section 112(a) of Customs Act, 1962.

2. Learned Counsel for the appellant pointed out that the appellant was power of attorney holder of M/s. Awim Exim Company, which is a unit situated in Kandla special economic zone, and was managing day to day activities of the companies. The company was engaged in manufacture of made-ups, readymade garments etc. The company was granted letter of permission by development Commissioner for manufacture of made-ups and readymade garments and trading activities of items.

2.1 The company M/s. Awim Exim Company (AEC) filed documents for import of maxis, sarees and scarves into containers from to Kandla SEZ without payment of Customs duty in terms of the LOP issued by Development Commissioner Gandhidham. On examination of goods in Kandla SEZ, it was found that the maxis imported were worn, used, not sewed properly and manufactured out of cheap quality Indian made fabric. The sarees were wrapped in old editions of Indian newspapers. Even the cartons in which the goods were packed were broken and worn out. Thereafter, a search was carried out in the factory of AEC. After the search AEC wrote a letter to the exporter in Dubai and sought classification regarding substandard quality of goods found in the containers. The supplier M/s. Al Sambook replied admitting that wrong goods were supplied on their part and requested AEC to arrange a reshipment of goods to Dubai and said that in such event they would return the money received by the exporter. On examination it was found that they were 174 cartons of ladies maxis, 131 cartons of sarees and 43 cartons of dupattas as against declared quantity of 75 cartons of ladies maxis, 71 cartons of sarees and 100 cartons of scarves as shown in the relevant invoice filed by the appellant. Similarly in the second container were also 301 cartons of ladies maxis worn old and used and of Indian origin were found. The maxis were also not stitched and were having very less waist line.

2.2 Revenue approached the managers of M/s. Hariya Exports Limited Gandhidham and M/s. Flax Apparels Pvt Ltd Gandhidham for expert opinion. He opined that the goods were very old used and worn out. He determined the value of seized goods between Rs.10,14,036/- to Rs.10,20,794/- instead of declared value of Rs.1,04,22,088/-. On the basis of above the show cause notice was issued and the appellant were called upon to show cause as to why penalty under Section 112 of Customs Act should not be imposed. By addendum dated 08.08.2015 additional reliance was placed on the inquiry conducted by consulted general of India in Dubai to the effects that the goods in issue had been exported by M/s. Al Sambook Dubai by declaring the value as Dhm 68,750/- equal into Rs. 8,59,375/- .

2.3 The appellants sought cross examination of the experts who had given opined on the value of the imported goods. Thereafter, during the personal hearing also they sought cross examination of the experts / panchas and also sought copy of the document of Dubai Customs authorities for valuation of imported goods. The learned counsel pointed out that the Commissioner of Customs Kandla had vide order dated 29.12.2006 adjudicated the case without allowing the opportunity for cross examination and imposed penalty of Rs. 25,00,000/- under Section 112 (a) of the Customs Act, 1962 on the ground that the appellant had confessed in his statement that he had knowledge about mis-declaration of value, country of origin and description of goods carried on by the company. The goods were also confiscated. The appellants agitated the matter before the tribunal which vide order dated 16.06.2015 set aside the impugned order and remanded the matter to the adjudicating authority decide a fresh with direction to allow cross examination of experts who provided an opinion on value of goods and to provide the letter address to Dubai Customs by the consulted general of India Dubai.

2.4 The revenue thereafter fixed personal hearing on 10.08.2015, 31.08.2015 and 11.08.2016 and every time the appellant sought cross examination of witnesses and a copy of the letter addressed to Dubai Customs by the council economic, consulted general of India Dubai. Thereafter, without providing any opportunity for cross examination the matter was adjudicated.

2.5 Learned counsel pointed out that failure to grant opportunity of cross examination of two panchas and two experts, amount saw denial of natural justice. It was pointed out that by the learned counsel that tribunal had specially directed cross examination of the panchas witnesses and experts and the appellant had specially sought cross examination before the personal hearing.

3. Learned AR relied on the impugned order.

4. We have considered rival submissions, we find that in the instant case the matter had earlier come to tribunal while remanding had directed as follows:

> *"3. The Hon'ble Delhi High Court in the case of Vasudev Garg vs. Commissioner of Customs – 2013 (294) ELT 353 (Del.) held that the statement against the assesses cannot be used without giving them opportunity of cross-examination of the deponent. In our considered view, the appellant should be given opportunity of cross-examination of the exporters and Panchas and documents should be provided in the interest of justice, otherwise, the adjudicating authority should give reasons thereof."*

It is noticed that the impugned order has been passed without allowing cross examination as ordered by the tribunal. The impugned order observed as follows:

> *"6.5.1 With regard to direction given by the Hon'ble CESTAT for opportunity of personal hearing and cross examination, various opportunities were given to the Noticee and Shri Subhash Choudhary for personal hearing as well as for cross examination of panch withnesses and experts (as cited in SCN) as required, as detailed below."*

Sr. No.	Letter F. No. & Date for intimation of hearing and also Cross examination	Date of personal hearing
1	S/10-23/Adj/coomr/2015-16 dated 10.08.2015	04.09.2015
2	S/10-23/Adj/coomr/2015-16 dated 31.08.2015	10.09.2015
3	S/10-23/Adj/coomr/2015-16 dated 07.01.2016	02.02.2016
4	S/10-23/Adj/coomr/2015-16 dated 11.08.2016	08.09.2016

4.1 We find that the observations in the said letter indicate that an opportunity for cross examination was granted however, perusal of the letter of personal hearing dated 10.08.2015, 31.08.2015 and 11.08.2016. It is apparent that there was no mention of any cross examination opportunity in the said letter. In that context, it is appears the observations of commissioner in the impugned order that opportunity of cross examination was granted is incorrect. The letters fixing personal hearing had no mention about cross examination.

5. Consequently, the appellant did not appear before the Commissioner for the personal hearing and the order was passed without granting an opportunity of personal hearing. In this background we find that the impugned order has been passed without following the directions given by the tribunal and without following in the principals of natural justice. The impugned order is therefore set aside in respect of Shri Subhash Chaudhary and matter remanded to Commissioner for fresh adjudication.

(Order pronounced in the open Court on 04.06.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Dharmi