Final Order No. A/10339-10340/2020 Dated 30.01.2020

Per : Ramesh Nair, Member (Judicial)

This difference of opinion is listed before me as per the orders of Hon'ble President's vide F.No. 01(02)/R/Judl-CESTAT/2018 dated 04.12.2018 in the matter of Appeal Numbers E/557/2008, E/755,881,887,888/2007. As per the said order, I was nominated as 3rd Member to hear the difference of opinion in this Tribunal's order dated 21.01.2016.

2. The brief background of the case is that there was difference of opinion between the Hon'ble Member (Judicial) and Hon'ble Member (Technical) in the aforesaid appeals. As per the said order, the points of difference of opinion are as under:-

(i) Whether with regard to Show Cause Notice No V.CH-54(15)23/R-V/D-Halol/Commr./2004/dated 19.9.2004, the penalty imposed on M/s Modern Petrofils is to be set aside and penalty on M/s Filatex India is to be reduced to Rs 1,00,000.00 as held by the Learned Member (Judicial) or the penalties imposed on M/s Modern Petrofils and M/s Filatex India are to be upheld as held by the Learned Member (Technical).

(ii) Whether the penalty imposed on Shri Abhinandan Kataria is to be set aside as held by the Learned Member (Judicial) or it is to be upheld as per order of the Learned Member (Technical).

3. As per the above points of difference, the differences were only in respect of Appeal No. E/557 of 2008-DB of M/s. Modern Petrofil, E/881/2007

of M/s. Filatex India Limited and Appeal No. E/755/2007-SM of Shri Abhinandan Kataria. As regards the difference of opinion in respect of Appeal of M/s. Modern Petrofils, the appellant approached the High Court challenging the difference of opinion order. The Hon'ble Gujarat High Court, after examining the issue, while disposing the matter, given directions as follows:-

> "The impugned order of the Tribunal to the extent the same relates to the question of imposition of penalty on M/s. Modern as recorded in the difference4 of opinion between the members is hereby quashed and set-aside. The Tribunal is directed to hear the appeal afresh to the aforesaid limited extent without in any manner being influenced by any observations made by the Members in the impugned order. The President shall ensure that the Appeal No. E/557/2008 is heard in consonance with the provisions of Section 129C (2) of the Act as per the original assignment of appeals to a Division Bench having territorial jurisdiction as per the position prevalent today."

As per the above directions of Hon'ble High Court, this Tribunal's Division Bench has taken up the appeal No. 557 of 2008-DB of M/s. Modern Petrofils and decided afresh vide Order No. A/11020/2019 dated 25.06.2019. Therefore, as per the order of Hon'ble President of this Tribunal, the following points of difference have to be decided by me.

(i) Whether, with regard to show cause notice V.CH-54(15)23/R-V/D-Halol/Commr./2004/dated 09.12.2004 [date 19.09.2004 was wrongly mentioned], the penalty imposed on M/s. Filatex India Limited is to be reduced to Rs. One Lakh as held by Hon'ble Member (Judicial) or penalty imposed on M/s. Filatex India Limited are to be upheld as held by Hon'ble Member (Technical);

(ii) Whether the penalty imposed on Shri Abhinandan Kataria is to be set-aside as held by Hon'ble Member (Judicial) or it is to be upheld as per the order of Hon'ble Member (Technical).

4. Heard Shri S.J. Vyas and Shri Vivek Bapat, learned Counsels appearing on behalf of the appellants and Shri Gobind Jha, learned Superintendent (Authorised Representative) appearing for the Revenue.

5. On both the issues, the findings of Hon'ble Member (Judicial) were recorded in Para 20 and 21 and findings of Hon'ble Member (Technical) in Para 10, 11 and 12 of their order dated 21.01.2016, respectively.

6. On careful reading of the findings of both the Hon'ble Members on both the points of difference, I find that the Hon'ble Member (Judicial), after agreeing that M/s. Filatex India Limited has committed offence of diverting the goods, the penalty of Rs. 15Lakh was found to be excessive commensurate to total duty involvement of Rs. 5,36,222/-, which was admittedly paid by M/s. Filatex India Limited, keeping in view this fact, penalty was reduced from Rs. 15 Lakh to Rs. One lakh.

On going through the findings of Hon'ble Member (Technical) recorded in Para 10 of the order, I find that the emphasis was given to the total value of the goods i.e. Rs. 65.92Lakhs and Central Excise duty involving amount of Rs. 24.26Lakh. I find that only in respect of four consignments, M/s. Filatex India Limited could not produce re-warehousing certificates whereas, for the remaining consignments, re-warehousing certificates were produced and the show cause notice also admitting the same, did not raise demand of duty to that extent against M/s. Filatex India Limited. Therefore, offence on the part of Filatex India Limited is confined to the consignments involving Central Excise duty of Rs. 5.32Lakhs. The Hon'ble Member (Technical) did not justify in his findings the quantum of penalty of Rs. 15Lakh as against the total duty involvement of Rs. 5.32Lakhs.

In this position, I am of the view that the Hon'ble Member (Judicial) is correct in reducing the penalty from Rs. 15 Lakhs to Rs. One Lakh on M/s. Filatex India Limited.

7. As regards the issue of imposition of penalty on Shri Abhinandan Kataria, I find that Hon'ble Member (Judicial) in the relevant finding recorded in Para 20 of the order, set-aside the penalty on the ground that even though the goods were unloaded in midway but there was no material to suggest that Shri Abhinandan Kataria had the knowledge that goods were cleared by Modern Petrofils and Filatex India Limited without payment of duty in contravention to exemption notification which is liable for confiscation.

I find force in this finding of Hon'ble Member (Judicial) for the very simple reason that the role of Transport Company is limited to transportation of goods. In the present case, the clearances are under Notification No. 1/95-CE dated 04.01.1995 and the entire procedure for removal of goods to 100% EOU is governed by erstwhile Rule 156A of Central Excise Rules, 1944. The entire procedure is very cumbersome and involving interpretation of law. The employee of Transport Company cannot be expected to know such cumbersome procedure of removal of goods without payment of duty under CT-3 to 100% EOUs. Therefore, if there is any violation of aforesaid legal provision, the responsible person is the supplier of goods and the recipient of goods. Therefore, Shri Abhinandan Kataria being an employee of Transport Company, cannot be said to have belief that the goods are liable to confiscation for non-compliance of Notification No. 1/95-CE read with Rule 156A of Central Excise Rules, 1944.

8. The Hon'ble Member (Technical) upheld the penalty imposed on Shri Abhinandan Kataria mainly on the ground that he had knowledge regarding diversion of goods. As discussed above, merely because Shri Abhinandan Kataria was involving in diversion of goods charges of non-compliance of Notification No. 1/95-CE read with rule 156A and 156B of Central Excise Rules, 1944 cannot be said to have been violated by him. I am therefore, of the view that the view taken by Hon'ble Member (Judicial) for setting aside the penalty imposed on Shri Abhinandan Kataria is correct and legal.

9. As per my above view, I would concur with the Hon'ble Member (Judicial) and reference ordered accordingly.

Registry is directed to place this file before the bench for appropriate action.

(Ramesh Nair)
Member (Judicial)

MAJORITY ORDER

(i) In view of majority order, the penalty against M/s. Filatex India Limited is reduced from Rs. 15 Lakhs to Rs. One Lakh.

(ii) The penalty of Rs. 2.5Lakhs imposed on Shri Abhinandan Kataria is set-aside.

(Pronounced in the open court on 30.01.2020)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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