CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 11695 OF 2013

(Arising out of Notification OIO-35/COMMR/SURAT-II/2013 Dated- 06/03/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

R K KULHAR & OTHERS **Appellant**
Chartered Engineer,
0405, Prajeet Apaerment, Behind Nehru Nagar, Umra,
Surat, Gujarat

Vs.

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS (ADJUDICATION)-SURAT-II **Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

WITH

i. **Customs Appeal No. 11846 of 2013 (H Tex)**
ii. **Customs Appeal No. 11847 of 2013 (Nirav Silk Mills)**
iii. **Customs Appeal No. 11848 of 2013 (Toran Textiles)**
iv. **Customs Appeal No. 11849 of 2013 (C K Textile)**
v. **Customs Appeal No. 11850 of 2013 (Tinu Tex)**
vi. **Customs Appeal No. 11851 of 2013 (Viral Textiles)**
vii. **Excise Appeal No. 11693 of 2013 (R K Kulhar)**
viii. **Excise Appeal No. 11732 of 2013 (Nirav Silk Mills)**
ix. **Excise Appeal No. 11733 of 2013 (Tinu Tex)**
x. **Excise Appeal No. 11734 of 2013 (Viral Textiles)**
xi. **Excise Appeal No. 11735 of 2013 (Toran Textiles)**
xii. **Excise Appeal No. 11736 of 2013 (H Tex)**
xiii. **Excise Appeal No. 11737 of 2013 (C K Singhal)**

Appearance:
Shri S Suriyanarayanan, Advocate and Shri Nirav Shah, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 12540-12553/2024

Date of Hearing : 04.10.2024
Date of Decision : 04.10.2024

SOMESH ARORA

In the present bunch of appeal some advocates are absent and we have Mr. S. Suriyanarayan Advocate causing appearance for appeal nos. C/11695/2013 and E/11693/2013 for the appellant Mr. R K Kulhar and also Advocate Mr. Nirav Shah causing appearance for appeal no. C/11846/2013 (H Tex), C/11847/2013 (Nirav Silk Mills), C/11848/2013 (Toran Textiles), C/11849/2013 (C K Textiles), C/11850/2013 (Tinu Tex), C/11851/2013 (Viral Textiles) and E/11732/2013 (Nirav Silk Mills), E/11733/2013 (Tinu Tex), E/11734/2013 (Viral Textiles), E/11735/2013 (Toran Textiles), E/11736/2013 (H Tex), E/11737/2013 (C Textiles), the main accused in the matter is not before this Court.

2. The main accused was allegedly using the premises of others for the goods in the instant case. The unit involved was 100% EOU, which was getting statedly job done from various appellants with whom this court is concerned (except Shri R K Kulhar of appeal no. C/11695/2013 and E/11693/2013) the allegation against the present appellants was that they dealt with the imported goods and allowed them to be cleared by the main accused i.e. M/s. Micro Polyster Pvt Ltd Unit-1.

2.1 It was indicated on documents that they were doing job work for the main accused whereas it was found by the department they were actually renting out their machine and production capacities to be utilized by the main accused, as only it was in fact doing production under its own supervision and Control and by renting of machines in their premises. This court finds that the department is relying upon statements as testimonial evidence against all these accused as they exhibited that they were knowingly renting the premises and were not doing the job work. The learned advocate pleads that statement do not exhibit any knowledge of the kind of material being used or that there was intent to evade any duty by the main accused. They only cooperated to the extent of earning good rent for the premises and machines. It was therefore pleaded that the penalty imposed is disproportionate.

3. Learned AR defended the order as passed by the lower authority and justified the penalty imposed.

4. Considered, this court finds itself in agreement with the stated position of learned advocate and accordingly is of the view the penalties are imposable but reducible for appellants in appeal nos. C/11846-11851/2013 and are reduced from 2.5 lakhs to 15,000/- each and for appellants in appeal nos. E/11732-11737/2013 Sr. No. 23 to 28 same are reduced from 1 lakh to Rs. 5,000/-.

4.1 For the appeal no. C/11695/2013 and E/11693/2013. in the matter of Shri R K Kulhar Ld. Shri S. Suriyanarayan, Advocate causing appearance pleaded that in these cases, appellant is a Chartered Engineer who had issued the impugned certificate post LOP and clearance of machinery. The same permission was issued on 08.01.2002 whereas the certificate issued was on 06.05.2002. His further argument therefore was that his client has certified production capacity on the basis of documents of the manufacturer, therefore that there was nothing wrong in it. He pleaded therefore that for these two reasons, his client deserves to be saved from the personal penalty, as the certificate issued by him was not incorrect as the same was based on documentary evidence given by the manufacturer of the machine. Secondly, the same certificate in any way had not influenced the decision of issuing of LOP by the Commissioner. This court finds itself in agreement with the argument advanced by the learned advocate and therefore the whole penalty imposed on Shri R K Kulhar is liable to be set aside. It is therefore ordered accordingly.

5. The appeal is partly allowed in respect of appeal nos. C/11846-11851/2013 and appeal no. E/11732-11737/2013 and is allowed for appeal nos. C/11695/2013 and E/11693/2013 in respect of Shri R K Kulhar. The remaining matters to come up in due course. Appeals allowed of Shri R K Kulhar (C/11695/2013 and E/11693/2013) and partly allowed of other appellants as per C/11846-11851/2013 and appeal no. E/11732-11737/2013 above.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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