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

REGIONAL BENCH – COURT NO. 02

Customs Appeal No. 11060 of 2016-SM

[Arising Out Of OIA-AHD-CUSTM-000-APP-368-15-16 Dated- 23/02/2016 Passed By Commissioner of CUSTOMS-AHMEDABAD)

Lilaram Arjandas Asudani **.....Appellant**
13, Rajnigandha Bunglows, Near Sant Kabir School,
Thaltej, Ahmedabad, Gujarat

VERSUS

C.C.-Ahmedabad **.....Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 13126 /2024

DATE OF HEARING: 06.12.2024
DATE OF DECISION:06.12.2024

Vakalat has been signed by Lilaram Arjundas Asudani in Gujrati whereas the language and the text of the vakalat is in English. This defect is pointed out to the consultant who has given the statement before the bench in his capacity as consultant that he explained the contents of the vakalat to the executant and though the text does not contain any such inscription but he is making statement at the bar in his personal and professional capacity. On the basis of such statement made by the counsel, the same is taken on record and consultant is allowed to proceed with assurance to bring on record the proper vakalat in due course.

2. Learned counsel in this matter is aggrieved as penalty of Rs. 6 Lakh under Section 112(b) has been imposed on his client who is the present

appellant. The basis of such imposition of penalty was statement of one Pundrik Trivedi, who was the proprietor of M/s. Abhishek Enterprises. The testimony stated that the goods cleared were going to the warehouse of Lilaram Arjundas Asudani i.e. the present appellant.

3. On being asked Learned AR while reiterating the finding pointed out that no statement of the present appellant was recorded during investigation and there is nothing on record that any summons were issued by the department. Imposition of penalty under such circumstances and even when the statement of available accused has not been recorded and also the testimony does not indicate as to whether the warehouse was in possession or ownership of the present appellant at the relevant time and again when the penalty has been imposed without confiscating the goods of the main accused who is not appellant before this Court, is liable to be set-a-side.

4. Considered. On due consideration of the facts and on the basis of above infirmities found in the proceedings including lack of proper investigation, this court is inclined to give relief of penalty. Accordingly, the penalty imposed is found unsustainable and is set-a-side.

5. Appeal allowed with consequential relief.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi