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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 67 of 2012- SM

(Arising out of OIA-05/COMMR/ACC-AHMEDABAD/2012 dated 30/03/2012 passed by Commissioner of CUSTOMS-AHMEDABAD)

Messrs Parikh Clearing Agency Pvt Ltd **........Appellant**
803, President House,
Opp. C N Vidyalaya, Ambawadi,
Ahmedabad, Gujarat

VERSUS

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

WITH

Customs Appeal No. 68 of 2012- SM

(Arising out of OIA-05/COMMR/ACC-AHMEDABAD/2012 dated 30/03/2012 passed by Commissioner of CUSTOMS-AHMEDABAD)

Rupin Parikh **........Appellant**
Director M/s, Parikh Clearing Agency Pvt Ltd, 803 President House,
Opp. C N Vidyalaya, Ambawadi,
Ahmedabad
Gujarat

VERSUS

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

APPEARANCE:
Shri Amal Dave, Advocate appeared for the Appellant
Shri Vijay G Iyengar, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10417-10418 /2023

DATE OF HEARING: 10.11.2022
DATE OF DECISION: 07.03.2023

RAMESHNAIR

The appellant filed the present appeals challenging the impugned order whereby the penalty on appellant was imposed. Penalty on appellant was imposed for an amount of Rs. 8,00,000/- in each case under section 112 A. The appellant was imposed penalty in connection with case of evasion of duty by M/s. Wireless Communication, Mumbai on the charge that the appellant are directly or indirectly associated with the firm that has evaded the duty.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the appellant at the outset submits that the penalties on the present appellant was imposed only on the basis of third party statement. The appellant have requested for cross- examination of the persons who has implicated them and for that reason penalty was imposed. He submits that the Adjudicating Authority has illegally rejected the request of cross- examination. He further submits that except the statements there is no corraboration of any evidence therefore only on the basis of third party statement, the appellant could not have been implicated in the case of evasion of duty. He placed reliance on the following judgments:

- Prasanta Sarkar – 2007 (209) ELT 220 (Tri.- Mumbai)
- Sushil Kumar Kanodia – 2007 (218) ELT 453 (Tri. Chennai)
- C.C Chennai Vs. Sushil Kumar Kanodia – 2015 (319) ELT A73 (Mad.)
- Orient Enterprises - 1986 (23) ELT 507 (tribunal)
- CCE vs. Sakeen Alloys P. Ltd – 2014 (308) ELT 655 (Guj.)
- Collector Vs. Orient Entrprises - 1997 (92) ELT A69 (SC)
- Suntrek Aluminium P.Ltd -2013 (288) ELT 500 (Guj.)
- CCE Vs. Chhajusingh S. Kanwal - 2011 (272) ELT 202 (Guj.)
- Super Smelters Ltd - 2020 (371) ELT 751 (Tri. Kolkata)’
- Krishnaram Dyeing & Finishing Works – 2007 (209) ELT 410 (Tri.- Mumbai)

3. Shri Vijay G. Iyengar, Learned Superintendent (AR) appearing on behalf of the appellant reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find that the appellants were imposed penalty under section 112 (a) on the basis of statement given by the third party. In this circumstances it is necessary for the adjudicating authority to provide the cross examination of the person. If statement were relied upon for imposing penalty on appellant, in terms of section 135 B it is mandated that the witnesses should be examined/ cross examined particularly, when the statement is used to implicate the other person. In this regard the judgment cited by the learned counsel, directly supports their case. Therefore, I am of the view that the Adjudicating Authority must grant the cross – examination of the witnesses to the appellants.

4.1 As per my above discussion and finding, appeals are allowed by way of remand to the Adjudicating Authority for passing a fresh order after allowing the cross-examination. It is made clear that in case after due process if the cross- examination is not possible, the adjudicating authority may pass a fresh order on the basis of the available records.

5. Accordingly, the impugned order to the extent of imposition of penalty on the present appellants is set aside. Appeals are allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 07.03.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

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