IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/539/2011-CU[DB]

(Arising out of Order-in-Appeal No. 8-9 CUS/MRT-II/2011 dated 31/05/2011 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Shri Anchit Vij **Appellant**

Vs.

Commissioner of Customs & Central Excise, Meerut-II **Respondent**

Appearance:

Shri Jitin Singhal (Advocate) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/02/2018
Date of Decision : 21/02/2018

FINAL ORDER NO. 71018/2018

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 8-9 CUS/MRT-II/2011 dated 31.05.2011 passed by Commissioner (Appeals), Customs and Central Excise, Meerut-II.

2. Brief facts of the case are that M/s The Village Art, Moradabad, obtained Advance License dated 28.03.2002 for import of brass scrap with an obligation to export handicrafts that is brass artware. The said advance license made the

license holder eligible for import of brass scrap without payment of customs duty under Notification No. 48/99-Cus dated 29.04.1999. As required under the conditions of said notification, M/s The Village Art executed a bond on 10.12.2002 before the Deputy Commissioner of Customs, Jawahar Customs House, Nhava Sheva for availing the benefit of said notification. M/s The Village Art imported four consignments of brass scrap and filed bill of entries on 15.01.2003, 17.01.2003, 25.01.2003 and 14.02.2003 and the total customs duty involved therein including Basic Customs Duty Additional Customs duty and Special Additional Customs Duty of Rs.19,88,113/-. M/s The Village Art could not discharge the export obligation and, therefore, in term of the policy in respect of the advance license and conditions of Notification No. 48/99-Customs and conditions of the Bond executed on 10.12.2002, the matter was adjudicated by Original Authority through Order-in-Original dated 24.01.2011. The order passed by the Original Authority is reproduced below:-

"(i) I confirm the demand of Customs duty amounting to Rs.19,88,113/- (Rs. Ninteen lacs eighty eight thousand one hundred thirteen only) on the 77.733 MT of brass scrap imported through ICD, Moradabad without payment of Customs Duty, under the said advance the said advance license No. 2910002997 dated 28/03/2002 under Notification No.48/99-Customs dated 29/04/1999 and not utilized for the

specified purposes & order to recover the same from M/s TVA and its partners namely Shri Manoj Sikka, Shri Achit Vij, Smt. Madhu Vij and Smt. Hema Sikka them in terms of the conditions of Exemption Notification No. 48/99-Cus. Dated 29/04/1999 and that of the Bond, and also in terms of Section 11, Section 12, Section 143 and Section 143A read with Section 25, Section 28 of the Customs Act, 1962.

(ii) I order to confiscate the aforesaid goods, viz. 77.733MT of Brass Scrap, having assessable value Rs.39,13,607/- and involving Customs duty Rs.19,88,113/- imported by the said M/s TVA and their partners & cleared through ICD Moradabad vide 04 Nos. of Bills of Entry listed in the Notice, without payment of Customs duty leviable there on, and not put into the specified use, in contravention to the conditions of exemption Notification No.48/99-Cus dated 29/04/1999, under Section 111(d) & Section 111(o) of the Customs Act-1962 read with the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and the rules made there under, for the contraventions as aforesaid. Since the goods are not available for confiscation therefore, I refrain from imposing redemption fine on the impugned goods.

(iii) I drop the proceedings of confiscation for resultant product in the form of finished goods/semi finished goods proposed in the show cause notice as no such resultant product was available at material time.

(iv) I impose a penalty of Rs.19,88,113/- (Rupees Nineteen Lakh, Eighty Eight Thousand, One Hundred Thirteen only) upon them under Section 112, Section 114, Section 114A & Section 117 of the Customs Act, 1962.

(v) I also demand the interest at appropriate rate on the said amount of duty Rs.19,88,113/- & order to recover from them in respect of import made through ICD Moradabad, in terms of condition No. (ii) of the subject exemption Notification, conditions of the Bond and Section 143 and 143A, read with Section 28AB of the Customs Act, 1962.

(vi) I also impose a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on Shri R.K. Gupta, CHA under Section 112, 114, 114A & Section 117 of the Customs Act, 1962."

3. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal where learned Commissioner (Appeals) rejected the appeal filed by the appellant. Aggrieved by the said order appellant is before this Tribunal.

4. On earlier occasion on 06.11.2017 the matter was heard in part and Interim Order No. 24/2017 dated 06.11.2017 was passed through which both the parties were directed to bring the facts on record whether duty and penalty as demanded which had survived through the process of appeal at the first stage have been recovered or not. Today when the matter was

called none of the parties could submit any information on the same. Heard the learned counsel for the appellant. The learned counsel for the appellant has submitted that the bond was executed by Shri Manoj Sikka in his capacity has proprietor of M/s The Village Art and that initially it was a proprietory firm and proprietor was Shri Manoj Sikka and as proprietor, he had obtained advance license and subsequent to obtaining advance license, he converted the firm into a partnership firm where the present appellant was also made a partner of the same. He has further submitted that the bond was executed in the capacity of a proprietor by Shri Manoj Sikka and bond had a condition that in the event of non-fulfilment of the export obligation the customs duty involved alongwith interest shall be paid by the executor of the bond and that the executor of the bond was Shri Manoj Sikka and the present appellant was not the executor of the bond. He has further pointed out that the Original Authority has ordered recovery of the customs duty confirmed in terms of the bond and since the appellant was not the executor of the bond, the recovery cannot be made from the appellant. Neither the penalties can be recovered from the appellant because penalty on the importer was imposed for non-payment of customs duty. He has further pointed out that there is no personal penalty imposed on the appellant.

5. Heard the learned AR who has agreed that the appellant is not signatory to the bond and through bond Shri Manoj Sikka has undertaken to pay customs duty in the event of non-fulfilment of export obligation.

6. Having considered the rival contentions and on perusal of record, we find that the Original Authority has ordered recovery of customs duty of Rs.19,88,113/- alongwith interest in terms of bond from Shri Manoj Sikka, the appellant, Smt. Madhu Vij and Smt. Hema Sikka. We also find that the learned Commissioner (Appeals) has allowed the appeal filed by Smt. Madhu Vij and the recovery was ordered in terms of the bond we further find that the appellant is not signatory to the bond and he has not bound himself to pay customs duty in the event of non-fulfilment of export obligation. Therefore, we hold that the customs duty adjust through the original order which has survived through the impugned Order-in-Appeal and penalty and interest ordered therein cannot be recovered from present appellant. In above terms we allow the appeal filed by the appellant. The appellant shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
(Anil Choudhary)	**(Anil G. Shakkarwar)**
Member (Judicial)	**Member (Technical)**

Ankit