CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Appeal Nos.51241 of 2014 &
58905-58907 of 2013-[DB]

[IN Customs Appeal No.51241 of 2014]
(Arising out of Order-in-Original No.13/Commissioner/GZB/CUS/2012-13 dated 30/03/2013 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

M/s Ruby Impex, **.....Appellant**

(1049, Outside Industrial, Area, Jalandhar, Punjab)

VERSUS

Commissioner of Customs, **....Respondent**

(Ghaziabad)

APPEARANCE:

Shri Ravi Chopra, Advocate for the Appellant
Shri Anupam Kumar Tiwari, Authorised Representative for the Respondent

WITH

(i) Customs Appeal No.58905 of 2013 (Shri Brij Mohan Hudda)
(ii) Customs Appeal No.58906 of 2013 (Shri Tejpal Singh)
(iii) Customs Appeal No.58907 of 2013 (Shri Mool Chand Sharma Proprietor)

(Arising out of Order-in-Original No.13/Commissioner/GZB/CUS/2012-13 dated 30/03/2013 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

APPEARANCE:

Ms Reena Rawat & Ms Ekta Kapoor, Advocates for the Appellant
Shri Anupam Kumar Tiwari, Authorised Representative for the Respondent

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOS-70118-70121 / 2020

DATE OF HEARING : 08 January, 2020
DATE OF DECISION : 08 January, 2020

PER: ARCHANA WADHWA

All the 4 appeals are being disposed of by a common order as they arise out of the same impugned order of lower authority vide which the imported goods stands confiscated and penalties stand imposed upon various appellants.

2. After hearing learned Advocate Shri Ravi Chopra appearing for M/s Ruby Impex and learned Advocates Ms Reena Rawat along with Ms Ekta Kapoor appearing for the other appellants (Shri Brij Mohan Hudda, Shri Tejpal Singh & Shri Mool Chand Sharma Proprietor) and learned Authorised Representative Shri Anupam Kumar Tiwari appearing for the Revenue, we find that importer M/s Ruby Impex imported 8 containers of Zinc Scrap. The Bill of Entry was filed only in respect of one container and on examination, the container was found containing lead scrap, instead of zinc scrap declared by them. The appellant took a ground that they have infact ordered for 'zinc scrap' and the supplier has mistakenly sent the lead scrap. As such no Bill of Entries were filed in respect of balance 7 containers and a request to re-export the goods was made.

3. However, the appellants request was not accepted and proceedings were initiated against them proposing confiscation of the goods and imposition of penalties. Vide the impugned order Commissioner absolutely confiscated the scrap alongwith imposition of personal penalty of Rs.25 lakhs on M/s Ruby Impex and a separate penalty of Rs.10 lakhs on Shri Kishan Lal Chawla, Proprietor of M/s Ruby Impex. Further, penalties of Rs.10 lakhs each was imposed on Shri Tejpal Singh, proprietor of the CHA

firm and freight forwarding agent Shri Mool Chand Sharma. Penalty of Rs.1 lakh was imposed upon Shri Brij Mohan Hudda, G. Card Holder of CHA. The said order of Original Authority is impugned before us.

4. Learned Advocate appearing for M/s Ruby Impex submits that they had in-fact ordered for 'Zinc Scrap' and agrees that the 'Lead Scrap' supplied by the foreign supplier was in contravention of the provisions of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules. However, he draws our attention to Rule 17 (2) of the said Rules which provide for re-export of the goods in case of illegal import. He submits that the import of lead scrap is not banned but restricted, subject to production of permission from the Ministry of Environment. As such he submits that their request for re-export should have been accepted. He also prays for reduction of penalties.

Ms Reena Rawat along with Ms Ekta Kapoor learned Advocates appearing for the appellants submits that the appellants are CHA, Freight Forwarding Agent, G. Card Holder of the CHA. There is no evidence on record to show that the persons were having any knowledge about the contents of the containers and the Bill of Entry was filed by them based upon the document provided by the importer. She also submits that the duty involved in the said Bill of Entry was only to the extent of Rs.81,000/- and as such imposition of heavy penalty upon them are neither warranted nor justified.

5. After hearing the learned A.R. and on going through the impugned order we are of the view that the appeals can be disposed of by taking into consideration the provisions of Rule 17 (2) of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules. For better appreciation the same is reproduced bellow:-

> *"(2) In case of illegal import of the hazardous wastes, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned State Pollution Control Board."*

As is seen from above, the Rule itself provide for re-export of the goods in case the same stands illegally imported into India. As such without going into the facts as to whether such import was intentional or by mistake, we are of the view that the ends of justice would meet, if the said goods are allowed to be re-exported. We order accordingly and direct the authorities to allow the re-export of the goods.

6. As regards penalty on M/s Ruby Impex admittedly the goods found in the containers were other than the goods declared by them. The appellants have also not been able to show any evidence that the same was a mistake on the part of the supplier. As such we are of the view that the said appellant is liable for penalty. Inasmuch as, the duty involved in respect of the Bill of Entry filed by them was only to the extent of Rs.81,000/-, though the other imports made by them were also of different goods i.e. the one declared by them in the first Bill of Entry, we deem it fit to reduce the penalty to Rs.3 lakhs. Further, as the penalty stands imposed on M/s Ruby Impex, the

imposition of separate penalty on the Proprietor is not called for as the proprietor and the proprietary concern are to be considered as one and the same. Accordingly, penalty imposed upon Shri Kishan Lal Chawla, Proprietor of M/s Ruby Impex stands set aside. As regards penalty imposed upon the CHA, Freight Forwarding Agent and G. Card Holder, we find no reasons, in the absence of any evidence to reflect any knowledge upon them, to impose penalty. Accordingly, the same are set aside and their appeals are allowed.

7. All the appeals are disposed of in above manner.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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