CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20020 of 2021

(Arising out of Order-in-Appeal No.121/2020 dated 28.09.2020 passed by the Commissioner of Customs (Appeals), Bengaluru.)

M/s. Bharti Trading Company
2, Davana Site No.182,
15th Cross, Telecom Layout,
Bangalore – 560 064.

Appellant(s)

Versus

The Commissioner of Customs (Appeals)
BMTC Building
Above BMTC Bus Stand,
Old Airport Road,
Domlur,
Bangalore – 560 071.

Respondent(s)

AND

Customs Appeal No.20019 of 2021

(Arising out of Order-in-Appeal No.121/2020 dated 28.09.2020 passed by the Commissioner of Customs (Appeals), Bengaluru.)

Mr. K. Naser
Kollancheri Houser
Chemmad,
Tirurangadi (PO)
Mallapuram,
Kerala – 676 306.

Appellant(s)

Verus

The Commissioner of Customs (Appeals)
BMTC Building
Above BMTC Bus Stand,
Old Airport Road,
Domlur,
Bangalore – 560 071.

Respondent(s)

Appearance:

Mr. A. Ganesh, Advocate — For the Appellant

Mr. Neeraj Kumar, Superintendent (AR) — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20976 - 20977 / 2023

Date of Hearing: 05.10.2023
Date of Decision: 10.10.2023

Per : DR. D.M. MISRA

These two appeals are filed against Order-in-Appeal No.121/2020 dated 28.09.2020 passed by the Commissioner of Customs (Appeals), Bangalore.

2. The appellant-company was charged for smuggling of gold and concealing the same in 24 Nos. of ANLU pressure washer pump. The said goods were imported via Bangalore Air Cargo Complex on 28.04.2016 and necessary Bill of Entry was filed on 29.04.2016. On specific intelligence, DRI detained the consignment and examination was conducted on 11.5.2016. On the second examination by the DRI, they found 120 yellow metal pieces concealed in the pressure washer pumps weighing 13996.8 grams. These goods were seized and later show-cause notice was issued to the appellant on 7.11.2016. On adjudication, the gold as well as 24 Nos. ANLU pressure washer pumps were confiscated and penalty of Rs.20,00,000/- was imposed on the appellant-company under Section 112 and penalty of Rs.10,00,000/- was imposed under Section 114AA of the Customs Act, 1962. Also penalty of Rs.2,00,000/- was imposed on the second appellant Shri K. Naser. Aggrieved by the said order, they filed appeal before the learned Commissioner (A); also the Department filed appeal against the said order of the adjudicating authority. The learned Commissioner (A) without hearing the appellants, rejected their appeals and allowed the appeal of the Department by way of remand. Against the said order, the appellants approached this Tribunal and the

Tribunal by its order dated 17.01.2019 remanded the case to the learned Commissioner (A) for fresh decision. Consequently, the impugned order is passed whereby the learned Commissioner (A) rejected the appeals filed by the appellants as well as the Department. Hence, the present appeals.

3. At the outset, the learned advocate for the appellants submits that the appellants in the present case do not intend to contest the issue on merits; however, the quantum of penalties being too harsh, the same is contested herein. He submits that the pressure washer pumps belonging to the appellants have been absolutely confiscated and also heavy penalties under Section 112 as well as Section 114AA have been imposed which is unjust and disproportionate to the quantum of offence. Further, he submits that the personal penalty imposed on the second appellant Mr. K. Naser is also unwarranted.

4. The learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (A).

5. The short issue involved for determination is about the quantum of penalties. I find that the appellants have not disputed the case on merits but vehemently argued about excessive imposition of penalties which in their submission is disproportionate considering the fact that all the 24 Nos. of pressure washer pumps which were imported by them and the gold concealed inside the pressure washer pumps have been absolutely confiscated. It is also argued that once heavy penalty under Section 112 is imposed, further penalty under Section

114AA would cause undue hardship and resulted into injustice. Considering the overall facts and circumstances including the fact that imported goods and the gold suffered absolute confiscation, I am of the view that the imposition of penalty under Section 114AA if reduced from Rs.10,00,000/- to Rs.5,00,000/- it would meet ends of justice in the case of appellant-company. I do not find any justifiable reason to interfere with the personal penalty imposed on the second appellant Mr. K. Naser.

6. In view of the above discussions, I hold that:

(i) In the circumstances except modifying the order to the extent of reduction of penalty imposed and confirmed under Section 114AA of the Customs Act, 1962 from Rs.10,00,000/- to Rs.5,00,000/- (Rupees Five Lakhs Only), the penalty of Rs.20,00,000/- imposed under Section 112 of the Customs Act, 1962 is confirmed against the appellant-company. Hence, the appeal filed by the appellant-company is partially allowed.

(ii) The appeal filed by the second appellant Mr. K. Naser is rejected.

7. Appeals are disposed of as above.

(Order pronounced in Open Court on **10.10.2023**.)

(D.M. MISRA)
MEMBER (JUDICIAL)

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