CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT No.-2

Customs Appeal No.20074 of 2020

(Arising out of Order-In-Appeal No.COC-CUSTM-000-APP-58 to 59/2019-20 dated 20.09.2019 passed by Commissioner (Appeals) Customs, Cochin)

Rafeek K.T. **.....Appellant**
67/2626-C, Amulya Street,
Banerji Road, Ernakulam,
Cochin-682018

VERSUS

Commissioner of Customs, Cochin **....Respondent**
Customs House, Willingdon Island,
Cochin-682009

WITH

Customs Appeal No.20075 of 2020

(Arising out of Order-In-Appeal No.COC-CUSTM-000-APP-58 to 59/2019-20 dated 20.09.2019 passed by Commissioner (Appeals) Customs, Cochin)

Shri Jasim N.P. **.....Appellant**
67/2626-C, Amulya Street,
Banerji Road, Ernakulam,
Cochin-682018

VERSUS

Commissioner of Customs, Cochin **....Respondent**
Customs House, Willigdon Island,
Cochin-682009

APPEARANCE:

Mr. M.S. Sajeev Kumar, Advocate for the Appellant
Mr. K. Vishwanath, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

FINAL ORDER NOS. 21159-21160/2023

DATE OF HEARING : 28.06.2023
DATE OF DECISION : 25.10.2023

PER: P.A. AUGUSTIAN

Both the appeals are arising out of common Order-In-Appeal No.COC-CUSTM-000-APP-58 to 59/2019-20 dated 20.09.2019.

2. Brief facts of the case is that the appellants are challenging the order issued by the Adjudication Authority imposing penalty on appellants under Section 112 & 114 of the Customs Act, 1962. As per the impugned order, it is held that appellants had abated the importer M/s Pushpa Telecom to import goods illegally by resorting to undervaluation. When the matter came up for hearing, learned counsel for the appellants submits that the findings of the Adjudication Authority is without any admissible evidence. There is no any act of omission on the part of the appellants to allege that appellants had abated the importer M/s Pushpa Telecom to import goods illegally.

3. Learned counsel for the appellants further submits that the proceedings were initiated based on the statement of Shri Xavier and even in said statement also, he never deposed that appellant used the license of M/s Pushpa Telecom. Further there is no allegation that appellants have prepared any invoice or evidence to substantiate the finding regarding involvement of appellants when importer resorted to undervaluation. In present case, based

on the allegation made by respondent, the importer paid customs duty, redemption fine and penalty and goods were also released to the importer. There is no prohibited goods imported by the importer to invoke provisions of Section 111(d) of the Customs Act, 1962. In the absence of any evidence, if the goods are found liable for confiscation and even if it is found that appellants had extended some assistance to importer as alleged in SCN, no presumption can be drawn that the appellants are the persons imported the goods. The learned counsel drew my attention to the finding of the Tribunal in the matter of **Commissioner of Customs, Lucknow V/s Sanjay Soni reported in 2022 (381) E.L.T. 509 (Tri.-All.).** Relevant para of the judgment is reproduced below:-

> "28.1 I find that other than the incriminating statement of Mr. Sanjay Soni there is no other worthwhile evidence against these appellants. These appellants and Mr. Vishwanath Soni have given cogent explanation, they being related and known to each other and being in the same line of business had been talking regarding rates etc. with each other. Thus, the call details records relied upon by the Revenue does not support the allegations of Revenue, in absence of transcription of the conversation between these persons. So far the WhatsApp message is concerned, which is retrieved from the phone of Mr. Sanjay Soni, alleged to have been received from Mr. Ashok Soni, the same is not reliable for non-compliance

> of the provisions of Section 138C of the Customs Act. Further, the message is also vague and incomplete. I further find that these appellants have not violated any of the provisions of the Customs Act including Section 111, and thus I hold that penalty under Section 112 of the Act is not attracted. Penalty cannot be imposed only on the basis of heresay evidence, or the incriminating statement of one of the co-accused in absence of other corroborative evidence, as has been held by Hon"ble Supreme Court in the case of Vinod Solanki versus Union of India {2009 (233) E.L.T. 157 (S.C.)."

4. Learned D.R. reiterated the findings given by the Adjudication Authority and also submits that there are sufficient evidence to presume that appellants used the license of M/s Pushpa Telecom to import goods illegally.

5. I have gone through the findings given by the Adjudication/Appellate Authority and grounds of appeal. The investigation was conducted alleging illegality by way of undervaluation of the goods. During investigation statements were recorded and during the pendency of the investigation, the importer approached the Hon'ble High Court of Kerala and as directed by the Hon'ble High Court, goods were released to importer. The Adjudication Authority has concluded the findings against the appellant on the ground that documents pertaining to the import was handed over to clearing agent

by the appellant. However, there is no admissible evidence forthcoming in the impugned order that appellants had resorted to undervaluation of goods. Moreover as per the order issued by Adjudicating Authority, goods were released to the Proprietor of the importer M/s Pushpa Telecom. Once the importer itself appears before the Hon'ble High Court by filing an affidavit and when the Hon'ble High Court find the proprietor of the firm M/s Pushpa Telecom Shri R. Mohandas Rangasamy as *bona fide* importer to order release of goods, there is no reason to consider him as proxy importer as held by the adjudication authority. Proprietor of the firm M/s Pushpa Telecom is the person imported the goods. Without any corroborative evidence, retracted statement of Shri R. Mohandas Rangasamy cannot be considered as admissible evidence to allege involvement of appellants in illegal import. Though the Adjudication Authority reproduced the order of the Tribunal in the matter of Commissioner of **Customs (ACC & Import), Mumbai V/s Gibson Guitar Corpn.** as part of the order, findings given by the Tribunal is based on the evidence available on record pertains to the said matter and same cannot be considered as sufficient reason to sustain the charge of abatement against the appellants in present appeals. In present import, there is no evidence to allege that appellants were actively involved in illegal import of goods by communicating with overseas agencies or by transferring any amount though illegal channel. Merely if the documents pertaining to the import is handed over through the appellants to clearing agent, no conclusion can be drawn that appellants are involved in illegal import.

6. Considering the above, appeals are allowed with consequential reliefs if any.

(Order pronounced in the Open Court on 25/10/2023)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

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