CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21627 of 2016

(Arising out of Order-in-Appeal No. 465/2016 dated 30.06.2016 passed by the Commissioner of Customs (Appeals), Bangalore.)

Syed Ajmal Pasha
(Sole Proprietor of Royal Timbers),
No.22, Tippu Sultan Road,
Bamboo Bazaar,
Kolar – 563 101.

Appellant(s)

VERSUS

The Commissioner of Customs,
Bengaluru Customs Commissionerate,
C.R. Building,
P.B.No. 5400,
Queens Road,
Bengaluru – 560 001.

Respondent(s)

APPEARANCE:

Shri K. Parameswaran, Advocate, for the Appellant

Shri K.A. Jathin, Authorised Representative for the Respondent

CORAM: HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20577 /2024

DATE OF HEARING: 21.06.2024
DATE OF DECISION: 30.07.2024

PER : R BHAGYA DEVI

The appellant Shri. Syed Ajmal Pasha is in appeal against Order-in-Appeal No. 465/2016 dated 30.6.2016.

2. Briefly stated the facts are that the appellant, Proprietor of M/s. Royal Timbers, filed the Bill of Entry 3985630 dated 4.12.2013 for the clearance of Merbau Sawn Timber Blocks claiming the benefit of Notification No.53/2011-Cus. dated

1.7.2011. The benefit of this Notification is available only on compliance of the conditions prescribed under the Notification No.43/2011 Cus. dated 01.06.2011 under the Indo-Malaysia Trade Agreement. On verification by the Customs, it was found that the 'Country-of-Origin' Certificate produced by the appellant was not in the prescribed format, hence denied the benefit of the above Notification. On further investigations, it was found based on the same 'Country-of-Origin' Certificate the appellant had filed 16 Bills of Entry and cleared the goods availing the benefit of the Notification. Therefore, show-cause notice was issued demanding differential duty of Rs,17,00,113/- for the period 18.01.2013 to 04.12.2013 which included the current Bill of Entry and previous 16 Bills of Entry. Accordingly, the demands were confirmed for the differential duty of Rs.17,00,113/- along with interest and equal amount of penalty on M/s. Royal Timbers. The goods under the live Bill of Entry were confiscated and released on payment of redemption fine of Rs.3,00,000/- under Section 125 of the Customs Act, 1962. In addition, penalty of Rs.45,00,000/- was imposed on the appellant the proprietor of M/s. Royal Timbers. On appeal, the same was upheld by the Commissioner (Appeals) in the impugned order.

3. The Learned Counsel submitted that the previous 16 Bills of Entry were cleared by the customs authorities during the period from February 2013 to November 2013 by allowing the benefit of concessional rate of duty under Notification No.53/2011-Cus., so the question of suppression does not arise. Further, it is submitted that only in 8 Bills of Entry the certificate of 'Country-of-Origin' was not in the format prescribed and therefore confirmation of duty for the other 8 Bills of Entry was not in order. On pointing out by the authorities that the appellant was not eligible for the concessional rate of duty for the live Bill of Entry, immediately the differential duty was paid and as and

when the demand was raised for all other Bills of Entry, the entire differential duty was paid including the interest amount of Rs. 1,17,455/-, hence, the question of penalty under Section 114 A did not arise. It is also submitted that 25% of the penalty was paid under protest within 30 days from the date of the order essentially to claim the benefit of reduced penalty. The learned Counsel also submitted that having already imposed equivalent penalty on the M/s. Royal Timbers the question of imposing penalty of Rs.45,00,000/- on the appellant who is the Proprietor of M/s. Royal Timbers is not justified and hence, requested for setting aside the penalty of Rs.45,00,000/-. Relied on the following case laws:

- **Raghu Lakshmi Narayanan Versus Fine Tubes 2007 (215) ELT -19 (SC)**
- **D Jewels Versus CCC 2019 (369) ELT 1244 (Tri-Ahmd)**
- **Dharmendra Kumar Versus CCC ICD Ghaziabad 2019 (370) ELT 1199 (Tri-All)**

4. The Learned Authorised Representative on behalf of the Revenue reiterating the findings of the authorities below and submitted that since the benefit of the Notification was available only on the production of genuine certificate of 'Country-of-Origin' and that being not produced, the question of extending the benefit of the Notification does not arise. This fact having been suppressed for all the previous self-assessed Bills of Entry, the authorities were correct in invoking suppression and demanding the differential duty. It is also to be noted that immediately the differential duty along with the interest and penalty has been paid accepting the fact that they were not eligible for the benefit of the Notification, therefore, the impugned order needs to be sustained.

5. Heard both sides. The Appellant had filed 17 Bills of Entry claiming the benefit of Notification No.53/2011-Cus. dated

01.07.2011 which required the appellant to file 'Country of Origin' certificate in the prescribed format as is given vide Notification No.43/2011-Cus (N.T.) dated 01.06.2011. At the time of filing the Bill of Entry No. 3985630 dated 04.12.2013, based on the investigation by the Special Intelligence and Investigation Branch (SIIB), it was noticed that the benefit of Notification No.53/2011-Cus. dated 01.07.2011 was wrongly claimed by producing the 'Country-of-Origin' certificate which was not in accordance with the relevant provisions of the above notification read with Notification No.43/2011-Cus. dated 01/06/2011. The ineligible benefits were also claimed for previous 16 Bills of Entry for the period January 2013 to November 2013, demands against these were also confirmed alleging mis-declaration and suppression of facts. The appellant vide letter dated 20.12.2013 claimed that they had wrongly claimed Notification No. 53/2011-Cus. dated 01.07.2011 instead of Notification No.46/2011 dated 01/06/2011 which appears to be an 'afterthought'. The appellant in fact vide letter dated 13.12.2013 requested for assessment without the benefit of the Notification and in response to summons issued to the appellant, he admitted that they were not eligible for the benefit of the Notification. The appellant in his statement dated 06.01.2014 admitted having submitted incorrect 'Country of Origin' certificate and was not eligible for the benefit of Notification No.53/2011-Cus. dated 01.07.2011. None of these have statements been retracted.

6. As discussed above, it is an admitted fact by the appellant that they had produced a wrong certificate of 'Country of Origin' to claim the benefit of the said Notification. And this came to the notice of the Department only when detailed investigations were undertaken by the department. In view of the above having accepted mis-declaration and paid the entire amount of duty

along with interest and the reduced penalty, the appellant cannot now claim that there was no mis-declaration. Therefore, the duty amount along with interest and reduced penalty already paid stands confirmed.

7. On appeal before the Commissioner (Appeals), the appellant claimed the benefit of Notification No.46/2011-Cus. dated 01.06.2011 read with Notification No.189/2009-Cus (N.T.) dated 31/12/2009. The Commissioner in the impugned order has clearly stated that the benefit of the above Notification was not part of the show-cause notice and hence, it is an afterthought. The Commissioner (Appeals) also states that the same cannot be extended as the said certificates were to be produced at the time of clearance and the said certificates are to be issued by the exporting country. Therefore, the question of extending the benefit of a new Notification which was not claimed at the time of filing the Bill of Entry cannot be extended as the same cannot be verified as the goods have already been cleared.

8. The only question to be decided is whether the appellant is liable to pay Rs.45,00,000/- under Section 114AA of Customs Act, 1962. The Commissioner (A) has upheld the penalty under Section 114A and Section 114AA of the Customs Act, 1962, on the ground that both are independent of each other and having admittedly produced a wrong 'Country of Origin' certificates, penalty to be sustained. The relevant penalty provisions are reproduced below:

[Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has [2] [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [3] [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

[Section 114AA. Penalty or use of false and incorrect material. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

9. In the case of **Ruby Impex Versus Commissioner of Customs, 2020 (373) E.L.T. 674 (Tri. - All.)** dated 8-1-2020 the Tribunal observed as follows:

"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".**

(Emphasis supplied)

9.1 The High Court of Bombay in the case of **Commissioner of Cus., CSI Airport, Mumbai Versus Gyanchand Jain 2015 (321) E.L.T. 199 (Bom.)** dated 27-3-2014 also held as follows:

"3. The Tribunal found in this case that the penalty imposed on the respondent proprietary concern is Rs. 70,00,000/- that is on M/s. Vijaybhav. The Commissioner of Customs had imposed a penalty of

> Rs. 5,00,000/- on the sole proprietor M/s. Gyanchand Jain, who is respondent before us. In law, there could not have been such a direction. Once the assessee is recognized as the sole proprietorship concern, then, imposition of penalty on the firm/concern or the proprietorship concern and sole proprietor separately was not permissible in the given facts and circumstances. In this state of affairs, we do not see that the appeal raises any substantial question of law. The only point argued does not raise any substantial question of law enabling this Court to entertain this appeal. The appeal is, therefore, dismissed”.

10. In view of the above, the proprietor and the firm being one and the same, penalty cannot be imposed twice, one on the firm under Section 114A and another on the Proprietor under Section 114AA. Moreover, the offence committed in this case is production of wrong ‘Country of Origin’ Certificate and therefore, based on the same offence, there cannot be two penalties on the same appellant. The appellant having already discharged the duty liability along with interest and penalty under Section 114A, I do not find any reason to impose penalty under Section 114AA. Accordingly, the penalty of Rs.45,00,000/- imposed on the appellant (Proprietor of M/s. Royal Timbers) cannot be sustained. The impugned order is upheld except for the imposition of the penalty under Section 114AA of the Customs Act, 1962. In view of the above, the impugned order is modified and the appeal is disposed of.

(Order pronounced in Open Court on 30.07.2024.)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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