CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

C/ROA/20248/2017, C/ROA/20249/2017,
C/ROA/20251/2017 in
C/148/2001-DB, C/149/2001-DB, C/150/2001-DB

Appeal(s) Involved:

C/148/2001-DB, C/149/2001-DB, C/150/2001-DB

[Arising out of Order-in-Appeal No. 11/2001/S-14/38/99 dated 16/04/2001 passed by Commissioner of CUSTOMS , COCHIN]

Shri George Pandicheril
33/124A, Soumya Nagar, Vennala,kochi
Ernakulam
COCHIN - 682028
KERALA

Appellant(s)

Smt. Sally George
Soumya Nagar, Alumchuvadu,
Palarivattom, Kochi
COCHIN - 682025
KERALA

Appellant(s)

Shri Reji K Thomas
Konnayil Puthen Veedu,
Karuvatta, Adoor P.O.
Pathanamthitta District
KERALA

Appellant(s)

Versus

Commissioner of Customs
Cochin-Cus.
CUSTOM HOUSE
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Mr. G. Subramanian, Advocate
Triveni, Warriyam Road
Kochi – 682 016.

For the Appellant

Mrs. Kavitha Podwal, AR

For the Respondent

Date of Hearing: 10/07/2018
Date of Decision: 10/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20944-20946 / 2018

Per : P. ANJANI KUMAR

Learned counsel appearing for the applicants submitted that the appellants have not received the notice of hearing nor received by his consultant and he came to know that some order has been passed by the CESTAT and then, he approached the CESTAT and came to know that a Final Order has been passed vide which appeals were dismissed for non-prosecution.

2. After hearing the learned counsel for the parties and perusal of the material on record, we find that the absence was not deliberate. Consequently, we allow the ROA applications and restore the appeals to original numbers.

3. Since the issue falls in a narrow compass, we proceed to decide the appeals on merits, with the consent of both parties.

4. M/s. Cochin Plastics Pvt. Ltd. is a unit in the Cochin Export Processing Zone. They had letter of permission valid from 9.7.1996 to 8.7.1997. They had imported two consignments of goods covered under Bill of Entry No.847 dated 4.7.1997 and Bill of Entry No.706 dated 6.6.1997. The department alleged that though this unit was incorporated on 5.2.1996 for manufacture of video shells and components had remained to be a non-starter; they attempted to clear these goods even after expiry of letter of permission and by over invoicing with a view to get undue benefits from the financial institutions. A show-cause notice was issued for confiscation of the machinery imported and imposing penalties on the company as well as Directors and others. The case was adjudicated by the Commissioner vide order No.11/2001 dated 16.4.2001 confiscating the goods and imposing penalties. Various appeals filed before this Bench have been dismissed for non-prosecution vide Final Order No.20896-20899/2016 dated 4.10.2016 in appeal Nos. C/39/2005-DB, C/148/2001-DB, C/49/2001-DB, C/150/2001-DB. Three appellants viz., Shri George Pandicheril, Smt. Sally George and Shri Reji K. Thomas have filed applications for restoration of their appeals, contending that they had not received the due notice for

hearing from the Tribunal and they have come to know of the order only when they received the order.

5. It has been contended that Shri George Pandicheril, and Smt. Sally George have resigned from the company on 21.8.1996. Shri Amar Jeet Singh has informed vide letter dated 22.8.1996 that their resignation will be accepted and a resolution will be passed in the Board of Directors meeting. Accordingly, the Board Meeting was held on 24.12.1996 and their resignations were accepted. This being the facts of the case, both Shri George Pandicheril and Smt. Sally George cannot be penalized for the wrongful activities, if any, of the company in respect of imports which have taken place much later than their resignation and acceptance thereof.

5.1 The learned counsel also submitted that the show-cause notice alleges that Shri Reji K. Thomas was functioning as General Manager. Further, he submitted that one Shri Chacko was in fact the General Manager during the relevant time. Moreover, the Commissioner’s findings in the Order-in-Original while levying penalty on Shri Reji K. Thomas was that he cannot escape the liability for non-functioning of the unit. The learned

Commissioner has not given any findings on the commissions or omissions of Shri Reji K. Thomas in respect of the import of impugned goods; therefore, the penalty levied on him is not proper and legal.

6. The learned DR has reiterated the findings in the Order-in-Original.

7. Heard both sides and perused the records. In respect of Shri George Pandicheril and Smt. Sally George, we find that they have resigned from the company on 22.8.1996 and the same has been put up before the Board Meeting and their resignation was accepted on 24.12.1996; therefore, by no stretch of imagination it can be concluded that they are responsible for the affairs of M/s. Cochin Plastics Pvt. Ltd. in relation to the import of the impugned goods. We find that the learned Commissioner has also not given any solid finding to impose penalties on the appellants viz., Shri George Pandicheril and Smt. Sally George except stating that they have not made any attempt to get the letter of permission extended after 8.7.1997 and given further finding that they were Directors still 14.8.1997. This finding of the Commissioner is factually incorrect. As discussed above, it is

evidenced by the records that they have resigned and the same was accepted well before the import of the impugned goods. Therefore, we find that these two directors cannot be held responsible for commissions and omissions of M/s. Cochin Plastics Pvt. Ltd.

7.1 In respect of Shri Reji K. Thomas, as stated above, the only findings given by the learned Commissioner was that he cannot escape from the liability of non-performing of the unit. No findings whatsoever have been given on his commissions or omissions with reference to the import of the impugned goods. Under the circumstances, the penalty levied on him also appears to be not sustainable.

8. In view of the above, applications for restoration of appeals are upheld and the penalties levied against the appellants of Rs.1,00,000/- each are set aside with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **10/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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