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

Appeal(s) Involved:

C/21054/2018-SM

[Arising out of Order-in-Appeal No. 35-2017-18 dated 27/02/2018 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

N S Mahesh
18/578-d Nambiyath House Palluruthy Po
ERNAKULAM - 682006
KERALA

Appellant(s)

Versus

Commissioner of Customs Cochin-cus
CUSTOM HOUSE
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Shri M.S.SAJEEVKUMAR, Advocate
Door No.67/2626-C
AMULYA STREET, BANERJI ROAD,
KOCHI - 682018
KERALA

For the Appellant

Smt. Kavita Podwal, Superintendent(AR)

For the Respondent

Date of Hearing: 18/01/2019
Date of Decision: 18/01/2019

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20086 / 2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 27/02/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has upheld the Order-in-Original imposing penalty of Rs.1 lakhs each under Section 112(a) and Section 114AA of the Customs Act, 1962.

2. Briefly the fact of the present case are that on the basis of intelligence gathered by SSIB, Custom House, Cochin that assorted consumer goods including Fancy Lights were being imported from China by grossly misdeclaring the value as well as quantity in import documents filed before Customs with the active connivance with the overseas suppliers as well as local clearing agent Shri N.S. Mahesh and thereby evading considerable amounts of customs duties, the SIIB had initiated investigation into the import made by M/s. Globlink Hotels and Entertainment Pvt. Ltd. On the basis of intelligence that Shri N.S. Mahesh was locally clearing the goods for the importers through Customs Broker M/s. Krishna Brothers, the office and residence premises of Shri N.S. Mahesh were searched by the officers of SIIB on 24/06/2014. The scrutiny of the email communications of Shri N.S. Mahesh during investigations resulted in recovery of several incriminating documents including invoices showing the actual value of the consignments imported by M/s. Globlink Hotels and Entertainment Pvt. Ltd. The original authority vide Order-in-Original dt. 29/07/2016 rejected the declared values of imports under investigation and values were re-determined. The goods were confiscated and penalty of Rs.1 lakh each was imposed on Shri N.S. Mahesh under Section 112(a) and 114AA of the Customs Act, 1962. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) who rejected the same.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned orders are not sustainable in law as the same have been passed purely based on presumptions and assumptions and without any cogent and convincing evidence. He further submitted that the findings of both the authorities are without any evidence. He further submitted that the appellant has not guided the importer to undervalue the imported goods. He further submitted that the statements relied upon by the original authority are not supported by any documentary evidence. He further submitted that in all these cases, the importer has admitted the undervaluation and they have paid the differential duty along with interest and penalty which has also been appropriated in the Order-in-Original in each case. He further submitted that the importer after having paid the differential duty, interest and penalty, have also not filed any appeal against the undervaluation and the penalties imposed on them. He further submitted that once the importers have admitted undervaluation and paid the differential duty along with interest and penalty, then as per Section 28(6) of Customs Act, 1962, the proceedings against the importer as well as other persons to whom the show-cause notices were issued deemed to be conclusive.

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the evidences on record, I find that there is no clear cut evidence of abetment or instigation on the part of the appellant to undervalue the goods declared by the importers. In fact the appellant has only acted as a Clearing and Forwarding Agent and there is no independent corroborative evidence to come to the conclusion that he has helped the importer in evading the payment of customs duty. In fact there is no legally sustainable evidence of connivance against the appellant. More over it has been accepted by the Revenue that the importer has paid the differential duty along with interest and penalty and the same has been appropriated in the Order-in-original. Further I find that the appellant's case is squarely covered by the provisions of Section 28(6) of the Customs Act which clearly lays down that once the duty with interest and penalty has been paid in full, then the proceedings in respect of the importer as well as other persons should be deemed conclusive. For the purpose of better appreciation, the provisions of sub-section 6 of Section 28 is reproduced below:-

> ***Section 26(6)*** *Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-*

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

7. In view of the statutory provisions cited supra, I am of the considered view that the case of the appellant is covered by Section 28(6) and therefore I hold that the proceedings against him also stands concluded once the importer has accepted the undervaluation and paid the differential duty along with interest and penalty. Consequently, I set aside the impugned order and allow the appeal filed by the appellant.

(Operative portion of the Order was pronounced
in Open Court on **18/01/2019**)

S.S GARG
JUDICIAL MEMBER

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