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

Appeal(s) Involved:

C/21130/2018-SM

[Arising out of Order-in-Appeal No. 500-2017 dated 25/09/2017 passed by Commissioner of CUSTOMS , BANGALORE-I (Appeals)]

Commissioner of Customs, Mangaluru — Appellant(s)

Versus

Baraka Overseas Traders
Post Box No 1204 Beach Road Ullal
MANGALORE - 00
KARNATAKA — Respondent(s)

Appearance:

Shri B. Venugopal, Advocate — For the appellant
Dr. J. Harish, Jt. Commissioner(AR) — For the Respondent

Date of Hearing: 25/02/2019
Date of Decision: 25/02/2019

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

Final Order No. 20210 / 2019

Per : S.S GARG

The Revenue has filed the present appeal against the impugned order dt. 25/09/2017 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) dismissed the Department's appeal filed before him and upheld the Order-in-Original.

2. Briefly the facts of the present case are that respondent M/s. Baraka Overseas Traders, Mangaluru, has exported 300 cartons of frozen

mackerel to USA vide Shipping bill No.4365838 dt. 28/11/2015. The same was rejected by the United States Food and Drug Administration due to detection of two numbers of decomposed fish. The subject goods were imported vide Bill of Entry No.6251153 dt. 05/08/2016 valued at Rs.19,33,021/- which were subjected to the first check. The identity of the goods was established. As the import of livestock products is subject to sanitary import permit / NOC of Animal Husbandry Authority, the bill was referred to the Animal Quarantine and Certification Services (AQCS), Bengaluru functioning under the Department of Animal Husbandry, Dairying and Fisheries for issuance of NOC (in SWIFT) before clearance. On examining the cargo imported, AQCS did not give NOC for the clearance of the goods for home consumption since the consignment posed a threat to the bio-security and proposed either destruction or deportation of the goods. The importer sought waiver of show-cause notice and requested for adjudication of the case. The Additional Commissioner of Customs, Mangaluru adjudicated the case vide order dt. 15/09/2016 and ordered for absolute confiscation of 300 cartons of frozen mackerels under Section 111(d) of the Customs Act, 1962 read with notifications issued under Section 3(1) of the Livestock Importation Act, 1898 and Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. Confiscated cargo has been ordered for destruction. However, no penalty was imposed under Section 112 of the Customs Act but the importer was warned to be more careful in future export. Aggrieved by the said order for not imposing penalty under Section 112 of the Customs Act, 1962, the Department filed appeal before the Commissioner(Appeals) and the

Commissioner(Appeals) vide the impugned order dismissed the appeal and upheld the order of the original authority. Aggrieved by the said order, the Department has filed the present appeal.

3. Heard both sides and perused the records.

4. Learned AR for the Revenue submitted that both the authorities have not imposed any penalty on the importer under Section 112 of the Customs Act, 1962. He further submitted that the findings of the Commissioner(Appeals) is in contravention of the provisions of Section 112. He further submitted that as per the Section 112, any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, shall be liable, in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater. The learned AR further submitted that the word ‘shall’ used in Section 112 is mandatory in nature and the Commissioner(Appeals) does not have any discretion not to impose penalty.

5. On the other hand, the learned counsel for the appellant defended the impugned order and submitted that both the authorities have not imposed any penalty though the consignment was confiscated. He further submitted that the Commissioner(Appeals) has specifically held that

penalty will ordinarily been imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation, but not in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

6. After considering the submissions of both sides and perusal of the material on record, I find that no penalty was imposed by the authorities below on the ground that respondent has not contravened the provisions of Section 112 of the Customs Act. Further I find that the Commissioner(Appeals) has categorically come to the conclusion that in this case, the importer has acted bona fidely and there is no negligence on his part. In view of this, I do not find any infirmity in the impugned order dropping the penalty under Section 112 of the Customs Act, 1962 and consequently I uphold the impugned order by dismissing the Revenue's appeal.

(Operative portion of the Order was pronounced
in Open Court on **25/02/2019**)

S.S GARG
JUDICIAL MEMBER

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