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

<u>Appeal(s) Involved:</u>

C/20366/2019-SM, C/20367/2019-SM

[Arising out of Order-in-Original No. COC-CUSTMS-000-COM-41/18-19 dated 31/12/2018 passed by the Commissioner of Customs, Cochin]

Joakim Yesudasan
S/o. M.J Yesudasan, Maniyapozhyil House, Andhakaranazhy P O
Cherthala
Alappuzha
Kerala

Appellant(s)

Antony Sijo
S/o. Johnson Veliparambil House
Kadebagham Road, Palluruthy
Cochin
Kerala

Versus

C.C-Cochin
Custom House,
Willingdon Island
Cochin – 682 009
Kerala

Respondent(s)

<u>Appearance:</u>

Ms. Amrin Fathima, Advocate

Chamber No. 732, 7th Floor Khcaa
Golden Jubilee Chamber Complex
Near High Court Of Kerala
Ernakulam
Kerala

For the Appellant

Smt. Kavita Podwal, Superintendent (AR)

For the Respondent

Date of Hearing: 11/06/2019
Date of Decision: 20/06/2019

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

Final Order Nos. 20475 - 20476 / 2019

Per : S.S GARG

These two appeals have been filed by the appellants against the common impugned order dated 31.12.2018 passed by the Commissioner of Customs, Cochin vide which the appellant No. (1) Joakin Yesudasam was imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under the provisions of Section 117 of the Customs Act, 1962 and Appellant No. (2) Antony Sijo has been imposed a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) under the provisions of Section 117 of the Customs Act, 1962. As the allegations against both the appellants are identical and common investigation was done and common impugned order was passed, therefore both the cases are being taken up together for discussion and disposal. For the sake of convenience, the facts of Appeal No. C/20366/2018 are taken.

2. Both the appellants are employee of M/s. MBL Logistics Pvt. Ltd. who were working as sale agent, shipping agent and shipping line agent under the Commissionerate of Customs, Cochin. The appellant No. (1) was working with the company in its Operation Wing as Operation Assistant from July 2017 and was looking after Customs related work of the company. During the investigation against the company, the appellant was summoned and his statement was recorded under Section 108 of the Customs Act. The said

statement was allegedly recorded under threat, coercion and undue influence and thereafter search and seizure was conducted in the office premises of M/s. MBK Logistics Pvt. Ltd. Appellant was harassed and dictated to write down what was dictated to him. Thereafter, a show-cause notice dated 10.12.2018 under Section 124 of the Customs Act was issued to the appellant calling him to show-cause as to why a penalty under Section 117 of the Customs Act should not be imposed on him. Appellant submitted reply dated 26.12.2018 to the show-cause notice and made a request for supplying the copies of video footages of the examination of the appellant as the same was recorded under threat and harassment. But the said request was never accepted nor provided with the copies of video footage to the appellant. In the reply to the show-cause notice appellant had completely retracted from his Section 108 statement given before the Customs officer. The appellant has further alleged that he was not provided copies of the necessary documents and other necessary material and was not given a reasonable time to peruse the statement recorded at the time of cross-examination and to properly adduce further evidence to substantiate the case.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order imposing the penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Appellant No. (1) and Rs. 25,000/- (Rupees Twenty Five Thousand only) on Appellant No. (2) under Section 117 of the Customs Act, 1962 is not

sustainable in law as the same has been passed solely on the basis of their statement recorded under Section 108 of the Customs Act which was retracted absolutely when they filed reply to the show-cause notice. She further submitted that the appellants were put under coercion and threat and their statement was recorded under Section 108 and they were not provided with the copies of the said statement. She further submitted that the appellants did not succumb to the illegal demand of bribe of some of the Customs officer and therefore they were falsely implicated in the present case. She further submitted that the allegation in the show-cause notice was vague, ambiguous and without any basis and the evidence available on record is not sufficient to attract penalty under Section 117 of the Customs Act on the appellant. She further submitted that documentary evidence on record has been brushed aside by the Department and had heavily relied upon the statement of the appellant recorded under Section 108 of the Customs Act. She also submitted that till today the Customs officers have not lodged any complaint regarding the missing of any Customs seal from any of the Department of the Customs. Further the officers of the Customs Shri. Ritesh Kumar Singh and Smt. Dheeraj Kumar Sing had admitted in their 108 statements and deposed in their cross-examination that they had no knowledge about the missing of any seal from any Department. Further Annexure A1 to the show-cause notice did not mention about the date on which the alleged missing of seal had occurred. Moreover, the officers of the Customs who gave their statements before the officers of the SIIB had even stated that they had not received any information or complaint regarding the missing of the seal from any of the Department. She further submitted that the respondent did not permit the appellant to inspect the alleged seal, seized part of seal and the rubber portion of the official seal. She also submitted that the existence of the seal and seizure of the seal and rubber portion of the office seal has become doubtful. She further submitted that the Customs officers had not prepared any Mahazar of such surrendered/handing over of the seal by the appellant and in the absence of such Mahazar, the existence of material object becomes doubtful and unbelievable. She further submitted that this Tribunal vide its Final Order No. 20192 /2019 dated 22.02.2019 has revoked the cancellation of the license of the said firm M/s. MBK Logistics Pvt. Ltd. She also submitted that in the impugned order, no penalty has been imposed on Santhosh Kumar, Senior Manager, MBK Logistics Pvt. Ltd. and also no penalty has been imposed on Smt. Anita Prabhakar, Managing Director of M/s. MBK Logistics Pvt. Ltd. under Section 117 of the Customs Act, 1962. In support of her submission, she relied upon the following decisions:

a. *Asst. Commr. of Central Excise, Rajmundry Vs. Duncan Agro Industries Ltd. – 2000 AIIMR (Cri) 1701 (SC)*
b. *Seventilal Karsondas Modi Vs. The State of Maharashtra and another AIR 1979 SC 705*
c. *K.I. Pavunny Vs. Asst. Collr. (HQ) C. Ex, Collectorate, Cochin – 1997 (90) E.L.T. 241 (SC)*

5. On the other hand the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the

material on record, I find that on both the appellants penalty under Section 117 of the Customs Act has been imposed solely on the basis of their statement under Section 108 of the Customs Act given before the officers of SIIB. Further I find that the appellants in their reply to the show-cause notice has completely retracted their statement given earlier and has alleged torture and inhuman treatment made to them during the recording of the statement. Further I find that even the copies of the statement have not been given to the appellants and they were not supplied all the documents relied upon by the Department and thereby deprived them to defend themselves properly. Further I find that the Department has not filed any report in the Police Station for the theft of the seal of the Department. Further I find that no Mahazar was prepared on the spot for the recovery of the alleged seal and the said alleged seal was never shown to the appellant. Further I find that this Tribunal has examined the impugned order in the case of **MBK Logistics Pvt. Ltd.** and set aside the cancellation of the license of the main firm M/s. MBK Logistics Pvt. Ltd. It is strange that the Commissioner (Appeals) has not imposed any penalty on the Senior Manager of the company as well as its Managing Director on the ground that he has imposed the penalty on the firm. Once the Senior Manager and the Managing Director of the company has been exempted under Section 117 of the Customs Act, I find no reason that penalty should be imposed on the appellants under Section 117 of the Customs Act, 1962. Further in view of the various contradictions and discrepancies appearing in the investigation, I am of the view that the Revenue has not been able to prove the allegations against the appellants with cogent and convincing evidence so as to warrant the imposition of penalty under the provisions of Section 117 of the Customs Act, 1962. In view of this, I set aside the penalty of Rs. 50,000/- (Rupees Fifty Thousand only) imposed on Appellant No. (1) and Rs. 25,000/- (Rupees Twenty Five Thousand only) imposed on Appellant No. (2) under Section 117 of the Customs Act by allowing the appeals.

(Order was pronounced in Open Court on **20/06/2019**)

(S.S GARG)
JUDICIAL MEMBER

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