CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20234/2019-SM

[Arising out of Order-in-Appeal No. 322-323/2018 dated 24/09/2018 passed by Commissioner of CUSTOMS, BANGALORE-I (Appeal).]

Mrs. Shahin Taj Begum
No. 601, Felicity Block II, Bejal New Road
MANGALORE - 575004
KARNATAKA

Appellant(s)

VERSUS

Commissioner of Customs
New Custom House, Panambur,
MANGALORE – 575 010.
KARNATAKA

Respondent(s)

Appearance:

Mr. PRADYUMNA G.H.
ADVOCATE
BVC & CO, 1st Floor,
NO. 371 8th Main, Sadashiva Nagar,
BANGALORE - 560080
KARNATAKA

For the Appellant

Smt. Kavitha Podwal,
Superintendent (AR)

For the Respondent

CORAM:

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

Final Order No. 20523 / 2019

Date of Hearing: 04/07/2019
Date of Decision: 04/07/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 24.9.2018 passed by the Commissioner (A) whereby the Commissioner (A) in respect of the present appellant has rejected the appeal and with regard to the Custom House Agent (CHA), the Commissioner (A) has remanded the case back to the original authority.

2. Briefly the facts of the present case are that the appellant is a Indian Passport holder bearing No.H9521458 returned to India from Dubai on 24.12.2016 and filed unaccompanied baggage declaration under Section 77 of Customs Act, 1962 on 02.01.2017 through the CHA claiming clearance of 128 packages as personal effects/household articles under Baggage Rules, 2016, which arrived in container bearing No.JFSU0129050 under Bill of Lading No.JEAIXE700596 dated 11.01.2017 at New Mangalore Port Trust, Panambur, Mangalore. The said cargo was examined in the presence of the authorized representative of the passenger and CHA on 13.10.2017, 16.10.2017 and 17.10.2017 at Central Warehousing Corporation, Mangalore. On examination of the packages, it was found that certain packages contained household articles and certain others contained only cosmetic items, which were in commercial quantity. On enquiry Smt. Sameena Begum, authorized representative of the appellant stated that the said cosmetic items belonged to shop run by the passenger in Dubai and as the shop was closed they were brought to India. As the said consignment consisted of cosmetic items in commercial quantity, the Baggage declaration filed by the passenger appeared to be mis-declared as personal effects to claim benefit of Transfer of Residence as per Rule 6 of Baggage Rules, 2016. Hence, a detailed examination was conducted and it was found that there was more than one carton in certain packages. Therefore, a packing list was prepared, wherein the packages were found to be 139 in number and not 128 as declared by the appellant. Out of the same, 54 packages contained personal effects/household articles and the remaining 85 packages contained various cosmetic items in commercial quantity which were listed. The 54 packages were only bonafide baggage of the appellant and they were valued at Rs.2,35,250/- and the remaining 85 packages containing cosmetic item were valued at Rs.29,58,971/-. It appeared that the passenger had contravened the provisions of Baggage Rules, 2016 and mis-declared the baggage in violation of Section 77 of Customs Act, 1962.

2.1 After following the due process, the adjudicating authority vide Order-in-Original dated 5.1.2018 held that:

(i) 54 packages of personal effects/household articles valued at Rs.2,35,250/- were classified under CTH 9803 0000;

(ii) Out of the same goods valued at Rs.1,75,250/- were eligible for clearance at 'Nil' rate and the remaining valued at Rs.60,000/- were charged at 35% BCD, 2% ED Cess and 1% Higher ED Cess working out to Rs.21,630/-;

(iii) 85 packages consisting of cosmetic items valued at Rs.29,58,971/- were confiscated under Section 111(m) of Customs Act, 1962 read with Rule 133 of the Drugs and Cosmetic Rules, 1945;

(iv) Penalty of Rs.8,87,691/- and Rs.4,43,845/- were imposed on the appellant under Section 112(a) and 114AA of the Customs Act, 1962; and

(v) Penalty of Rs.8,87,691/- was imposed on the CHA under Section 112(a) of the Customs Act, 1962.

Aggrieved by the said order, appellant filed appeal before the Commissioner (A) who rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without appropriately appreciating the facts. He further submits that the goods have been confiscated without issuance of show-cause notice which is a mandatory requirement in case of confiscation and therefore, the confiscation is not in accordance with law. He further submitted that the valuation of the confiscated goods is without any basis and is much higher than the market value and that the appellant was not informed about the valuation and there is no finding on valuation or the basis for arriving at the valuation. He further submits that there is no suppression or deliberate violation by the appellant and there is no finding on willful or malicious intention of the appellant, hence the imposition of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 is not sustainable. He also submits that unaccompanied baggage in the present case contained 139

packages of household items as well as other cosmetic items meant for daily use and it has been held by the Additional Commissioner that out of the total 139 packages, only 54 packages are classified Baggage under the Customs Tariff as eligible for transfer of residence and value thereof has been determined at Rs.2,35,250/- and out of the said amount of Rs.2,35,250/- goods valued at Rs.1,75,250/- has been held as eligible for clearance at 'Nil' rate of duty under TR Concession in terms of Rule 6 of Customs Baggage Rules, 2016 and the remaining goods valued at Rs.60,000/- is held to be chargeable to duty at 35% working out to Rs.21,630/-. He further submitted that imposition of huge penalty on the appellant under Sections 112(a) and 114AA is not sustainable because the essential requirements of those Sections are not present in the facts of the case. He also submits that the penalty imposed is disproportionate and is beyond the capacity of the appellant to pay.

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant has mis-declared the quantity as well as the description of the impugned goods and on examination, it was found that only 54 packages were personal effects/household articles and the remaining 85 packages were consisting of cosmetic items valued at Rs.29,58,971/- were rightly confiscated because the said import was in violation of Rule 133 and Rule 43A of the Drugs and Cosmetic Rules, 1945. He further submitted that as per the Board Circular No.08/2010-Cus. dated 26.03.2010, Mangalore Port is not listed for import of the impugned goods into India by sea. Therefore, the appellant has violated the Baggage Rules as well as Board Circular and also contravened the Rules of Drug and Cosmetics Rules, 1945. The learned AR also justified the valuation done by the department and the imposition of penalty on the appellant.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is an Indian Passport holder and she shifted her household articles into India from Dubai and filed unaccompanied baggage under Section 77 of the Customs Act, 1962. When the goods reached at Mangalore Port, it was examined and it was found that out of 139 packages, 54 packages are personal effect/household articles and

remaining 85 packages were cosmetic items which are not permitted to be brought to India through Mangalore Port. Further, I find that the appellant has violated the provisions of Baggage Rule as well as Drugs and Cosmetics Rules and also the Board Circular which prohibits the import of these goods through Mangalore Port and both the authorities have rightly upheld the absolute confiscation of the said goods. As far as imposition of penalty on the appellant under Sections 112(a) and 114AA of the Customs Act is concerned, I find that it is on higher side because the appellant has not suppressed any material facts from the Department and she has filed the declaration before the Customs as required under law. Moreover, she was not knowing the Customs Regulations and she was shifting from Dubai where she was running a shop which was closed and all the items brought in her baggage were cosmetic items and she was not aware of the requirement of law that Mangalore Port is not authorized port for import of impugned goods into India through sea. Therefore, keeping in view the facts and circumstances of the case, I reduce the penalty to Rs.50,000/- (Rupees Fifty Thousand Only) under Sections 112(a) and 114AA of the Customs Act, 1962. As far as 54 packages are concerned, the department will immediately release the same on payment of customs duty of Rs.21,630/- which was assessed by the original authority and also upheld by the Commissioner (A). Consequently, the appeal is partially allowed in terms of above terms.

(Operative portion of the Order was pronounced
in Open Court on **04/07/2019.**)

S.S GARG
JUDICIAL MEMBER

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