CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/21268/2014-DB

[Arising out of Order-in-Original No. TVM-EXCUS-000-COM-15-13-14 dated 06/01/2014 passed by Commissioner of Central Excise and Customs , TRIVANDRUM]

Trident Courier & Cargo
Aeramela House, (nandanam), Kattaikonam
P.o.
THIRUVANTHAPURAM - 695584
KERALA

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax
Trivandrum
T.C.NO.26/334(1&2),
I.C.E BHAVAN,PRESS CLUB ROAD,
TRIVANDRUM - 695001
KERALA

Respondent(s)

Appearance:

Shri P.A.AUGUSTIAN, ADVOCATE
FAIZEL CHAMERS, PULLEPADY CROSS ROAD,
COCHIN-682018

For the Appellant

For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P.V. SUBBA RAO, TECHNICAL MEMBER

Final Order No. 20663 / 2019

Date of Hearing: 21/08/2019
Date of Decision: 21/08/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 06/01/2014 passed by the Commissioner whereby the Commissioner has confirmed the customs duty and Cesses on the goods imported by the appellant under Section 28(8) of the Customs Act, 1962 and has also held that appellant is liable to pay the appropriate interest as per Section 28AA of the Customs Act, 1962. He has also imposed equal penalty under Section 114A and also imposed penalty of Rs.10 crores under Section 114AA of the Customs Act, 1962.

2.1. Briefly the facts of the present case are that the appellants are holders of Courier Registration issued under Regulation 10 of Courier Import and Export (Clearance) Regulations, 1998 to act as an Authorised Courier in Thiruvananthapuram International Airport for clearance of import and export goods under courier mode.

2.2. Intelligence was received by the department that the courier agencies which were granted licence as authorized couriers to operate through Trivandrum International Airport were importing unaccompanied baggage of passengers and goods intended for trade / business etc. in the guise of bonadie gifts, in order to illegitimately avail the benefit of duty free provisions granted for bonafide gifts under Ministry of Finance (Department of Revenue) Notification No.171/93-Cus dt. 16/09/1993, as amended read with Courier Export and Import (Clearance) Regulations, 1998, thereby causing huge loss to the exchequer in terms of customs duty otherwise leviable on such imports. Hence, a detailed inspection had been carried out to identify all the imports made by such courier agencies through Trivandrum International Airport. From the commencement of their operations till 2012 October, almost all the Bills of Entry filed by courier operators were under Courier Bill of Entry-IV (Form CBE-IV) meant for import of free gifts and samples i.e. duty free imports only. The courier agents themselves had subscribed to a self declaration in the relevant portion of the CBE-IV that the goods imported as per the Bill of Entry include only bonafide commercial samples, prototypes of goods and bonafide gifts of articles for personal use of a value not-exceeding Rs.10,000/- and which for the time being not subject to any prohibition or restriction on their import to India.

2.3. The appellant had imported goods at the declared value of Rs.72,73,38,363/- during the period from the beginning of their operations till October 2012 and cleared the same against 10994 Courier Bills of Entry (in Form CBE-IV) in the name of various individuals. Thereafter the investigation was conducted against the appellant and during the investigation, statements of Shri P.S. Biju, Proprietor of the appellant were recorded and after completion of the investigation, a show-cause notice dt. 12/07/2013 was issued to the appellant and after following the due process, the impugned order was passed confirming the demand.

3. Heard both sides and perused the records.

4. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and law. He further submitted that on identical facts this Tribunal in various appeals filed by the courier companies against whom identical show-cause notices were issued, remanded the matter by setting aside the impugned orders. He further submitted that this case should also be remanded on the same terms as was done in other cases of identical nature.

5. On the other hand, the learned AR did not have any objection if the matter is remanded to the original authority as was done in orders passed by this Tribunal earlier.

6. After considering the submissions of both parties and perusal of the records, we find that show-cause notices were issued to various courier agencies on the same allegation and this Tribunal in the case of RPS Global Courier Services & others vs. CCE, Trivandrum vide its Final Order No.21470-21472/2014 dt. 19/08/2014 has remanded the case back to the original authority for passing the fresh order. Further in the case of M. Mohammed Reji, Prop. Of Arabian Couriers & anr. Vs. CCE, Trivandrum, this Tribunal vide its Final Order No.20323-20324/2015 dt. 12/02/2015 remanded the matter to the original authority for de novo adjudication. Since the issue involved in the present case is also same as involved in the earlier cases cited supra, in our view, this case also needs to be remanded back to the original authority for de novo adjudication. Further, we find that in the case of M. Mohammed Reji, Prop Arabian Courier & anr., the Tribunal in para 3 has held as under:-

> *3. After hearing both the sides, we found that according to Regulation 13(a) of CIECR, the appellants are required to keep the authorizations for a period of one year so that the Customs authorities can inspect the authorizations and satisfy themselves about the bona fide of the receivers. However, in both the cases, the demands have been confirmed for the period of more than one year and there is no indication as to whether the appellants had fulfilled the requirements of Regulation or not. Further all the items have been assessed at single rate whereas in the case of courier operators, it is required to be examined whether legally individual items have to be assessed as is done in the case of Bill of Entry filed in the normal course. If that is the case, the question of correctness of assessment also arises. Moreover there was also a submission in one of the case that they had submitted documents and this also has to be verified. Further if the authorizations are available, at least some sample verifications have to be done to ensure that such consignees were non-existent, bogus or not genuine. We feel that matter is required to be reexamined under these circumstances and adjudicated afresh. Accordingly, the impugned orders are set aside and matters are remanded for de novo adjudication. Needless to say, appellants shall be given reasonable opportunity to present their case.*

7. The ratio of the above said case is applicable in this case and consequently we set aside the impugned order and remand the present case to the original authority for de novo adjudication. Accordingly, appeal is allowed by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **21/08/2019**)

S.S GARG
JUDICIAL MEMBER

P.V. SUBBA RAO
TECHNICAL MEMBER

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