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

COURT HALL No.1

Appeal(s) Involved:

C/21902/2018-SM

[Arising out of No. 03-2014-15 dated 27/01/2015 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

V Ramesh, Proprietor
Shashank Assiociates No 147 Infantry Road
BANGALORE
KARNATAKA
560001

Appellant(s)

Versus

C.C-Bangalore-cus
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

Shri B. VENUGOPAL, Advocate
NO.82, 3RD FLOOR,
S.T. ROAD, BED, 4TH BLOCK,
KORAMANGALA
BANGALORE
KARNATAKA
560034

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR) — For the Respondent

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

Final Order No. 20998 /2019

Date of Hearing: 06/11/2019
Date of Decision:08/11/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 27/01/2015 passed by the Commissioner of Customs, Bangalore wherein the Commissioner has imposed a penalty of Rs.10,32,283/- under the provisions of Section 112(a) of the Customs Act, 1962.

2. Briefly the facts of the present case are that the appellant is engaged in the business of hotel management consultancy. On the basis of investigation conducted by the DRI, a show-cause notice dt. 30/03/2009 was issued to the appellant along with others and the allegation against the appellant in the said show-cause notice was that the appellant was responsible in procurement of goods, guided Shri HR Ravichandra, Partner of Gardenia in procuring goods through Maxx Access Ltd., China and was fully aware of the facts of availability of two sets of invoice showing different prices/values, payment of differential value of the imported goods being made through other than Banking Channel and also availability of the account statements showing the actual transaction details, in respect of the imports of the said goods. Further it was alleged that the appellant has not disclosed the facts to the Customs department which has resulted in undervaluation and non-payment of appropriate Customs duties. Appellant was directed to show cause as to why penalty under Section 112(a) of the Customs Act should not be imposed on him for his acts of omission and commission which has rendered the goods liable for confiscation under Section 111(m) of the Act. The appellant filed reply to the show-cause notice and submitted that though he was approached by M/s. Gardenia Comforts in the initial stage of setting up of their hotel, but eventually was not engaged as a consultant and hence he was in no manner involved in the setting up of the hotel or importing of the furniture and accordingly contested the charge of abetting and proposed imposition of penalty. In the meantime, M/s. Gardenia Comforts have deposited the entire amount of duty with interest and approached the Settlement Commission, Chennai under Section 127(B) of the Customs Act, 1962. The Settlement Commission vide order dt. 06/01/2010 settled the case and granted full immunity to M/s. Gardenia Comforts and Shri HR Ravichandra and imposed penalty of Rs.20,000/- and Rs.30,000/- respectively. After considering all these facts, the Commissioner of Customs vide Order-in-Original dt.

27/01/2015 held the appellant guilty of abetting and assisting M/s. Gardenia Comforts in the undervaluation of imported goods and imposed the said penalty under Section 112(a) of the Customs Act. Against which, the appellant has filed the present appeal.

2.1. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order imposing penalty on the appellant under Section 112(a) of the Customs Act, 1962 is not sustainable in law as the same has been passed without properly appreciating the facts and the evidence on record. He further submitted that the main charge against the appellant is that he has guided M/s. Gardenia Comforts in undervaluation of furniture imported from China and therefore the appellant has abetted and aided in undervaluation of imported goods. He further submitted that the appellant has not been engaged by the Gardenia Comforts as consultant and he has no role in import of the said furniture by Gardenia Comforts. He further submitted that appellant was engaged as consultant by few other importers who have imported furniture from China and those importers have been issued show-cause notices with the charge of undervaluation and appellant was also charged with abetment in those imports. But in the present case, the appellant is not involved but still charged for abetment. He also submitted that all those cases in which the appellant was involved in the undervaluation, he filed application for settlement of cases before the Settlement Commissioner along with importers and settled the cases and the Settlement Commission had imposed a penalty of Rs.10,000/- which the appellant had paid. He also submitted that in the present case appellant was not involved at all and therefore he chose to contest and did not go to the Settlement Commission whereas the main importer M/s. Gardenia Comforts approached the Settlement Commissioner and settled the matter. He further submitted that the Commissioner has relied upon the statements of

the appellant dt. 27/06/2008 and 15/12/2008 and also the statement given by the importer Mr. H.R. Ravichandra dt. 16/07/2008. He took me through the statement of the appellant as well as statement of Shri H.R. Ravichandra and submitted that there is not even an iota of evidence against him which directly or indirectly implicates him in the commission of aiding and abetting the undervaluation by the importer. He also submitted that once the importer settled the matter and the Settlement Commission has allowed the settlement vide its Final Order dt. 06/01/2010, then the case is said to be settled in totality i.e. in respect of all other parties in the said case. In support of his submission, he relied upon the following decisions:-

i. N.S. Mahesh Vs. CC, Cochin [2018(363) ELT 644 (Tri. Bang.)]
ii. S.K. Coombowala Vs. CC(Import), Mumbai [2007(220) ELT 492 (Tri. Mumbai)]
iii. Virender Bansal Vs. CC(ICD), New Delhi [2015(317) ELT 796 (Tri. Del.)]

He also referred to Section 28(6) of the Customs Act to buttress his argument that once the main case is settled, all the cases of co-noticees get settled.

4,. On the other hand, the learned AR defended the impugned order and submitted that the appellant has acted as a consultant for the importer M/s. Gardenia Comforts and has helped the Gardenia Comforts to undervalue the furniture imported from China and therefore he has been rightly imposed penalty under Section 112 of the Customs Act. He further submitted that settlement of the case by the importer does not absolve the appellant from the offence committed by him. He also submitted that the role of the appellant has to be independently examined and the benefit of Section 28(6) of the Customs Act cannot be given to him. In support of his submission, he relied upon the following decisions:-

i. Mamta Garg Vs. CC&CE, Noida [2018(359) ELT 77 (Tri. Del.)]
ii. Motilal gupta Vs. CCE, Thane-I [2016(337) ELT 462 (Tri. Mum.)]

5. After considering the submissions of both the sides and perusal of the material on record, I find that the only allegation against the appellant is that he has aided and abetted the importer Gardenia Comforts in the undervaluation of the furniture imported by them from China. In order to prove the said allegation, the Revenue has relied upon the statement of the appellant as well as the statement given by the main importer Shri HR Ravichandra. I have gone through the statement of the appellant given on two dates as well as the statement given by the main importer Shri HR Ravichandra. In all the statements, no material has come on record which establishes that the appellant has aided and abetted the importer in undervaluation of the imported goods. Commissioner has wrongly observed in the impugned order that the appellant has admitted that he has helped the importer Gardenia Comforts in undervaluation of the furniture. Commissioner has misread the evidence on record and has come to the conclusion on the basis of the involvement of the appellant in other cases wherein the appellant has confessed his guilty and has also approached the Settlement Commission along with other importers and paid the penalty of Rs.10,000/- imposed by the Settlement Commission . but as far as, this case is concerned, there is no evidence on record to establish that the appellant has helped the importer in undervaluation of the furniture imported by them. Therefore I hold that the Revenue has failed to establish the charge against the appellant on merits. As far as other contention of the appellant is that this Tribunal in the case of N.S. Mahesh has held that once the case is settled by the Settlement Commission, the proceedings against the co-noticee also stands concluded though there are contrary judgments on this issue. Because in the case of Mamta Garg and Motilal Gupta, the Tribunal has

held that once the case is settled by the Settlement Commission, the co-noticee is not automatically exonerated and his role has to be seen independently. But in the present case, from the evidence on record, I find that role of appellant has not been established in aiding and abetting the importer to undervalue the imported furniture. Therefore I hold that in the facts and circumstances and the evidence on record, imposition of penalty on the appellant is not tenable in law and therefore I set aside the penalty by allowing the appeal of the appellant.

(Order was pronounced
in Open Court on **08/11/2019**)

S.S GARG
JUDICIAL MEMBER

Raja...