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

Appeal No.C/372, 373, 374/2012

[Arising out of Order-in-Original No.19706/2012 dated 29.10.2012 passed by Commissioner of Customs (Seaport-Export), Chennai]

1. Viswanaath Agro Products International
2. Shri J. Ganesh Kumar
3. Shri S.R. Janaki Ram — Appellant

Versus

Commissioner of Customs (Seaport – Export)
Chennai — Respondent

<u>Appearance :</u>

Shri S. Sankaravadivelu, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 06.07.2018

<u>FINAL ORDER No. 42001-42003 / 2018</u>

Per Madhu Mohan Damodhar

After hearing both sides, we find that the issue concerns admitted export of banned items namely non-basmati rice, pulses, wheat, wheat flour and Semolina in the guise of other grocery items. We find that on identical issue concerning the same appellants for a live consignments of 3 shipping bills separate proceedings had been initiated and adjudication orders issued, which on appeal to the Tribunal had been disposed vide Final Order Nos.444-446/2010 dt.19.4.2010 wherein the redemption fine and penalties imposed on the very same appellant had been reduced. We note that the present disputed concerns earlier imports by the very same appellant involving a value of Rs.5,87,88,384/- during the period 1.4.2008 to 27.02.2009. The adjudicating authority in the impugned order has inter alia imposed penalties as under :-

(1) Viswanaath Agro Products – Rs.1,25,00,000/- (Appellant in Appeal C/372/2009)

(2) Shri J. Ganesh Kumar – Rs.30,00,000/- (Appellant in Appeal C/373/2009)

(3) Shri S.R.Janakiram – Rs.30,00,000/- (Appellant in Appeal C/374/2009)

The adjudicating authority also ordered for appropriation of Rs.85 lakhs already paid. Appellants have filed these appeals only against penalties imposed.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri S. Sankaravadivelu draws attention to the fact that even for the live consignments, penalties had been reduced by the Tribunal in the case cited supra. He also placed reliance on Tribunal's decision in *Parvaz Overseas Pvt. Ltd. Vs CC Kandla* - 2013 (294) ELT 233 (Tri.-Ahmd) to contend that in such cases penalty of around 4% to 5% of the value has been considered adequate by the Tribunal. He submits that appellants have paid up an amount of Rs.85 lakhs during the course of investigation towards the penalty that could be imposed.

3. On the other hand, Ld. A.R Shri A. Cletus opposed the appeals. He submits that the Tribunal in the earlier order was dealing only live consignments of 3 shipping bills whereas the present appeals relate to 115 shipping bills where the same modus operandi had been adopted in export. For these reasons, he contends that there should not be any leniency shown in respect of the penalties already imposed.

4. Heard both sides and have gone through the facts.

5. It is important to note that the Tribunal in the final order relied upon by Ld. Advocate (supra), dealt with live consignments of goods which were available for inspection and verification. The Tribunal considered it proper and appropriate in that case to reduce the penalty substantially. However the present appeals are related to the consignment that were exported prior to that live consignments. These items that had actually been exported in these consignments were not available at the time of investigation and for which reason only, the adjudication has not imposed any redemption fine. At the same time, it has to be noted that the appellants have admitted their offence in respect of the past consignments also and have paid up an amount of Rs.85 lakhs towards the adjudication liabilities. While these actions on the part of the appellants will not in any way sanctify or redeem their contraventions, they are nonetheless acts of contrition, which should be considered as mitigating factors while imposing penalties.

6. In the event, following the decision of the Tribunal in Final Order dt. 19.04.2010, stated above, we order reduction of the penalties as follows :

(1) M/s. Viswanaath Agro Products from Rs.1,25,00,000/- to **Rs.60,00,000/-** (Rupees Sixty lakhs only) (Appellant in Appeal C/372/2009)

(2) Shri J. Ganesh Kumar from Rs.30,00,000/- to **Rs.10,00,000/-** (Rupees Ten lakhs only) (Appellant in Appeal C/373/2009)

(3) Shri S.R.Janakiram from Rs.30,00,000/- to **Rs.10,00,000/-** (Rupees Ten lakhs only) (Appellant in Appeal C/374/2009)

Appeals are partly allowed in above terms.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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