IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/42316/2013

[Arising out of Order-in-Appeal C. CusNo.1103 &1104/2013,dated08.08.2013 passed by the Commissioner of Customs (Appeals), Chennai]

M/s.L. HARISH GANDHI APPELLANT

Versus

COMMISSIONER OF CUSTOMS (IMPORTS), CHENNAI RESPONDENT

Appearance:

For the Appellant ShriM. Karthikeyan, Adv.
For the Respondent ShriL. Nandakumar, AC (AR)

CORAM:

Hon'ble Smt. SulekhaBeevi C.S, Judicial Member

Date of hearing/decision **15-03-2019**

FINAL ORDER NO.

Brief facts are that the appellant was importer of goods covered under Bill of Entry Nos.551841/12.09.2007, 569982/05.10.2007 and 685674/06.03.2008. The department was of the view that the value of the goods was not declared properly and show-cause notice was issued proposing to enhance the value along with interest and also for imposing penalties. However, the notice M/s. M.G. Trading Company on receiving the show-cause notice itself paid-up the entire enhanced duty along with interest and also paid-up 25% penalty. The present proceedingswere continued against the appellants herein as co-noticee. The main plea raised by the appellant was since the other co-noticee has paid up the entire duty, interest and 25% penalty, proceedings has to be deemed to be concluded against all other noticees as per sub-section (1A)(2) of section 28 to

Customs Act, 1962. However, after due process of law, the original authority confirmed the duty demand and imposed penalties of Rs.2,00,000/- against the appellants herein. In appeals, the Commissioner (Appeals) upheld the same. The appellant approached the Tribunal and vide Final Order dated 27.06.2016, the Tribunal dismissed the appeal filed by the appellant. An appeal was filed before the Hon'ble High Court and vide its judgment dated 04.09.2018, the Hon'ble High Court gave the appellant the liberty to file misc. application within prescribed time and put up the contentions before the Tribunal. Thereafter, the appellant has filed misc. application for recall of the order dated 27.06.2016 vide order dated 11.01.2019 recalled the order passed earlier. The matter has thereafter come up for hearing.

2. The learned counsel for the appellant Shri M. Karthikeyan submitted that the co-noticee M/s. M.G. Trading Co., had already paid the entire duty determined by the department along with interest and 25% of penalty thereon. In fact, though this plea was put forward before the original authority, the same was not considered for the reason that the appellant has not furnished necessary documents to prove that the amounts were paid. He pointed out to the order impugned in this appeal and submitted that in paragraph 5 of the impugned order, the Commissioner (Appeals) has correctly noted that the duty, interest and 25% penalty has been paid-up by M/s. M.G. Trading Co., (co-noticee) vide challans dated 20.05.2019. Thus, it is clearly recorded by Commissioner (Appeals) that the co-noticees have paid-up the entire duty demand and 25% as penalty. It is then argued by the learned counsel that as per the proviso to sub-section

(2) of section 28, the proceedings against the co-noticees has to be deemed to be concluded. Thus, penalty imposed against the appellant herein cannot sustain. He referred to the Circular of the Board No.450/190/2015 – Cus.IV, dated 15.03.2016 and submitted that the board has clarified that when the duty, interest and penalties have been paid-up by the noticee, the proceedings against other persons/co-noticees in the show-cause notice would be deemed to be concluded. He also took assistance of the decisions of the Tribunal in the case of *S. Jaikumar Vs Commissioner of Customs, Cochin* reported in *2017-TIOL-2407-CESTAT-Bangalor*and *M/s.Welspring Universal Vs Commissioner of Central Excise, New Delhi* reported in *2017 (348) E.L.T.292 (Tri.-Del.).*

3. The learned Authorised Representative for the Revenue Shri L. Nandakumar, AC (AR) supported the findings in the impugned order.

4. Heard both sides.

5. From the submissions made by both sides as well as perusal of records, it is noted that the co-noticee M/s. M.G. Trading Co., has paid-up the duty demand, interest as well as 25% penalty within 30 days from the issue of show-cause notice. As proviso to sub-section (2) of section 28 of the Customs Act states that the proceedings in relation to co-noticees will stand concluded when such demand, interest and 25% penalty has been paid-up by one of the notices. The clarification issued by Board in para 5 of the Circular dated 15.03.2016 makes this clear. The same is extracted below:-

> "(5) The provision of deemed conclusion is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a

> circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other personsimplies person(s) to whom no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. Other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main noticee to whom inter-alia a demand of duty has been issued has been fulfilled. Further, all such cases where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority."

6. However, the Tribunal in the case of *S. Jaikumar* (supra) as well as in the case of *M/s.Welspring Universal* (supra) has considered the very same issue and held that the proceedings against the other noticees has to be considered as concluded when one of the noticees has complied with the provisio to sub-section (2) of section 28. Therefore, I find that the confirmation of penalty on the appellant is unwarranted. The same requires to be set aside, which we hereby do. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

ksr
20-03-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	**15.03.2019**			
Draft Order - Date of typing	**18.03.2019**			
Fair Order Typing	**20.03.2019**			
Date of number and date of dispatch	**.03.2019**			