CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. I

Customs Appeal No. 42670 of 2018

(Arising out of Order-in-Appeal No. 155, 160 to 167/2018-TTN (CUS) dated 12.06.2018 passed by the Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

M/s. Blueleaf Trading Company, : **Appellant**
410, Near Betleham Church,
Karukutty Ankamally,
Ernakulam, Kerala – 683 576

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Tiruchirapalli Commissionerate,
No. 1, Williams Road, Cantonment,
Tiruchirapalli – 620 001

WITH

(i) Customs Appeal No. 42671/2018 (M/s. Blueleaf Trading Co.);
(ii)Customs Appeal No. 42672/2018 (M/s. Blueleaf Trading Co.);
(iii)Customs Appeal No. 42673/2018 (M/s. Blueleaf Trading Co.);
(iv)Customs Appeal No. 42674/2018 (M/s. Blueleaf Trading Co.);
(v) Customs Appeal No. 42675/2018 (M/s. Blueleaf Trading Co.);
(vi)Customs Appeal No. 42676/2018 (M/s. Blueleaf Trading Co.);
(vii)Customs Appeal No.42677/2018 (M/s. Blueleaf Trading Co.);
(viii)Customs Appeal No. 42678/2018 (M/s. Blueleaf Trading Co.);

(Arising out of Order-in-Appeal No. 155, 160 to 167/2018-TTN (CUS) dated 12.06.2018 passed by the Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

APPEARANCE:

Shri. A.K. Jayaraj, Advocate for the Appellant

Ms. T. Usha Devi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 40772-40780 / 2019

DATE OF HEARING:23.04.2019

DATE OF DECISION: **08.05.2019**

This is a batch of appeals preferred by the assessee, for waiver of penal charges, levied for belated filing of Bills-of-Entry.

2. The adjudicating authority vide Order dated 08.11.2017 intimated the addressee namely, "M/s. Diamond Shipping Agencies Pvt. Ltd., Diamond House, A-4, World Trade Avenue, Harbour Estate, Tuticorin – 628 004", who are the Customs Broker for the appellant herein, that the request for waiver of penal charges for late filing of Bills-of-Entry was rejected. The appellant having not met with success in its appeal before the first appellate authority, has come in appeal before this forum.

3. Today, when the matter was taken up for hearing, Ld. Advocate Shri. A.K. Jayaraj appeared on behalf of the assessee and Ld. AR Ms. T. Usha Devi appeared on behalf of the Revenue. I have heard the rival contentions and gone through the documents placed on record.

4. Facts are not in dispute. Three containers of Raw Cashew Nuts in shell form from the supplier M/s. Ecom Agro Trade Limited, London consigned to M/s. Metro Nuts, arrived at Tuticorin Port on 12.09.2017 through Maersk Line. These consignments are covered under BL No. 96116092F pertaining to IGM No. 2174286 dated 11.09.2017. The consignees did not come forward to clear the consignments due to financial problem. This made the shipper to identify a new buyer. The appellant-firm was contacted by the shipper and offered the consignments for sale and the appellant-firm accepted the offer. The appellant itself immediately requested their Customs Broker M/s. Diamond Shipping Agencies Pvt. Ltd. to file letter requesting to waive the penal charges arising out of late filing of Bill-of-Entry, as mandated under Section 46 of the Customs Act, 1962. The Bills-of-Entry in dispute were filed belatedly and the reason has also been explained by the Customs Broker vide its letter dated 19.10.2017 filed before and acknowledged by the Authorized Signatory, Customs House, Tuticorin.

5.1 The only point of dispute, is the eligibility of the appellant for waiver of late filing fees, in terms of Section 46 (3) of the Customs Act, 1962. Section 46 deals with entry of goods on importation and also prescribes the time limit for filing the same, apart from prescribing the consequence for failure to adhere to the time limit. The second proviso to Section 46 (3) deals with a situation where, the Bill-of-Entry is not presented within the time specified, which makes the importer liable for such charges for late presentation of the Bill. The above proviso also qualifies the late fees if the appropriate officer is not satisfied with the cause shown for the delay. The second proviso to Section 46 (3) ibid reads as under :

> *"SECTION 46. Entry of goods on importation. —*
>
> *.*
> *.*
> *(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing :*
> *.*
> *.*
> ***Provided** further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed."*

5.2 Considering the difficulties faced by the importers which had resulted in delayed presentation of Bill/s-of-Entry, the CBEC issued Instructions from time to time. One of such Instructions, Instruction No. 12/2017-Customs dated 31.08.2017 had instructed the officers – jurisdictional Additional/Joint Commissioners of Customs – to exercise power judiciously. The above instruction of the Board was clarified vide Standing Order No. 01/2017 dated 06.09.2017 by the Chief Commissioner of Customs (Preventive), Tiruchirappalli, wherein it was even suggested to waive off the late charges in respect of some of the cases specified therein.

6. Subsequently, vide Notification No. 36/2018-Customs (N.T.) dated 11.05.2018 the 'Bill-of-Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018' was introduced. Regulation 4 of the Regulations *(supra)* deals with the delayed filing of Bill-of-Entry and the consequence thereto and proviso to Sub-Clause (3) authorizes the proper officer to even waive off the charges if he was satisfied with the reasons for the delay. It is quite clear that the provisions of Section 46 ibid nowhere mandate charging of late fee for the delayed filing of Bill-of-Entry as fee is charged subject only to the 'non-satisfaction' of the proper officer and the Board's Instructions,

some of which are referred to hereinabove, also authorize the proper officer to waive off subject to his satisfaction.

7.1 The Order-in-Original dated 08.11.2017 has nowhere questioned the *bona fides* of the importer/Customs Broker against whom the said order was passed since it is the first requirement of Section 46 read with proviso to Sub-Clause (3) that the charge of late fee was subject to non-satisfaction of the proper officer as to the sufficiency or otherwise of the cause for delay, which discernibly is not questioned.

7.2 Further, the appellant has also furnished a number of communications, filed with the Additional Commissioner of Customs, Assistant Commissioner of Customs and Deputy Commissioner of Customs, all at Customs House, Tuticorin, dating prior to that of passing of the Order-in-Original, explaining the cause for delay in filing the belated Bills-of-Entry. The explanation/cause shown in these letters have not at all been rejected as insufficient, wrong or improper, which only reflects the *bona fides* of the appellant.

7.3 The impugned order referring to this Order-in-Original dated 08.11.2017, has also not questioned the *bona fides* of the appellant. In his order, however, the Commissioner (Appeals) has only directed the adjudicating authority to charge the assessee the late fee from the date of agreement made between the shipper and the appellant, which was nobody's case and not even as per law. As discussed above, Section 46 ibid authorizes the proper officer to collect late fees subject to his 'non-satisfaction' of the cause shown and there is no via media. The appellant admittedly is not the first importer, but a saviour who came forward at a later stage. The Act only contemplates charging of late fee from the importer *per se*. It is clear from the impugned order as well as that of the Commissioner (Appeals) that there was no reason/question of 'non-satisfaction' as to the reasonable cause shown by the appellant. In the above factual background therefore, it is very difficult to accept as to how the Order-in-Original came to be passed against a Customs Broker just because it made a request. Appellant is clearly not the first importer, there is request for amendment in IGM on record, allowed by the Revenue after collecting requisite fees and these are clearly post-import developments. The subsequent developments, as observed *supra*, were perhaps necessitated because of the goods being perishable. Clearly, no *mala fide* is found in the above developments by the Revenue and therefore, it can be safely assumed that the Revenue was otherwise satisfied with 'sufficient cause'.

8. For the above reasons, I am of the view that the impugned order is not sustainable and hence, the same is set aside.

9. The appeals are allowed.

(Order pronounced in the open court on **08.05.2019**)

(P. DINESHA)
MEMBER (JUDICIAL)

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