IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40064 of 2020

(Arising out of Order-in-Appeal No. 88/2019-TTN(CUS) dated 05.11.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. A.K. Rajavel & Co. **: Appellant**
No. 19B, South Raja Street,
Tuticorin – 628 001

VERSUS

The Commissioner of Customs, **: Respondent**
Custom House, New Harbour Estate,
Tuticorin – 628 004

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant

Shri M. Jagan Babu, Authorized Representative (A.R.) for the Respondent

CORAM:

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

FINAL ORDER NO. 41387 / 2021

DATE OF HEARING: 03.03.2021

DATE OF DECISION: **10.03.2021**

Order :

The assessee has come in appeal against the Order-in-Appeal No. 88/2019-TTN(CUS) dated 05.11.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals), Tiruchirappalli.

2. Brief facts as gathered from the documents placed on record and the appeal memorandum are that the vessel carrying 38,000 kgs of "Laird Lentils" covered by Bill-of-Lading No. 968374475 dated 30.03.2019 sent by the shipper, M/s. Columbia Grain International, LLC. 1300

SW Fifth Avenue, 29th Floor, Portland, Oregon, USA arrived at Tuticorin Port on 27.04.2019 covered under IGM No. 2223105 dated 26.04.2019 in the name of M/s. Moorthy Traders, Virudhunagar; that M/s. Moorthy Traders, Virudhunagar did not come up to clear the consignment; that this made the shipper to identify a new buyer; that the appellant-firm was contacted by the shipper who is a different entity and offered the consignments for sale; that the the appellant-firm accepted the offer on 15.05.2019 and the consignment was sold by shipper vide the Invoice No. A/S100987-1 dated 30.03.2019 without changing the invoice number and date; that as the vessel had arrived on 26.04.2019, the appellant itself informed the Department on 06.06.2019 (Sevottam Sl. No. 3707 dated 06.06.2019) that they are the new consignee and the IGM amendment is under process and also advised their Customs Broker to file Bill-of-Entry immediately after receiving the necessary documents and accordingly, the Customs Broker filed Bill-of-Entry No. 3521953 dated 04.06.2019, etc.

3. In view of the above, the appellant had requested for waiver of penal charges for late filing of Bill-of-Entry. The Adjudicating Authority did not waive the penal charges, which on appeal also came to be upheld vide impugned Order-in-Appeal No. 88/2019-TTN(CUS) dated 05.11.2019. Hence, the appellant is before this forum.

4. Heard Shri A.K. Jayaraj, Learned Advocate appearing for the assessee-appellant and Shri M. Jagan Babu, Learned Authorized Representative appearing for the Revenue-respondent.

5. Learned Advocate for the appellant would submit at the outset that in an identical situation, this very Bench of the CESTAT has deleted the late fee in the cases of *M/s. Blueleaf Trading Company v. The Commissioner of G.S.T. & Central Excise, Tiruchirappalli in Customs Appeal No. 42670 of 2018 and ors. [Final Order Nos. 40772 to 40780*

of 2019 dated 08.05.2019] and *M/s. ECOM Gill Coffee Trading Pvt. Ltd. v. Commissioner of Customs, Tuticorin in Customs Appeal No. 42103 of 2018 [Final Order No. 41155 of 2019 dated 30.09.2019]*.

6. *Per contra*, Learned Authorized Representative for the Revenue supported the findings of the lower authorities.

7. Having heard both sides, I am of the view that this Bench has already taken a decision in the above cases, which are not disputed by the Department, by making the following observations :

> *"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'.*
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> *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."*

8. In view of the above and in the absence of any contrary decisions or orders, I am of the view that the impugned order is not sustainable and accordingly, the same is set aside.

9. In the result, the appeal is allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **10.03.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd