IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40050 of 2020

(Arising out of Order-in-Appeal No. 74/2019-TTN (CUS) dated 26.09.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. St. Antony's Traders : **Appellant**
New No. 4/61, Old No. 4/28,
C.G.E. Colony, Tuticorin – 628 003

VERSUS

The Commissioner of Customs, : **Respondent**
Custom House, New Harbour Estate,
Tuticorin – 28 004

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. 41436 / 2021

DATE OF HEARING: 19.03.2021

DATE OF DECISION: **26.03.2021**

Order :

The assessee has come in appeal against the Order-in-Appeal No. 74/2019-TTN (CUS) dated 26.09.2019 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 151.560 MTs of Heavy Melting Scrap covered by Bill-of-Lading No. COM/MLE/V09/18/01 dated 19.08.2018 sent by the shipper M/s. Rehoboth Worldwide

Limited, Unit B, LOT 49, 1st Floor, Block F, Lazenda Warehouse, 3 Jalan Ranca, Ranca 8700 Ft., Laubuan, Malaysia arrived at Tuticorin Port on 25.08.2018 covered under IGM No. 2202897 / 20.08.2018 and M/s. Siva Agencies, Tuticorin as consignee; that the shipper realized that M/s. Siva Agencies, Tuticorin had not come forward to clear the consignment due to financial problems and difference in weight of the cargo, which made the shipper identify a new buyer; that the appellant-firm was contacted by the shipper who is a different entity and offered the consignments for sale, which offer was accepted by the appellant-firm; that the consignment was sold by the shipper vide Invoice No. 003/2018-2019 dated 04.10.2018; that the shipper vide letter dated 04.10.2018 requested to amend the quantity of cargo and consignee name and address in the Bill-of-Lading No. COM/MLE/V09/18/01 dated 19.08.2018 ; that the liner, vide letter dated 15.10.2018, filed an application for amending the consignee name, address and the quantity of cargo in the IGM and the amendment was approved by the Department vide amendment No. 3332417 dated 15.10.2018 in File C.No. VIII/48/11/2018-2019-Vol-IV; that on the insistence of the Department, the appellant paid penal changes of Rs. 5,45,537/- vide Challan No. 2026220785 dated 11.03.2019 for Bill-of-Entry No. 8545866 dated 22.10.2018 to avoid demurrage and CFS charges and requested for waiver of penal charges in toto in respect of the said consignment.

3. In view of the above levy of penal charges for late presentation of Bill-of-Entry, the assessee preferred appeal before the Commissioner of G.S.T. and Central Excise (Appeals), Tiruchirappalli, who vide order impugned herein rejected the appeal filed by them. Aggrieved by the same, the assessee has filed the present appeal 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 **26.03.2021**)

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

Sdd