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

Appeal No. C/25/2011

(Arising out of Order-in-Original No. 12/2008 dated 31.12.2008 passed by the Commissioner of Central Excise, Chennai – III)

S. Benjamin — Appellant

Vs.

Commissioner of Central Excise, Chennai – III — Respondent

Appearance

Shri Somasundaram, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **15.11.2017**

Final Order No. 42927/2017

Per B. Ravichandran

The appeal is against the order dated 31.12.2008 of Commissioner of Central Excise, Chennai – III.

2. The brief facts of the case are that M/s. Hi-Bright Apparels India Pvt. Ltd. are engaged in the manufacture and export of readymade garments and have an approved 100% EOU for the said purpose. Based on certain information, the Central Excise officers conducted certain enquiry and verification with regard to the activities of the said 100% EOU.

On completion of enquiry, proceedings were initiated against the unit and various other persons for loss of customs duty due to violation of the provisions of Customs Act, 1962 and also proposing penalties on various persons. The case against the EOU is that they have not undertaken any manufacture as mandated in the permission nor they have followed the procedure for getting the goods manufactured from the job workers. The case was adjudicated resulting in the impugned order. The original authority held that the main noticee (M/s. Hi-Bright Apparels India Pvt. Ltd.) have violated various provisions of Customs Act resulting in loss of Government revenue. He confirmed the demand of Rs.1,38,42,452/- of customs duty against the main noticee. He also ordered confiscation of seized goods with option of redemption on payment of Rs.40 lakhs. Various penalties were imposed on the main noticee as well as others. The present appeal is against imposition of Rs.15.00 lakhs as penalty on the appellant under section 112(a) of Customs Act, 1962.

3. The ld. counsel appearing for the appellant submitted that though the appellant was the Managing Director of the EOU, he was residing in Coimbatore and was not in-charge of day to day activities of the unit. It is managed mainly by Shri Arunachalam at that time. Further, he also submitted that the quantification of duty loss itself was wrong as the concessional rate of duty available under Notification No. 14/2005-Cus. dated 1.3.2005 was not extended to them. Viewed with such

concession in the rate, the duty liability will come down to almost 40%. Considering that the main noticee could not contest the merits of the case before the Tribunal, in view of dismissal of their appeal due to failure to predeposit, the present appeal is handicapped in elaborating and getting the benefit on the merits of the case. He pleaded for waiver of penalty or in the alternative reduced quantum of penalty.

4. The ld. AR objected to the grounds of appeal. He submitted that the role of the appellant has been elaborately discussed in the impugned order. The appellant was the Managing Director of the main noticee and authorized all operations for dispatching the imported fabrics for job work etc. He further submitted that the appellant had another unit in Coimbatore in which the duty-free imported materials meant for Chennai unit have been diverted and misused. Considering the facts as revealed in the investigation, there is no case for waiver of penalty or reduction of the same.

5. We have heard both sides and perused the record.

6. The role of the appellant for the violation of various provisions of Customs Act, 1962 connected to duty-free import of items for the EOU cannot be contested with any force. The original authority examined the depositions made by the appellant during investigation as corroborated by various other evidences before arriving at his conclusion. The observation of the original authority is as below:-

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> *"38. As regards imposition of personal penalty on Shri Benjamin, Managing Director, HBAPL, I find that Shri Benjamin in his statements dated 29.3.2007 has voluntarily admitted that HBAPL does not own any machinery at the licensed premises at Vandalur. He also admitted that 12,10,062 meters of fabrics was imported. He further admitted that as HBAPL did not have any manufacturing facility. It is pertinent to mention here that the permission for dispatching the imported fabrics for job work purpose was obtained in respect of only three job workers out of which one was not inexistence and incase of fifteen other units (not 100% EOU) for which no permission was taken as already discussed supra. His_contention that he was not aware of rules and regulation in respect of 100% EOU and it happened due to carelessness of his employees cannot absolve him from his role. Shri Benjamin did not file any reply to the show cause notice and also to the intimations sent to him to attend personal hearing on 14.10.2008, 30.10.2008, 18.11.2008 were returned undelivered. This shows that he has nothing to say in the matter. From above it is clear that he has knowingly concerned himself in improper removal and diversion of warehouse goods to domestic tariff area without payment of duty and in contravention of the purpose for which it was intended as per the Conditional Notification 52/2003-Cus. dated 31.3.2003. Therefore, he is liable for penalty under section 112(a) of the Customs Act, 1962"*

7. In the present appeal there is no substantial ground to reverse the finding of the original authority. The appellant cannot shift the blame to the carelessness of the employees for the violation of Customs Act. Accordingly, we find that the liability for penalty under section 112(A) cannot be contested. However, considering the fact that there was no appeal or observation on merits of the case, because of the dismissal of the appeal by the main noticee for default of payment of predeposit, the overall merits and the quantification of duty loss was not subject matter of detail examination, on such appeal by this Tribunal. The present appeal is only for penalty

under section 112(a). The ld. counsel pleaded for reduction of penalty on the ground that the duty loss has been calculated without extending the benefit of Customs Notification No.14/2003. Considering the overall facts narrated above, we find it fit and proper to reduce the same to Rs.5,00,000/- (Rupees five lakhs only).

8. In view of the above discussions and analysis, except for the modification of the penalty amount, the appeal is dismissed.

(Dictated and pronounced in open court)

(B. RAVICHANDRAN)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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