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

C/40593 - 40594/2015

(Arising out of Order-in-Appeal No. 188/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals-II), Chennai).

CC (Port – Import), Chennai — Appellants

Vs.

1. Shri Vikram Kumar Ranka — Respondents
2. Shri Nitin

Appearance

Shri A. Cletus, ADC (AR)
for the appellant

Shri Krishnanandh, Advocate
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing/Decision: **25.07.2017**

FINAL ORDER No. 41262-41263/**2017**

After hearing the Ld. DR, Shri A. Cletus, ADC, appearing for the Revenue, in support of their appeal and after hearing Shri Krishnanandh, Ld. Advocate for the respondent, I find that the original adjudicating authority, while confirming the demands and imposing penalties, observed as under:-

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"(iv) I impose a mandatory penalty under Section 114A of Customs Act, 1962 of Rs. 7,22,132/- on the importer. M/s. Padmavathi Enterprises and Shri Nitin for their for his acts of collusion, willful mis-statement and suppression of facts with intention to evade payment of applicable Customs Duties."

2. The said order was accepted by the assessees. However, the Revenue was of the view that the said imposition of penalty on M/s. Padmavathy and Shri Nitin was jointly and severely, which is not proper and legal and they filed appeals against the said portion, before the Commissioner (Appeals). While disposing of the Revenue appeal, the Commissioner (Appeals) observed as under:-

"I have gone through the records of the case, the Order-in-Original and the grounds of appeal. I find that the submissions made by the Respondent's Advocate are correct. Para (iv) of the order portion of the Order-in-Original is clear that mandatory penalty under Section 114A of the Customs Act, 1962 has been imposed to the extent of Rs. 7,22,132/- on Shri Padmavathi Enterprises and Sri Nitin. The word 'and' signifies the separateness of penalty on each of them. Further, the Advocate for the Respondent has stated that penalty of Rs. 7,22,132/- was paid by each of them i.e. M/s. Padmavathi Enterprises and Sri Nitin separately. Thererfore, the ground of appeal stating that the penalty has been imposed jointly is not correct."

3. Being aggrieved by the said order of the Commissioner (Appeals), further appeals stand filed by the Revenue on the sole ground that the respondents have not deposited the penalty amounts, as observed by the Commissioner (Appeals).

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4. Ld. DR appearing for the Revenue reiterated the same very grounds that the observation of the Commissioner (Appeals) that both the respondents have deposited the separate penalties is not factually correct.

5. Ld. Advocate appearing for the respondents submit that the averment made by the respondents before the Commissioner (Appeals) are correct and separate penalty stand deposited by both the respondents. He further clarifies that the dispute was in respect of a live consignment and without deposits of duty, penalties or redemption fine, the consignment would not have been cleared.

6. I find that no legal issue arises for decision of the Tribunal. The respondents have accepted their liability of separate penalties on both of them and it is also the Revenue's case that separate penalties are required to be imposed. Deposit of the same by the respondent is factual dispute, and the same has to be solved at the administrative level. There being no dispute about legal issue of imposition of separate penalties upon both the respondents, the Revenue's appeals are found to be devoid of merit. If the respondents have not deposited the amount, the Revenue is within its rights to recover the same as separate penalties imposed ~~from~~ on both the respondents stand confirmed against them.

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7. In view of the above, I find no reasons to interfere in the impugned order and both the appeals are disposed of in the above manner.

(Order is dictated and pronounced in the open Court)

25/7/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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अपील अधिकरण / (CESTAT)
चेन्नै / Chennai