CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Customs Appeal No. 52237 of 2019

[Arising out of Order-in-Appeal No. CC(A)/CUS/ D-1/Export/NCH/ 191-193/2017 dated May 24, 2019, passed by the Commissioner of Customs (Appeals) New Delhi]

WIJETA IMPEX AND LOGISTICS ... APPELLANT

VERSUS

COMMISSIONER OF CUSTOMS, ... RESPONDENT
(APPEALS), NEW DELHI

APPEARANCE:
Shri S Sunil, Advocate for the Appellant
Shri Yasbir Singh, Authorised Representative for the Department

CORAM:
HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: March 24, 2021

FINAL ORDER No. 51173 /2021

PER RACHNA GUPTA

The order of Commissioner (Appeals) bearing No. 191-193/2017 dated 24 May, 2019 has been assailed vide the impugned appeal.

2. I have heard Shri S. Sunil, learned Advocate appearing for the appellant and Shri Yasbir Singh, learned Authorised Representative for the Department.

3. Learned Counsel for the appellant has mentioned that earlier this Tribunal vide Final Order No. 53331/2018 dated 19.11.2018 had condoned the delay of two days in filing the appeal before Commissioner (Appeals) and accordingly, set aside the Order-in-Appeal dated 2.1.2018 and remanded the matter not only for decision on

merits but also with the directions for deciding the issue of jurisdiction as it appeared that show cause notice was never served upon the appellant.

4. It is submitted by the learned Counsel for the appellant that the said directions about the decision on issue of jurisdiction have not still been complied with in the Order under challenge. The order, though is passed on merits but is still silent about the issue of jurisdiction. It is absolutely silent about the letter of appellant dated May 07, 2013. Learned Counsel further submitted that M/s. Wijeta Impex and Logistics has never authorised Mr. Lalit Gupta to become their G-card holder. Paragraph (iii) of appeal stands impressed upon where it is mentioned that no request was ever made by the appellant to the Customs Authority to issue G-Card in the name of Shri Lalit Gupta. It is also mentioned therein that if any such document has been produced by Shri Lalit Kumar before the Customs Authorities showing that the appellant have allowed them to hold his G Card, it should be put to strict scrutiny and necessary legal action should be taken against him for committing such a fraud.

5. The appellant has also lodged an FIR registered against Shri Lalit Gupta. It is further submitted that the impugned show cause notice also has not been served upon the appellant at Secunderabad address which was duly informed to the Customs vide letter dated 07 May, 2013 and the authorities had acknowledged the receipt thereof vide letter dated 04.06.2013. The closure of Ghaziabad office was also brought to the notice of Customs vide letter dated 07.05.2013

itself. Still the copy of the impugned Show cause notice, the impugned order-in-original were dispatched on the previous Ghaziabad address only and hence were not available to the appellant. This issue has again not been not discussed in the order under challenge. Order is accordingly, prayed to be set aside and appeal is prayed to be allowed.

6. While rebutting the impugned order, learned Departmental Representative has impressed upon the findings of the Order under challenge in last three lines of paragraphs 5.1 thereof. Impressing upon that due to internal mechanism, the appellant M/s. Wijeta Impex and Logistics had sufficient knowledge about the shipping bills as has been processed in the name of four fake importers /exporters as mentioned in paragraph 5 of the order itself. However, Departmental Representative acknowledged that the Order under challenge is silent about the issue of jurisdiction which was directed by this Tribunal on 19.11.2018 while remanding the matter. Learned Departmental Representative endorsed no objection if the matter be remanded against on this count.

7. In view of the said submissions and confirming the opinion that the allegations of the appellant against Shri Lalit Gupta who though was the Manager of appellant for operating their work at Delhi Customs but was never authorised to be the G-card holder by appellant, cannot be ascertained unless and until requisite documents are called by the adjudicating authority below to be scrutinised in respect thereof. The findings of the Commissioner (Appeals) in last

four lines of paragraph 5.1 of the Order under challenge as is impressed upon by learned Departmental Representative also need to be scrutinised as to whether the said internal mechanism was enabling M/s. Wijeta Impex and Logistics to have knowledge about filed shipping bills and to sign the acknowledgements thereof. Both the findings are relevant for the proper adjudication of the impugned appeal specially when the appellant as CHA is aggrieved of misconduct of Shri Lalit Gupta. The order under challenge has otherwise extended part benefit to the appellant by setting aside the revocation of his licence and by reducing the penalty from Rs. Five lakh to Rs. One lakh.

8. Keeping in view the same, I deem it fit case for remanding the matter back for fresh decision on merits specifically on issue of jurisdiction as was directed vide the order of first remand passed by this Tribunal. Resultantly, the appeal stands allowed by way of remand.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

ss