CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 3

Customs Appeal No. 50822 of 2019

(Arising out of Order-in-Original No. 05/COMMR/CUS/ADJ-I/2018-19 dated 07.01.2019 passed by the Commissioner, CGST, Central Excise & Customs, Indore)

Mr. Deepak Singh, Director **Appellant**
M/s Laser Scanning Systems Pvt. Ltd.
H. No. 7, Nand Bag, Near Scheme No. 51,
Indore

VERSUS

The Commissioner, CGST, Central Excise & Customs, Indore **Respondent**

Appearance

Ms. Priyanka Goel, Advocate – for the Appellant

Shri Rakesh Kumar, Authorized Representative – for the Respondent

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION : 27/02/2023

Final Order No. 50433/2023

P.V. Subba Rao:

Shri Deepak Singh[1] filed this appeal to assail the Order-in-Original[2] dated 7.1.2019 passed by the Commissioner of CGST and Central Tax, Indore whereby he confirmed the demands of Customs duty and Central excise duty from M/s. Laser Scanning Systems Pvt. Ltd[3], Indore, the main noticee, ordered confiscation of the imported goods under section 111(o) and allowed their redemption

[1] **Appellant**
[2] **Impugned order**
[3] **Laser**

on payment of fine and imposed penalties. The operative part of the order is as follows:

> "(i) Amount of Customs duty Rs. 76,93,245/- is confirmed and order to be recovered from Noticee No. 1 under section 72 & 28 of the Customs Act, 1962 read with Notification No. 52/2003-Cus dated 31.03.2033 and condition no. 10 of the Bond executed by them.
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> (ii) Amount of Central Excise duty of Rs. 7,53,375/- is confirmed and order to be recovered under section 11A of the Central Excise Act, 1944 read with Notification No. 22/2003-CE dated 31.03.2003 and condition no. 10 of the bond executed by the Noticee No. 1.
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> (iii) I order for confiscation of goods valued Rs. 2,61,56,755/- + Rs. 60,27,000/- total value Rs. 3,21,83,755/- under section 111(o) of the Customs Act, 1962. However, I allow them to be redeemed on payment of redemption fine of Rs.32,00,000/- under section 125 of the Customs Act, 1962.
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> (iv) The Noticee No. 1 shall also pay interest under section 28AA of the Customs Act, 1962.
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> (v) The Noticee No. 1 shall also pay interest under section 11AB of the Central Excise Act, 1944.
>
> (vi) I impose a penalty under section 72 read with section 114A of the Customs Act, 1962 equivalent to amount of duty confirmed at (i) & (ii) above [i.e. Rs. 84,46,620/-] Plus amount equivalent to interest payable on such confirmed amount of duty mentioned at (iv) & (v) of the order till the date of payment of such tax.
>
> (vii) I impose a penalty of Rs. 1,00,000/- on the Noticee No. 2 under section 117 of the Customs Act, 1962.
>
> (viii) The Customs duty, Central Excise duty, interest and penalty shall be recovered from the Noticee No. 1 in case any amount remains due, said amount shall be recovered from the Noticee No. 2."

2. The only appeal before us is by the appellant on whom a penalty of Rs. 1,00,000/- was imposed under section 117 of the Customs Act (clause vii of the order) and if any amount of duty is not recoverable from Laser, it is ordered to be recovered from the appellant. The prayer in the appeal is to set aside the impugned order and allow the appeal with consequential relief. However, we find that the only part of the order against the appellant is the imposition of penalty and recovery of duty to the extent it cannot

be recovered from the main noticee. The issues framed in paragraph 9 of the appeal are as follows:

a) Whether the present appellant, being director of the company is liable to penalty under section 117 of the Customs Act?
b) Whether the recovery of dues of the company can be proposed against the present appellant being whole time director of the company as he executed the bond on behalf of the company?

3. All submissions were on these two issues only and not on the merits of the confirmation of demand against Laser. The following submissions were made on behalf of the appellant.

a) The appellant was one of the Directors of Laser which was a 100% EOU registered with the Software Technology Park of India, NOIDA.
b) Laser was granted a Custom Bonded Warehouse Licence No. 3/2005-06 for manufacture of High Performance Electro Optic System and Components and for this purpose, it executed three B-17 bonds for Rs. 20,00,000/- along with a bank guarantees and the appellant signed them on behalf of the company (Laser).
c) After procuring raw material and capital goods duty free, under Customs notification no. 52/2003 and Central Excise Notification No. 22/2003, failed to meet the Net Foreign Exchange (NFE) and applied for permission to de-bond which rendered Laser ineligible for the exemption notifications and hence the SCN was issued demanding duties. In the same

SCN, penalty under section 72 & 117 was also proposed against the appellant.

d) The appellant was in the process of preparing the reply and had not received the notice for personal hearing and has instead received the impugned order imposing a penalty of Rs. 1,00,000/-.

e) The impugned order is therefore, ex-parte and therefore must be set aside.

f) The penalty has been imposed but no provision under which it is imposed has been indicated in the impugned order.

g) The duty cannot be recovered from the appellant since he was only the director of the firm during the relevant period.

4. Learned authorised representative confirms the facts of the case but submits as follows:

a) The appellant had signed the B-17 bonds of Laser as a surety and therefore, the order of the Commissioner to recover the duty from the appellant if it cannot be recovered fully or partly from Laser is fair and proper. Laser and the appellant bound themselves jointly and severally to pay the duty payable but for the exemption.

b) The Commissioner was fair and just in ordering recovery from Laser and proposing recovery from the appellant only to the extent it cannot be so recovered.

c) Laser had executed a bond for warehousing licence valid up to 8.7.2015 but failed to extend the bond beyond this period which was a clear contravention of section 72.

d) The appellant is undisputedly the Director of Laser and hence was responsible for working of the company affairs and was fully aware of the fact that he had executed a bond and was aware of the contravention of section 72. No specific penalty has been provided for contravention of section 72 and hence the penalty was imposed under the residual penal section 117.

e) The Supreme Court, in **Patel Engineering vs Commissioner of Customs, Mumbai**[4]**,** upheld the decision of the Mumbai Bench of this Tribunal that there should be strict liability on the executors of bond/ undertaking and in case of violations they shall be liable to pay the duty on demand.

f) In view of the above, the impugned order is correct and proper and calls for no interference.

5. We have considered the submissions on both sides and perused the records and we proceed to examine the two issues raised in this appeal.

Demand of duty from the appellant to the extent the main noticee fails to pay the duty

6. It is not disputed that Laser had imported the goods as a 100% EOU and obtained a Customs bonded warehouse licence for its premises. It is also not in dispute that the duties would have been payable but for the exemption available to the 100% EOUs. It is also not in dispute that the exemption is available to some conditions including the main condition that the importer

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[4] **2016(338) ELT A 35 (SC)**

manufactures and exports goods and thereby achieves the Net Foreign Exchange (NFE) requirement and that Laser failed to achieve it and therefore, requested to de-bond the goods. It is undisputed that in such a case, duties have to be paid as appropriate. Therefore, the duties were recoverable from Laser.

7. It is undisputed that at the time of import of goods, the exemption was allowed subject to execution of bonds on which the appellant signed as the surety. Needless to say, if the main person fails to pay the amounts (duties in this case) due, they can be recovered from surety. The impugned order confirmed the demands only against the importer and the duties were ordered to be recovered from the appellant only to the extent that they could not be recovered from Laser.

8. We, therefore, find that insofar as the recovery of dues from the appellant is concerned, the order is legally correct and is also fair and balanced and it calls for no interference.

Penalty of Rs. 1,00,000/- imposed on the appellant under section 117 of the Customs Act

9. The impugned order recorded in paragraph 22 that Laser violated the provision of section 58 of the Customs Act as they did not renew the bank guarantee despite several requests by the department and thus violated the condition of the bond and thus, the goods shall be deemed to have been removed without payment of duty.

10. It also recorded that the appellant was responsible for the day to day affairs of Laser and had executed a bond on its behalf

and in the event of failure to do so, to pay all the duties, fine and penalty. He was the whole time Director of Laser and had persistently mislead the department that the unit will be made functional and obtained extension of the license.

11. We find that section 117 provides for penalties for contraventions not expressly mentioned. It reads as follows.

> **Section 117. Penalties for contravention, etc., not expressly mentioned. –**
>
> Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

12. Considering the facts recorded in the impugned order, (which are not disputed) that the appellant was the whole time director of Laser and was responsible for its operations and Laser violated section 58 of the Act and the appellant mislead the department, we find no reason to interfere with the penalty imposed on the appellant under section 117.

13. The appeal is rejected and the impugned order is upheld.

(Operative part of the order pronounced in Court)

(P. V. Subba Rao)
Member(Technical)

(Binu Tamta)
Member(Judicial)

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