CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COURT No. III

Customs Appeal No. 50763 of 2019

(Arising out of Order-in-Order No.73/MK/Policy/2018 dated 30.11.2018 passed by the Commissioner of Customs (Airport & General), New Custom House, New Delhi-110037)

M/s.PS Bedi & Co (P) Ltd.
D-14/1, Okhla Industrial Area, **Appellant**
Phase-1, New Delhi-110020

Vs.

Commissioner of Customs (Airport & General)
New Custom House, New Delhi-110037. **Respondent**

APPEARANCE:
Mr.Prabhat Kumar & Sh.Karan Kanwal, Advocates for the Appellant
Mr. M.R.Dhania, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MS.HEMAMBIKA R.PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.51562/2023

Date of Hearing: 27.10.2023
Date of Decision: 27.10.2023

PER:SOMESH ARORA

In this case, 10 Nos of pistons alongwith accessories were imported by claiming benefit of Notification No.157/90 dated 1.5.2015 for import under ATA Carnet procedure. It is submission of learned counsel for the appellant that though there was no requirement to file Bill of Entry being import under ATA Carnet but at the insistence of the Department, Customs broker handling Agent filed Bill of Entry for clearance of consignments. The same was accepted by the department. Later on since there was delay in outward clearance of carnet import as per guarantee given FICCI, fine as ATA carnet notification was duly paid by FICCI under ATA carnet procedure. Thereafter proceeding was started for penal action against the Customs Broker Agent (C.B.A). As far as penalty is concerned under Customs Act, 1962, same was set aside by the Commissioner (Appeals). However, in the present proceeding, which is a disciplinary proceeding a penalty of Rs.5,000/- has been imposed.

2. Ld DR opposed the prayer for setting aside the impugned order and submitted that though Bill of Entry was not required but is nothing on record to show that Proper Officer of the department had asked to file Bill of Entry, therefore having submitted Bill of Entry, the Customs Broker cannot escape consequence of suspension of license or disciplinary proceedings or any lack of diligence emanating from the aftermath of finding such Bill of Entry.

3. We have considered the rival submissions. On perusal of the record including exemption notification, we find that the goods cleared under carnet procedure, which simplified procedure developed under international treaty as incorporated in Indian law requiring only a carnet to be produced and stamped. In the instant case, there was no requirement of filing any Bill of Entry, as the carnet was produced at the port of import. The very fact that the Bill of Entry was provided when there was no such requirement was a procedure undertaken beyond statutory requirement rather even against the spirit of ATA Carnet procedure. Once same is done beyond prescribed procedure, C.B.A. cannot be faulted against as what was done beyond prescribed was not as per requirement of law. In whatever circumstances Bill of Entry got filed, malum prohibitum (wrong due to being prohibited) is required to be proved by the department. Same cannot be construed from a document which was not even required to be filed, ab initio, in any disciplinary proceeding. We are, therefore inclined to agree that there are merits in the grounds taken by the appellant and accordingly allow the appeal.

4. Appeal allowed.

(Order dictated in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(HEMAMBIKA R.PRIYA)
MEMBER (TECHNICAL)

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