IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 50834 /2014

[Arising out of Order-In-Appeal No. 17/2013 dated 13.11.2013, passed by Commissioner of Customs, Jodhpur]

Sudhir Kumar Jain **Appellants**

Vs.

Commissioner of Customs **Respondent**
Jodhpur

Appearance:
Shri Alok Kothari, Advocate for the Appellants
Shri Govind Dixit, DR for the Respondent

CORAM:
Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing/ Decision: 01.03.2017

FINAL ORDER NO . 52238 /2017

Per Archana Wadhwa:

The challenge in this appeal is to the extent of Rs.25,000/- penalty imposed on the appellant CHA in terms of section 158 (2) (ii) of the Customs Act, 1962. Learned advocate Shri Alok Kothari, appearing for the appellant challenges the said imposition on the technical ground that section 158(2)(ii) of the Customs Act, 1962 cannot be invoked for the alleged contravention of provision of CHA Regulation, as has been held by the Tribunal in the case of Sunil Kumar Jain, vide Final Order No. 55295/2016 dated 9.11.2016.

2. Learned DR agrees that identical matter was the subject matter before the Tribunal and has covered with the present issue. For better appreciation we reproduce para 4 of the earlier order No. 55295/2016 dated 9.11.2016.

> *4. As is seen from the above, the said Section empowers the Central Govt. to make any rule or regulation in terms of which a penalty to the extent of Rs.50,000/- can be imposed on any person for contravention of the provisions of rule or regulation. As such, it is seen that the said section is empowering Section and cannot be adopted by itself for imposition of penalty. It does not stand to brought to our notice that any rule or regulation stand framed under this Section for imposition of penalty. Even if they stand framed the penalty has to be imposed in terms of such framed rules and regulations and not in terms of the empowering provisions. As such, we are of the view that penalty imposed under Section 158(2)(ii) cannot be sustained. Accordingly, the same is set aside the impugned order and allowed the appeal with consequential relief to the appellant.*

3. As is seen from the above, it stands held by the Tribunal that penalty on CHA under section 158 (2) (ii) is not sustainable.

4. By following the said decision, we set aside the penalty imposed upon the appellant and allow the appeal with consequential relief.

(Dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(B Ravichandran)
Member(Technical)

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