IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Customs Appeal No. C/52246-52247, 52252-52253/2016-CU [DB]

[Arising out of Order-in-Appeal No.15-17 (AK) Cus/JPR 2015 dated 01.03.2016 passed by the Commissioner (Appeals), Central Excise, Jaipur]

H.C. Lohia
Vidhya Sagal Singhal
Shrish Business Ventrues Pvt. Ltd.
Pankaj Enterprises …Appellant

Vs.

C.C., Jaipur-I … Respondent

Present for the Appellant : Mr.S.Sunil, Advocate.
Present for the Respondent: Mr.Govind Dixit, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 28/04/2017

FINAL ORDER NO. 53162-53165/2017

PER: B.RAVICHANDRAN

The brief facts of the case are that M/s. Pankaj Enterprises, New Delhi imported heavy melting scrap from Cyprus and sold the consignment on high seas sale basis to M/s.Shirish Business Ventures Pvt. Ltd. The proceedings in the present case are with reference to mis-declaration of quantity as well as nature of product for which bill of entry was filed by

M/s.Shirish Business Ventures Pvt. Ltd. The other two appellants, namely, Shri H.C. Lohia is the authorized signatory of M/s. Pankaj Enterprises and Shri Vidhya Sagar Singhal is the Director of M/s.Shirish Business Ventures Pvt. Ltd. These two filed appeal against personal penalty. The original authority vide his order dated 13.09.2012 imposed penalties of Rs.15,000/- and 10,000/- on the main importers and Rs.20,000/- on Zim Integrated Shipping Services (India) Pvt. Ltd., shipping agent. The actual quantity of import was determined as 12.840 M.Ts. of HMS Scrap.

2. Against the above original order M/s.Shirish Business Ventures Pvt. Ltd. and M/s. Pankaj Enterprises filed appeals before the Commissioner (Appeals) the same was decided by the Commissioner (Appeals) vide order dated 13.12.2012, the Commissioner (Appeals) allowed the appeals setting aside the penalties on these two parties. Separately, the original order was reviewed by the Commissioner and appeal was preferred by Revenue before the Commissioner (Appeals). The said appeal was decided vide the impugned order dated 01.03.2016 by the Commissioner (Appeals). He held that M/s.Shirish Business Ventures Pvt. Ltd. have clandestinely removed 24.560 M.Ts. of scrap. He confirmed a demand of Customs

Duty of Rs.1,72,782/- and imposed penalty of equivalent amount on M/s.Shirish Business Ventures Pvt. Ltd. Penalty of Rs.1.00 Lakh has been imposed on M/s. Pankaj Enterprises and penalties of Rs.1.00 Lakh each was imposed on the other 2 appellants in this case.

3. In the appeals against this impugned order ld. Counsel submitted that there is no basis for passing this order as the Original order which was subject matter of this appellate order was already appealed to and the said appeals were allowed by the very same first appellate authority. As such, the whole proceedings are without any legal sanctity.

4. Ld. A.R. submitted that the first appellate authority order was passed in a hasty manner without waiting for the review period available to the Revenue. Further, the appellants who appeared before the Commissioner (Appeals) at the time of second decision and sought adjournment, did not present the presence of first appellate order already issued on the original order.

5. We have heard both the sides and perused the appeal records. It is clear that the original order is issued to only 3 parties, which included two of the appellants as main importers. These two main importers preferred appeal against the said order which was allowed by the Commissioner

(Appeals). A separate appeal was filed by the Revenue against the original order, which resulted in the present impugned order after almost 4 years of the earlier appellate order. We note that when the impugned order was passed no original order was existing, as the same got merged with order of Commissioner (Appeals) dated 13.12.2012. As such, the impugned order has no legal sanctity and cannot be enforced. Regarding the appellants not bringing the facts to the notice of the Commissioner (Appeals) in the second proceedings, we note the Counsel representing the appellant appeared and sought adjournment. Thereafter, they did not appear in spite of notice. The Commissioner (Appeals) passed the impugned order based on records. It is clear that the earlier first appellate order is by the same office and as such not taken note of, which resulted in the present order. As such, we find the present impugned order lacks legal sanctity and cannot be enforced. In view of the above facts and discussion, we allow all the appeals.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita