IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:10.08.2017
Date of Decision:18.08.2017

Customs Misc. Application No.61862/2013 &
Customs Misc. Application No.60650/2013 in Customs Appeal No.56324/2013

[Arising out of Order-in-Original No.02/SU/COMMR./2013 dated 11.01.2013 passed by the Commissioner of Customs (Preventive), New Customs House, New Delhi].

Gunjan Sharma …Appellants

Vs.

CC, New Delhi (Preventive) …Respondent

<u>Appearance</u>:

Rep. by Shri Piyush Kumar, Advocate for the appellant.
Rep. by Shri S. Nunthuk, DR for the respondent.

Coram: Hon’ble Mr. Justice (Dr.) Satish Chandra, President
Hon’ble Mr. V. Padmanabhan, Member (Technical)

Final Order No.55930/2017

<u>Per Justice Dr. Satish Chandra</u>

The present appeal is filed against the order-in-original No.02/SU/COMMR./2013 dated 11.01.2013. The brief facts of the case are that the appellant is a CHA licence holder. One consignment has come from China, which was lying unclaimed for above two months at ICD, Tughlakabad. It was declared that the container has toys. When unclaimed container was opened, it was found that there was crackers in that container. The container was in the name of M/s. Planet Overseas, Wazirabad, Delhi.

2. From the record, it was found that on earlier occasion, about one month, another container was cleared by the appellant, which came in the name of same firm, M/s. Planet Overseas.

3. In these circumstances, the penalty of Rs.30 lakh (Rupees Thirty Lakh) was levied on the appellant, who is a CHA licence holder. Being aggrieved, the present appeal has been filed.

4. With this background, Shri Piyush Kumar, ld. Counsel submits that for the container in question, no bill of entry was filed by the importer for clearance of the same. The appellant has no role pertaining to the container in question. He also submits that regarding the earlier clearance of the container, no discrepancy was found by the Department. On query from the Bench, he admits that M/s.Planet Overseas was non-existent at given address. He submits that on the earlier occasion, for clearance of the consignment, documents submitted by the appellant were available on the website of the respective departments. These documents include copies of the PAN, Voter ID Card of Shri Karandeep Singh, who is the Proprietor of M/s. Planet Overseas. He further submits that the penalty under Section 114 A can be imposed only when deliberately some incorrect documents in transaction were filed. In the instant case, no documents were filed at all.

5. Regarding the penalty under Section 117, he submits that if the appellant has failed to follow KYC norms prescribed under the Circular No.9/2010-Customs dated 8.4.2010, then the penalty can be levied. In the instant case, no documents were submitted by the appellant. To support his arguments, he relied on the ratio laid down in the following cases:-

(A) Shirva Khurana Vs. CC, New Delhi – Final Order No.55914/2016 dated 15.12.2016

(B) Shri Boria Ram, Superintendent & Ors Vs. CC, New Delhi- Final Order No.52181-52183/2017-CU(DB) dated 7.3.2017

(C) Falcon India Vs. CC, New Delhi (Import & General) – 2015(326)ELT 728 (Tribunal-Delhi)

6. On the other hand, ld. Counsel for the Department, Shri S. Nunthuk has relied on the impugned order. He submits that just before one month, the appellant has cleared the consignment, which was in the name of M/s.Planet Overseas. The said consignment was cleared on the basis of the forged documents as the said firm was not found at the given address. He submits that the appellant must be known Karandeep Singh, Proprietor of M/s.Planet Overseas.

7. After hearing both the sides and on perusal of the record, it appears that on an earlier occasion, the appellant has cleared the consignment, which was meant for M/s.Planet Overseas (Mr.Karandeep Singh, Proprietor). The said documents were not the proper documents somehow the consignment was cleared. The appellants has failed to discharge his obligations under the Board's circular No.9/2010 dated 8.4.2010. Thus, the appellant has not discharged his duties to verify the KYC norms.

8. But fact remains that in the instant case, the appellant has not submitted any documents to clear the container in question. It is the submission of the ld. Counsel that he does not know that Shri Karandeep Singh, who is the Proprietor of M/s.Planet Overseas and he never met with him. The documents for the earlier consignment were received by Mr. Surender, who had received the documents from Mr. Ravish Kumar. For clearance of the present container, the appellant was not involved. When it is so, then levy of the penalty is looking on the higher side. By keeping in mind the doctrine of equality, justice and good conscious, we

modify the impugned order and restrict the penalty to Rs.15,00,000/- (Rupees Fifteen Lakhs only). Thus, the appellant will get the partial relief from the impugned order.

9. In the result, the appeal filed by the appellant is partly allowed.

[Order pronounced on 18.08.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Ckp.