CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 25.09. 2017

Customs Appeal Nos. 50024 - 50025 of 2017

(Arising out of order in appeal No. CC(A)/CUS/ICD/324/2016 & CC(A)/CUS/ICD/323/2016 both dated 10.03.2016 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

M/s Krush Exim Appellant
M/s Sushmuna Traders

Vs.

CC, New Delhi Respondent

Appearance:

Sh. Priyadarshi Manish, Advocate for the assessee
Sh. R. K. Manjhi, A. R. for the Revenue

Coram:

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

Final Order Nos. 56750 – 56751/2017

Per: **Justice (Dr.) Satish Chandra**:

Both the appeals have been filed against the order in appeal No. CC(A)/CUS/ICD/324/2016; and CC(A)/CUS/ICD/323/2016 both dated 10.03.2016 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.

2. Brief facts of the case are that in the month of January, 2015 the appellant had exported readymade garments in eight containers. Six containers were at SEZ Mundra, Sea Port, Gujarat; and two containers at ICD Patparganj,

New Delhi. After first examination, the department got the information and goods were reopened for examination and it was found that in the name of export goods, old/torn cloths were packed in the boxes. It is the allegation that this exercise was done by the appellant to get the excess duty drawback. Presently, the goods are in the custody of the Department. Being aggrieved, the appellants had filed Writ Petition No. WP(C) No. 11395/2015 before Hon'ble Delhi High Court who on 8.12.2015 the following order was passed-

> "*We have heard the learned Counsel for the parties. There is a grievance with regard. To, inter alia, the supply of documents which have been relied upon in the show cause notice and the right to cross examine persons whose statements have been relied upon by the respondents in the show cause notice. The learned counsel for the petitioner states that an appropriate application for the same would be filed before the adjudicating authority within a week and the adjudicating authority shall dispose of the said application in accordance with law within four weeks thereafter.*
>
> *The writ petition stands disposed of.*
>
> *Dasti*."

3. In pursuance to the aforesaid order passed by the Delhi High Court, opportunity of cross-examination was provided but authority have refused to re-examination of the seized goods. Being aggrieved, the present appeals have been filed by the appellant.

4. With this background, we heard Sh. Priyadarshi Manish, ld. Advocate for the appellants who submits that the goods are still in the custody of the Department and requests that the goods need to be re-examined but under the supervision of an independent authority. So, he made a request to examine the goods in the presence of the independent authority at the cost of the appellant

as he has apprehension that the element of bias may be involved on the part of the Departmental officer.

5. On the other hand, Sh. K. K. Manjhi, ld. AR for the Revenue justified the impugned order by stating that panchnama was drawn in the presence of the appellant. Examination of the goods on the basis of sample was performed in the presence of the appellant. During investigation, no question was raised by the appellant.

6. After hearing both the parties and on perusal of record, we are of the view that the justice should not only be done but, it appears that it has been done. In the instant case, when appellant is ready to bear the cost of the independent authority then seized goods need to be re-examined in the presence of both the parties but under the supervision of the independent authority. Hence, we set aside the impugned order and remand the matters to the original authority to decide the issue **denovo**, after clubbing the pending issue pertaining to the mis-declaration and valuation of the goods and on the basis of the report of the independent authority.

7. The independent authority will submit the report directly to the Adjudicating Authority i.e. Commissioner by the end of November, 2017 provided that if the appellant will pay the advance expenses to the independent authority within a period of one week. After having the report, it is expected that the adjudicating authority will pass the order within next three months, but

by providing an opportunity of hearing to the appellant. Fresh evidence, if necessary, may be admitted as per law.

8. With the consent of both the parties, the Tribunal has appointed Dr. V. K. Agarwal, Advocate & former Law Secretary to the Government of India (98103-54294) as an independent authority.

9. The appellant will provide in advance fee of Rs. One lakh per day plus accommodation and travelling mode as per the choice of independent authority. Both parties assured full co-operation to him.

10. The facts and circumstances are identical in the case of M/s Sushmuna Traders (C/Appeal No. 50025/2017). Hence, the appeals are disposed of with the above direction. Both parties have agreed to it.

11. In the result, both the appeals are disposed of as stated above.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant