IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –IV

Customs Appeal No.C/52808/2016 [SM]

[Arising out of Order-in-Original No.SRB/COMM/ACE/15/2016 dated 01.07.2016 passed by the Commissioner of Customs (Import), New Delhi]

M/s.Anubhav Cargo Movers **...Appellant**

Vs.

C.C.E., New Delhi **... Respondent**

Present for the Appellant : Ms.Priyanka Goel, Advocate
Present for the Respondent: Mr.U. Sengraj, D.R.

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

Date of Hearing/Decision: 10.10.2017

FINAL ORDER NO. 57380/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 01.07.2016 passed by the Commissioner of Customs, New Delhi, wherein, penalty of Rs.1,87,898/- was imposed on the appellant under Section 112 (b) and Section 114 AA of the Customs Act, 1962. In this case, the appellant is a Customs Broker and for illegal importation of goods made by one M/s. Krishna Mobile and Accessories Pvt. Ltd., the Department has confirmed and imposed penalty on the basis of statement recorded from 'G' Card holder, Shri Raju.

2. The ld. Counsel appearing for the appellant submits that Shri Surender Kumar, who was present at the time of seizure of Truck was not the employee of the appellant and the Cross-examination sought for in respect of Shri Surender Kumar and Shri Raju was neither denied by the adjudicating authority nor produced for cross-examination by the appellant. Thus, she submits that the adjudication order passed in non-affording cross-examination of witness is a violation of natural justice and proceedings cannot be initiated against the appellant for confirmation of penalty amount.

3. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

4. Heard both sides.

5. I find that vide paragraph 10 of the impugned order, the ld. Adjudicating authority has recorded the request of the appellant for cross-examination of Shri Surender Kumar and Shri Raju. The relevant portion in the said order is extracted herein below:-

> *"10..*
>
> *During the hearing, it was stated that the Custom House Agent (CHA for short) had done all necessary KYC verification as per the CHA Regulations; that Shri Surender Kumar who was referred as the main person caught with the offending goods was never an employee of the CHA; that they requested for cross-examination of Shri Surender Kumar and Shri Raju; that they have given a certificate of Chartered*

Accountant stating that Surender Kumar has never been their employee; that they have no complicity in the matter."

6. However, on perusal of the impugned order, I did not find any findings of the Commissioner, as to why opportunity of cross-examination was not granted to the appellant. Thus, in this case, natural justice has been violated by the adjudicating authority. Since, the proceedings were initiated based on the statement recorded by Shri Raju and in view of the fact that the appellant has categorically denied that Shri Surender Kumar was not its employee, the penalty imposed on the appellant solely on the statement recorded will not stand for judicial scrutiny.

7. Therefore, I do not find any merits in the impugned order in so far as, the imposition of penalty on the appellant is concerned. Accordingly, the same is set aside and the appeal is allowed in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita