CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal Nos. 50666 & 50791 of 2018 with
Customs CoD Application Nos. 50293 & 50326 of 2018

(Arising out of Order-in-Original No. 05/ICD-PPG/BBG/Commr/2017 dated 11.10.2017 passed by the Commissioner of Customs, New Delhi)

DATE OF HEARING : 09.05.2018
DATE OF DECISION : 09.05.2018

M/s Surya Automation Pvt. Ltd. ……..**Appellants**
Shri Deepak Chopra (Rep. by Sh. G.K. Sarkar, Adv.)

VERSUS

CC, Patparganj, New Delhi ……….**Respondent**
(Rep by Sh. Rakesh Kumar, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51849-51850/2018

PER JUSTICE (DR.) SATISH CHANDRA :

Both the Misc. Applications are for condonation of delay of 9 days in filing the appeals. For the reasons mentioned in the applications, the delay is condoned and the appeals are admitted.

2. With the consent of both sides, both the appeals are taken up for hearing.

3. Both the present appeals are filed by the assessee-Appellants against the Order-in-Original No. 05/ICD-PPG/BBG/Commr/2017 dated 11.10.2017 passed by the Commissioner of Customs, New Delhi.

4. The brief facts of the case are that, the assessee-Appellants, M/s Surya Automation Pvt. Ltd., had imported "Solenoid and Mecnical Valves" of different types from China. It is the allegation of the Department that the goods were imported in excess quantity by mis-declaring the same. So, a search was conducted at the business premises of the assessee-Appellants on 28.04.2016. On the basis of the search material, demand has been confirmed against the assessee-Appellants by alleging that they misdeclared the goods and thereby evaded appropriate payment of the customs duty. Penalties were also imposed on the assessee-Appellants Company as well as the Director, Shri Deepak Chopra. Being aggrieved, the assessee-Appellants have filed the present appeals.

5. With this background, we have heard Dr. G.K. Sarkar, learned counsel for the assessee-Appellants and Sh. Rakesh Kumar, learned DR for the Revenue.

6. The learned counsel submitted that there was no case to demand the duty or impose penalties. The assessee-Appellants have acted on the invoices produced by the liner company, M/s EMU Logistics Pvt. Ltd. (EMU), who had directly communicated with the Customs authorities, but without taking into confidence the assessee-Appellants. He submits that in spite of repeated requests opportunity for cross-examination was not provided. He also submits that there is violation of the principles of natural justice. For

the purpose, he relied upon the ratio laid down by the Hon'ble Supreme Court in the case of **Andman Timber Industries vs CCE, Kolkata-II,** 2015 (324) ELT 641 (SC), wherein it was observed that not allowing the assessee to cross-examine the witnesses is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice. It is also the submission of the learned counsel that the photocopy of documents procured from the shipping lines cannot be relied upon as an evidence unless they are certified to be the true copies of the original. To support his contention, he placed reliance in the case of **Ramesh Verma & Ors. Vs Smt. Lajesh Saxena & Ors,** AIR 198 MP (53). Lastly, he made a request that the impugned order may kindly be set aside.

7. On the other hand, the learned DR justified the impugned order.

8. After hearing both sides at length and on perusal of the material available on record, it appears that, in the instant case, the charge of mis-declaration or less amount declaration is based on the invoices produced by the liner Company as well as some other vouchers which were recovered from the assessee-Appellants' premises. But the fact remains that, no opportunity was granted to the assessee-Appellants to cross-examine the witnesses and to show the original vouchers which were produced by the Department. The Hon'ble Delhi High Court in the case of **J&K Cigarettes Ltd. vs CCE,** 2009 (242) ELT 189 (Del.), emphasized on complying with the requirement of examination and cross-examination during the adjudication proceedings, and that condition has not been fulfilled.

9. In view of the above, we set aside the impugned order and remand the matter to the original authority to decide the issue *de novo* in the light of the above discussion, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional documents, if any, as per law.

10. In the result, both the appeals filed by the assessee-Appellants are allowed by way of remand.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(C.L. MAHAR)
MEMBER (TECHNICAL)

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