CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court – I

Appeal No. C/31136/2017

(Arising out of Order-in-Appeal No. HYD-CUS-000-APP-047-17-18 dt. 24.07.2017 passed by Commissioner (Appeals), Customs & Central Excise)

Mohammed Azmatullah ….. Appellant(s)

Vs.

CCT, Hyderabad – G.S.T ….. Respondent(s)

Appearance
Shri G.V. Reddy, Advocate for the Appellant.

Shri P.S. Reddy, Asst. Commissioner/DR for the Respondent.

Coram:

Hon'ble Mr. M.V. Ravindran, MEMBER (JUDICIAL)

Date of Hearing: 22.05.2018
Date of Decision: 25.07.2018

FINAL ORDER No. A/30760/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No.HYD-CUS-000-APP-047-17-18 dated 24.07.2017.

2. The relevant facts that arise for consideration after filtering out unnecessary details are SIB Branch of Hyderabad, Customs carried out investigations into alleged smuggling of automobile tyres in container and

consigned to one M/s Great Overseas, Hyderabad which was manifested wrongly in IGM as Chappals. The Officers intervened as no bill of entry was filed seeking clearance for consignment even after lapse of 7 months from the date of landing of container in India. On verification of the goods, it was found that new automobile tyres were sought to be imported under the guise of chappals. Authorities recorded the statement of Shri M.A. Mujahid who is the proprietor of M/s Great Overseas (importer as per IGM) and also of the appellant herein who is proprietor of Reliance tyres. On the conclusion of the investigation, it was noticed by the authorities that, appellant herein was contacted by agents of shipping lines, who had ferried the consignment. Show cause notices were issued for confiscation of the goods along with imposition of penalties to one M.A. Mujahid and also appellant herein. The show cause notice proposed to impose penalties under Sec.112 (a) & 114AA of the Customs Act, 1962. The adjudicating authority confiscated the imported goods, rejected the value declared and imposed penalties on the appellant herein under both the sections. Aggrieved by such order, an appeal was preferred to the first appellate authority. The first appellate authority in the impugned order set aside the penalty imposed U/s. 114AA but upheld the penalty U/s. 112 (a) of the Customs Act, 1962. Revenue has not filed any appeal against the impugned order.

3. Learned Counsel appearing for the appellant submits that the statement of Shri M.A. Mujahid, who claimed to be proprietor of M/s Great Overseas itself, indicated that they are the importers of the said tyres. It is his submission that appellant has not played any role, leave alone key role or actively assisted for importing tyres in the guise of chappals. He draws

my attention to the statement of Shri M.A. Mujahid recorded by the lower authorities.

4. Learned Departmental Representative on the other hand submits that the appellant for all practical purposes is treated as importer as his mobile number was used for contacting shipping lines and the income tax records indicate the address of M/s Great Overseas as the same that of Reliance Industries. He submits that the bill of lading is in the name of Great Overseas along with commercial invoices but the Branch Manager of shipping line was always contacting the appellant herein on his cell number which would indicate that appellant was mastermind. It is his submission that appellant could not explain why Shri M.A. Mujahid used his phone number when he had his own number. It is his further submission that the pan card of Shri M.A. Mujahid was used in the address of Reliance tyres in the form of appellant herein and the goods which are imported are prohibited goods.

5. On careful consideration of the submissions made by both sides and perusal of records, I find that the appeal herein is only against imposition of penalty U/s 112 (a) of Customs Act, 1962.

6. I find that the Revenue authorities have relied upon the statement of Manager, shipping line, the address on the pan card of Great Overseas and that the appellants phone number was mentioned by the Manager of the shipping line as contact person and that the said Shri M.A. Mujahid of Great Overseas was employee of the appellant, to come to a conclusion that appellant has played role in smuggling of the tyres into India.

7. On perusal of the records, I find that though the shipping line Manager has stated that he was contacting the appellant on his mobile number, it is not indicated in the said statement that it was in respect of the declarations to be made on IGM or in respect of the disputed consignment. It is on record that the statement of Shri M.A. Mujahid, the proprietor of Great Overseas claimed that consignment was imported by him and there was a mis-declaration on the IGM by the shipping lines which he was trying to rectify by getting in touch with the overseas supplier. It is also to be noted that no role is attributed to the appellant herein and no bill of entry is filed by appellant so as to allege any mis-declaration. In the absence of anything to indicate that appellant played any role in importing tyres in the guise of chappals, I find that the provisions of Sec.112 (a) of Customs Act, 1962 are not attracted.

8. In view of the foregoing, the impugned order to the extent it is contested before the Tribunal is set aside and the appeal stands allowed.

(Pronounced in the Open Court on 25.07.2018)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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