CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench
Court – I

Appeal No.C/2421/2011

(Arising out of Order-in-Original No.02/2011 dated 31.05.2011 passed by CC, Visakhapatnam))

S. Kameswara Sastry ….. Appellant(s)

Vs.

CC & ST, Visakhapatnam ….. Respondent(s)

Appearance
Shri Chandrasekhar Gupte, Advocate for the Appellant.
Shri Moin Anwer, Asst. Commissioner/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Date of Hearing: 04.09.2018
Date of Decision: 04.09.2018

FINAL ORDER No. A/31079/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against the Order-in-Original No. 02/2011 dated 31.05.2011.

2. Heard both sides and perused the records.

3. This appeal is filed by individual Shri S. Kameswara Sastry, Dy. General Manager of Arya Offshore Services Pvt Ltd, Visakhapatnam against imposition of penalty under Sec.112 (a) of the Customs Act, 1962.

4. The factual matrix after filtering out unnecessary details that lead to imposition of penalty are that appellant being Dy. General Manager of Arya Offshore Service Pvt Ltd had filed a coastal IGM as agents of Dolphin Drilling Pvt Ltd on arrival of rig "Blackford dolphin". Subsequently, they also filed

inclusion of another line for cargo indicated as contaminated fuel and the same has been accepted. It is the case of the revenue that on information, it was noticed that said rig was carrying additional HSD which was not declared. Show cause notices were issued for the demand of the duty, confiscation of seized goods and also for imposition of penalty under Sec.112 (a) of the Customs Act, 1962. The said show cause notice was defended by this appellant on the ground that they were agents and filed declarations of IGM and all the information required was done so and hence there are no omissions or commissions on their part which has lead to confiscation/seizure of the goods. The adjudicating authority after following due process of law did not agree with the contentions raised and imposed penalty of Rs.1 lakh on the appellant herein.

5. It is seen from the records and undisputed that appellant Mr. S. Kameswara Sastry is the Dy. General Manger of Arya Offshore Services Pvt Ltd; they had filed coastal IGM No.06/2010 on 03.02.2010 and on arrival of rig they also made an application on 05.02.2010 for inclusion of relying 01 and mentioned the description of the cargo as contaminated fuel with 510 Cubic Mts (or KLs). On the notice that in Para 61.4 of the Order-in-Original, the adjudicating authority has recorded that 395 Cubic Mts of HSD which was found available on board of rig has been declared as contaminated oil but it was not so. Adjudicating authority has further recorded in Para 62.1 that M/s Arya Offshore Services Pvt Ltd had not guided the crew of the rig properly as regards the Indian Customs procedure. I find that all these findings of the adjudicating authority lead to a definitive conclusion that M/s Arya Offshore Services Pvt Ltd had in fact filed the IGM and also made additional inclusion which has been confirmed by the authorities and that

the excess HSD being declared as contaminated oil was on an advice of the appellant is not coming forth from the records. In the absence of any definitive conclusion that appellant had advised the master of the vessel not to declare correct quantity, I find that provisions of Sec.112(a) do not get attracted in the case in hand. The findings of the adjudicating authority against this appellant are unacceptable in the facts and circumstances of this case.

6. In view of the foregoing, it is held that the penalty imposed on the appellant herein is unwarranted. The impugned order to the extent it is contested in this appeal is set aside and the appeal of the appellant stands allowed.

(Dictated and pronounced in the Open Court)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda