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

Division Bench

Court - I

Appeal No.	Appellants	Respondent	Impugned Order-in-Appeal No.
C/2966/2011	Madhusudhan Grani Marmo Pvt Ltd	CCCE & ST, Hyderabad - II	28/2011 (H-II) CUS dt.28.07.2011 passed by CCCE & ST (Appeals-II), Hyderabad
C/2967/2011	L.N. Maru, Director		29/2011 (H-II) CUS dt.28.07.2011 passed by CCCE & ST (Appeals-II), Hyderabad
C/2968/2011	Nanda International		30/2011 (H-II) CUS dt.28.07.2011 passed by CCCE & ST (Appeals-II), Hyderabad

Appearance

Shri Mansor Ilah, Advocate for the Appellants.

Smt A.V.L.N. Chary, Superintendent/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 31.01.2019
Date of Decision: 31.01.2019

FINAL ORDER No. A/30228-30230/2019

[Order per: P.V. Subba Rao.]

1. These appeals have been filed against Orders-in-Appeal Nos.28, 29 & 30/2011 (H-II) CUS dated 28.07.2011 passed by Commissioners (Appeals-II), Hyderabad.

2. The assessee/ appellant M/s Madhusudhan Grani Marmo Pvt Ltd filed a bill of entry No. 721168 dated 11.06.2009 with the Asst. Commissioner of Customs seeking clearance of polished marble slabs imported into containers. On examination, it was found that they had actually imported unpolished marble slabs whose import was restricted. The quantity of imported marble was also under layer than the declaration. The importer did not have required import license as per EXIM Policy and therefore, the marble slabs were seized and show cause notices were issued to the appellants. After following due process, the lower authority vide his Order-in-Original No. 29/2011 dated 31.03.2011, rejected the declaration made in the Bill of Entry as 611 Sq.Mt of marble slabs and held that the quantity was

861.03 Sq.Mt on physical examination. He also revised the value of the goods accordingly and confirmed the duty of Rs.5,01,646/- on the re-determined value of Rs.21,30,608 /- under Sec.28(1) of the Customs Act, 1962. He appropriated the duty already paid by the appellant towards this demand. He also ordered payment of interest under Sec.28AB of the Customs Act, 1962. He confiscated the marble slabs which were initially seized and subsequently provisionally released under Sec. 111(d) & (m) of the Customs Act, 1962 for contravening the provisions of Sec.46 of Customs Act, 1962 and Sec.11 read with Sec.3(3) of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 11 of Foreign Trade (Regulation) Rules, 1993. He allowed redemption of goods on payment of fine of Rs.4,00,000/- under Sec.125 of Customs Act. He also imposed penalty of Rs.1,50,000/- on the importer M/s Madhusudhan Grani Marma Pvt Ltd under Sec.112 (b) of the Customs Act, 1962 for importing any contravention of Sec.46 of the Customs Act read with Sec.11 & Sec.3(3) of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 11 of Foreign Trade (Regulation) Rules, 1993. He also imposed penalty of Rs.50,000/- on Shri L.N Maru, Director of importer (appellant herein) and M/s Nanda International (CHA) under Sec.112(a) of Customs Act, 1962. On an appeal, the first appellate authority vide the impugned order upheld the order of the adjudicating authority but reduced the fine on the company, penalties on Shri L.N. Maru and the CHA. He reduced the redemption fine from Rs.4,00,000/- to Rs.3,50,000/- on the importer. He further reduced personal penalty on Shri L.N. Maru, Director of importer from Rs.50,000/- to Rs.25,000/- and he reduced penalty on the CHA from Rs.10,000/- to Rs.5,000/-.

3. Learned counsel for the appellant submits that they had actually placed an order for polished marble slabs but they have wrongly received unpolished marble slabs instead and this mistake was admitted by their overseas supplier in the correspondence which they had made after importation. He also submits that additional quantity of marble received was also on account of this mistake. He therefore, prays that the confiscation of the imported marble and the penalties

imposed on the importer, the Director of the importer and the CHA may be set aside. He also presents before us copies of letters which they have received from their suppliers when they have enquired from them about the supply of unpolished marble.

4. Learned departmental representative reiterates the findings and asserts that the documents produced by the appellant are nothing but an afterthought and they do not even bear a date. Therefore, the appeals may be rejected.

5. We have considered the arguments on both sides and perused the records. It is undisputed that the appellant has imported unpolished marble slabs without license as required under the EXIM Policy framed under Foreign Trade (Development & Regulation) Act, 1992. Therefore, the goods in question were liable to confiscation under Sec.111 of the Customs Act. The importer has done acts of omission or commission with respect to such imports are liable under Sec.112 of the Customs Act, 1962. We find that the facts were not in dispute. We do not find any force in the arguments of the appellant that they have placed orders for polished marble only and have received unpolished marble slabs because of an error by their supplier. From the documents placed before us, this is not evidenced. The documents are silent as to whether they placed an order for polished marble or otherwise. Until the Customs opened the container and examined, it was never discovered that they actually imported unpolished marble. An ex post facto undated letter from their supplier does not, in any way, alter the confiscability of the goods which have been imported. If it is held to the contrary the entire system of restrictions on imports in the country become meaningless. Anybody can import any prohibited good and simply produce an e-mail or a letter from their overseas supplier saying that prohibited goods were sent to them by mistake. Holding such a view would defeat all the legal provisions of the country under various enactments with respect to restrictions on imports. We, therefore, find that the goods in question are liable for confiscation under Sec.111 of the Customs Act. Redemption fine imposed by the adjudicating authority was already

reduced by the first appellate authority to Rs.3,50,000/- which is a fair amount of redemption fine and we find no reason to interfere with it. In so far as the penalty under Sec. 112(a) is concerned, the penalties imposed on the importer firm also need to be upheld and we do so. As far as the personal penalty is concerned, we do not find sufficient justification to impose a personal penalty on Shri L.N. Maru in this case and set it aside. As far as the penalty on the CHA, M/s Nanda International is concerned, we find that the allegations in the show cause notices and in the Order-in-Original are that they failed to discharge their obligations as a CHA. Sec.112 is not the provision under which penalty can be imposed for violations of CHA licensing regulations. Therefore, the penalty on the CHA is unsustainable and needs to be set aside and we do so. In conclusion, we pass the following order:

a) The confiscation of the goods and the redemption fine imposed on the importer are upheld.
b) The penalty imposed on the importer is upheld.
c) Personal penalty imposed on Shri L.N. Maru, Director of importer firm is set aside and personal penalty imposed on CHA M/s Nanda International is set aside.

(Operative part of this order was pronounced in the open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda