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

Single Member Bench

Court – I

Appeal No. C/31119/2018

(Arising out of Order-in-Appeal No.VIZ-CUSTOM-000-APP-013-014-18-19 dt.29.06.2018 passed by CCT & C (Appeals), Guntur)

Commissioner of Central Tax,
Visakhapatnam -GST
Port Area, Visakhapatnam
Andhra Pradesh – 530 035 ……**Appellant**

VERSUS

M/s K Steamship Agencies Pvt Ltd,
D. No. 25-12-35, Indu Mansion,
Godavari Veedhi, Near Old SBI Branch,
Visakhapatnam, AP – 530 001 ……**Respondent**

and

Appeal No. C/31129/2018

(Arising out of Order-in-Appeal No.VIZ-CUSTOM-000-APP-015-016-18-19 dt.29.06.2018 passed by CCT & C (Appeals), Guntur)

Commissioner of Central Tax,
Visakhapatnam -GST
Port Area, Visakhapatnam
Andhra Pradesh – 530 035 ……**Appellant**

VERSUS

M/s A V B G P R And Co,
Harbour Approach Road, Next to NMDC Building,
Port Area, Visakhapatnam, AP – 530 035 ……**Respondent**

Appearance

Shri N. Bhanu Kiran, Authorized Representative for the Appellant.
Shri N. Bhanu Kiran, Authorized Representative for the Respondent.

Coram:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30598-30599/2019

Date of Hearing: 04.07.2019
Date of Decision: 04.07.2019

[Order per: P.V. SUBBA RAO.]

1. Both these appeals are filed by the revenue against impugned Orders-in-Appeal as above.

2. The facts of these cases in brief are that the respondents had imported containers claiming exemption under customs notification 104/1994 with an undertaking to re-export the goods within a period of 6 months from the date of import. The notification also provided for further extension of time by the proper officer in case they are unable to re-export the containers within 6 months. In both these cases, after some time, the respondents neither re-exported the goods nor sought extension of time.

3. On investigation, it was found that they had actually sold the imported containers in violation of the notification 104/1994 and thereby evaded payment of duty. After following due process, the lower authority confirmed the demand of duty from the respondents, confiscated the goods, imposed redemption fine and also imposed penalties under Section 114A of the Customs Act, 1962. He further gave them an option of paying penalty within 30 days from the date of communication of the order and getting the penalty reduced to 25% of the amount as per the proviso to Section 114A.

4. Accordingly, the respondents paid the duty as well as penalties. They also appealed to the first appellate authority who upheld the confiscation of the goods, demand of duty and imposition of redemption fine but held that the penalty under Section 114A must be only equal to the amount of duty or interest and cannot be equal to the amount of duty plus interest as has been calculated by the lower authority. Accordingly, he restricted the amount of fine to the total amount of duty sought to be evaded. Revenue is aggrieved by these orders of the first appellate authority. It is their contention that Section 114A states that the amount of penalty shall be equal to the amount of duty or interest as the case may be. Therefore, wherever both duty and interest are liable to be imposed, the penalty must be equal to the amount of duty as well as amount of interest. They rely on the Board Circular No. 61/2002-CUS dated 20.09.2002 in which the advice of the Ministry of Law has been communicated in which it has been clarified that under Section 114A of the Customs Act the word “or” may be read as “and” to give effect to the clear intention of the legislature as has been held by the Hon’ble

Supreme Court in the case of T.S. Govindlalji Maharaj Vs State of Rajasthan as reported in *AIR 1963 SC p. 1638*.

5. None appeared on behalf of the respondents. On examination of the two files, I find that the amount involved in both these cases pertaining to the differential amount of penalty is less than the minimum prescribed limit under the new litigation policy and therefore, the appeals deserve to be dismissed. Both appeals filed by the revenue are dismissed without passing any remarks on the merits of the case.

6. The appeals are dismissed as per the litigation policy.

(Order dictated and pronounced in open court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Veda