CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT - I

Customs Appeal No. 1975 of 2011

(arising out of order-in-Appeal No 14/2011 (H-II) Cus dated 20.04.2011 passed by Commissioner of Customs & Central Excise (Appeals-II) Hyderabad)

Bhagyanagar India Ltd
5th Floor, Surya Towers,
S.P. Road, Secunderabad

Appellant

Versus

The Commissioner of Customs
Hyderabad

Respondent

WITH
Customs Appeal No. 1976 of 2011

(arising out of order-in-Appeal No 15/2011 (H-II) Cus dated 20.04.2011 passed by Commissioner of Customs & Central Excise (Appeals-II) Hyderabad)

Shri Narender Surana
Managing Director
Bhagyanagar India Ltd
5th Floor, Surya Towers,
S.P. Road, Secunderabad

Appellant

Versus

The Commissioner of Customs
Hyderabad

Respondent

Appearance:

Mr R. Murlidhar & Mr P.V.B. Chary , Advocates for the Appellant

Mr C. Mallikarjuna Reddy, A.R. for the Respondent.

CORAM

HON'BLE Mr Ashok Jindal, Member(Judicial)
HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

FINAL ORDER No. 30471-30472/ 2020

Date of Hearing: 12/02/2020
Date of Decision: 12/02/2020

[ORDER PER: ASHOK JINDAL]

The appellants are in appeal contesting the penalties imposed on them on the ground that during the course of investigation, the appellants have paid of all the duty along with interest and 25% of the penalty with an impression that 25%of the penalty works out to Rs 2,03,592/- whereas the actual amount of penalty works out to Rs 2,53,313/-. The show-cause notice was issued to appropriate the amount already paid and to impose penalty. At the time of adjudication it was found that as the appellant has paid the entire amount of duty, interest and 25% of duty as penalty before the issuance of show-cause notice, therefore, the same is not in compliance with Section 28 of the Customs Act 1962 and the amount paid by the appellant is not considered as payment under the said provisions and confirmed the demand against the appellant. The appellant challenged that order before the learned Commissioner (Appeals) who held that although the appellant paid the entire amount of duty, interest and 25% penalty calculated as Rs 2,03,592/- before issuance of show-cause ntoice the same is required to be appropriated . On calculation, the amount of penalty works out to Rs 2,53,313/-, as they have made short-payment of penalty, therefore, they are required to pay penalty of 100% of the duty demand and Managing Director is also required to be penalised. Against the said order appellants are before us.

2. Heard both the parties and perused the records.

3. On perusal of the records, we find that the appellant was under the impression that 25% of the penalty works out to Rs 2,03,952/- and it was paid by them before investigation itself therefore while issuing the show-cause notice, the authorities are required to calculate the actual amount of penalty payable by the appellant towards penalty and if there is any short payment they would have been be asked to pay at that stage and the matter could have been come to an end. But instead of doing so, the matter had to travel up to this Tribunal which is very unfortunate. As whole of the demand of duty, interest and 25% penalty has been paid by the appellant and the Managing Director is also not be penalised.

4. Therefore, the penalty equal to 100% duty imposed by the learned Commissioner is not sustainable against the appellant. In these circumstances, we set aside the impugned order and dispose of the appeals.

(Order pronounced and dictated in open court)

(Ashok Jindal)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)

Neela reddy