IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal Nos.1)C/70027/2013, 2)C/70141/2013 & 3)C/76540/2014

(Arising out of Order-in-Original No.01/2012 dated 19.11.2012 passed by the Commissioner of Customs (Prev.), Customs House, Kolkata)

1) Sri Pratik Kumar Sen
2) Sri Nikhil Chakraborty
3) Sri Ashok Kumar Durani

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs (Preventive), Kolkata

Respondent (s)

Appearance:
Shri Satyabrata Chakraborty, Advocate & Shri Piyush Chakraborty, Advocate, Ms. Rituparna Ghosh, Advocate and Shri Omprakash Choudhary, Advocate for the appellants.

Shri A.K.Das, Special Counsel for the Respondent

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

Date of Hearing :- 20.02.2018

Date of Pronouncement: 10.04.2018

ORDER NO.FO/75798-75800/2018

Per Shri P.K.Choudhary.

1. All the appeals are arising out of a common order and therefore all are takenup together for disposal.

2. Brief facts of the case are that the Customs Officers gathered information that high value Integrated Circuits (IC) are being cleared regularly by some unscrupulous importers with active connivance with

certain clearing agents by misdeclaring those as "transistors" of much lower value at the cargo complex, Calcutta Airport. The present case relates to seizure of (a) 58885 pcs of Integrated Circuits and 28,000 pcs of Transistors collectively valued at Rs.12,75,490.00 imorted under C.N.No.217-5967-6175, HAWB No. BE 0056423 & cleared under BE No.AI-192 dt, 05.03.1994 on account of M/s. Ambika Electronics, Delhi, Clearing Agent M/s. Seaking Shipping Agency, Calcutta, seized at Calcutta city on 10.3.94 (b) 45004 pcs of Integrated Circuits and 30000 pcs of Transistors collectively valued at Rs.9,06,080.00 imported under C.N.No.217-6026, HAWB No.BE-0056446 & declared under BE Sl.No.668 dated 9.3.94 on account of M/s. Allied Electronics Industries, New Delhi, Clearing Agent M/s. Seaking Shipping Agency, Kolkata, seized at Air Cargo Complex, Calcutta on 28.03.1994 (c) 43651 pcs of Integrated Circuits & 30000 pcs of Transistors collectively valued Rs.8,69,020 imported under C.N.No.217-6026-6883, HAWB No.0056495 on account of M/s. Arti Electronics, Jammum Clearing Agent M/s. Seaking Shipping Agency, Calcutta seized at Air Cargo Complex, Calcutta on 29.03.1994. The Adjudicating Authority confiscated the seized goods and imposed the Redemption Fine and demanded customs duty. It has also imposed penalties on the appellants herein amongst others, (a) Shri P.K.Sen, CHA, Rs.5,00,000/- (b) Shri Nikhil Chakraborty, Rs.50,000/- & (c) Shri Ashok Kumar Durani, Rs.5,00,000/- ,(d) The duty and interest liability on the cleared goods shall, jointly and severally, be recovered from the importers, Shri V.N.Lakhi & Shri P.K.Sen, Hence, the appellants filed these appeals.

3. Heard both sides and perused the appeal records.

4. On perusal of records, it is seen that the show cause notice was issued on 08.09.1994 and adjudicated by Order-in-Original No.18/99-CCP dated 10.12.1999 and penalty was imposed on Shri P.K.Sen and Shri Nikhil Chakraborty (of Rs.1,00,000/- and Rs.5000/-) respectively. The said order was set aside by the Tribunal by order dated 22.06.2000. In denovo adjudication order dated 15.05.2001, the same penalty was imposed. The appellants again filed appeal before this Tribunal. By order dated 12.12.2001, the Tribunal remanded the case for denovo adjudication. In denovo adjudication order dated 30.11.2004, penalty of Rs.5,00,000/- & Rs.50,000/- were imposed upon Shri P.K.Sen and Shri Nikhil Chakraborty respectively. The appellants filed Writ Petition before the Hon'ble High Court against the denovo adjudication order. The Hon'ble High Court again remanded the matter to the Adjudicating Authority.

5. The instant appeals are filed by the appellants against the de novo adjudication order dt. 19.11.2012. I find that the Hon'ble High Court and this Tribunal remanded the matter to the adjudicating authority with a direction to provide the documents to the appellants to defend their cases. The ld. Senior Counsel for the department in his written submission stated that they have not been provided some of the specific documents as Bills of Entry and other documents used to be filed in air customs manually during the material time period and that would not materially affect the case as the alleged offense is even otherwise very obvious.

6. The ld. Adj. auth. in the impugned order had observed in respect of supply of documents as under:

> *"Being aggrieved with the said impugned order bearing No.1/2004 dated 30.11.2004 passed by the CCP, party filed writ petition No.635 of 2005 under Article 226 of the Constitution of India in the Hon'ble High Court, Kolkata.*
> *The Hon'ble High Court Kolkata vide order dtd. 26th June, 2008 under W.P.No.635 of 2005 disposed of the writ petition and set aside the impugned order 1/2004 CCP dt. 30th Nov.2004 and directed the respondent No.2 to decide the matter afresh after ensuring that the copies of the necessary documents, which have been sought for by the petitioner are served upon him.*
> *As directed by the Hon'ble High Court Petitioner Shri Pratik Sen was requested to collect the relied upon documents vide letter dated 08.09.2008 and 09.02.2009 and the same were supplied to the authorized person of his counsel under receipt. Fresh dates for Personal Hearing were fixed on 10.09.2012, 13.09.2012 and 17.09.2012. Intimations were issued to the respective noticees but the same were received back with the Post Authority remark "Left/"Moved" except noticee no. 1 and 3. Noticee no.1 requested extension of time vide letter dated 07.09.2012 and accordingly, the same was extended to 09.10.2012. Copy of the said Personal Hearing Memo was also displayed on the Customs House Notice Board. But nobody appeared for personal hearing date. Hence I, take up the case for adjudication on the basis of available records."*

7. I find that there is a contradiction in the submission of the ld. Special counsel for the department and the findings of the adjudicating authority in so far as the adjudicating authority observed that the documents were supplied, however, the counsel in his written

submission stated that some of the documents were not supplied. According to the learned counsels for the appellants, the documents such as Bills of Entry are essential for the adjudication of this case. I find that the appellant had not appeared in the personal hearing before the adjudicating authority. Simultaneously, the adjudicating authority had not given any finding on the grievance of the appellants in respect of non supply of documents.

8. The ld. Counsels categorically submitted that it is the third round of litigation before the Tribunal. The Hon'ble Supreme Court and High Court *have observed that repeated remand should be avoided. However, in the present case, there is no factual finding of the adjudicating authority with respect to factual disputes and allegations made in the show cause notice. In my considered view, if the department is unable to provide documents as requested by the appellants as per the earlier orders of the Tribunal and the High Court, the adjudicating authority may decide the matter on the basis of the documents available before him. Hence, it is appropriate to remand the matter to the adj. auth. in the interest of justice.

9. In view of the above discussion, the appeals filed by the appellants are allowed by way of remand to the adjudicating authority to decide afresh after considering the submission of the appellants and in the light of the direction of the Tribunal and the High Court in the earlier order, and to pass orders in accordance with law.

As the matter is an old one, the adjudicating authority is directed to decide the matter as expeditiously as possible. Further, as the hearing notice was returned as undelivered, the adjudicating authority may issue the hearing notice to the ld. Counsels appearing before the Tribunal. All the appeals are allowed by way of remand.

(Pronounced in the open court on.10.04.2018)

S/d.
(P.K.Choudhary)
Member(Judicial)

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