IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal Nos. C/75930/15 & C/76985/16

(Arising out of Order-in-Appeal No.80/CUS(A)/GHY/14 dated 31.12.2014 passed by the Commissioner of Customs, Central Excise & Service Tax(Appeals), Guwahati.)

Shri Arunabha Chakraborty
Shri Satya Ranjan Saha

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs(Prev.), NER, Shillong

Respondent (s)

<u>Appearance:</u>

Shri K.P.Dey & Shri H.K.Pandey, Advocates for the Appellant (s)
Shri S.N.Mitra, AC(AR) for the Revenue

CORAM:

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

Date of Hearing :- 17.01.2018
Date of Decision:- 27.03.2018

ORDER NO.FO/75768-769/208

Per Shri P.K.Choudhary.

Briefly stated the facts of the case are that on 17.11.2012 the Officers of Customs and Anti smuggling unit of Agartala and BSF personnel detected one Truck bearing registration no. WB-29-6271 in front of Sherowali Trade and Transport, Agartala. It was found that the said Truck was loaded with 9000 bottles of Recodex Cough Syrup and 6000 bottles of Phensedyl Cough Linctus concealed under the load of miscellaneous goods. The Driver and Khalasi could not produce the documents. The Customs authorities seized the goods vide Case No. 33/CL/EXP/DPF/AGT/12 dated 17.11.2012. By extension order dated 07.05.2013 the Commissioner of Customs (Preventive) North Eastern Zone ordered extension of the period for issuance of the Show

Cause Notice under Section 124(a) of the Customs Act, 1962 in respect of the goods and vehicle seized under Section 110(1) of the Act, upto 16.11.2013. Shri Satyaranjan Saha filed Appeal No. C/76985/2015 against the Order dated 07.05.2013 before this Tribunal.

2. Thereafter, Show Cause Notice dated 12.11.2013 was issued proposing confiscation of the seized goods, vehicles and to impose penalty on various persons. The Adjudicating authority confiscated absolutely the seized Cough Syrup and Cough Linctus. It has also confiscated the vehicle and imposed redemption fine of Rs. 2,50,000.00. It has further imposed penalties on various persons including Shri Arunava Chakraborty of Rs. 50,000.00 under Section 114(iii) of the Act, 1962. Hence, Shri Arunava Chakraborty filed this Appeal No. C/75930 of 2015 as against imposition of penalty.

3. Heard both sides and perused the appeal records.

4. In appeal no. C/76985/2015-CUS filed by Shri Satyaranjan Saha, the Learned Counsel filed a written submission and argued the matter at length. It is submitted that the Commissioner passed the Order dated 07.05.2013 without giving proper opportunity of hearing. It is further submitted that the appellant had not received the Show Cause Notice. So, the Order dated 07.05.2013 may be set aside.

5. I find that by Order dated 07.05.2013, the Commissioner extended the period of issue of Show Cause Notice upto 16.11.2013. It is seen from the record that the Show Cause Notice was issued on 12.11.2013. Hence, there is no need to go into this matter as the Show Cause Notice had already been issued. Hence, the appeal is liable to be dismissed as infractuous.

6. The Appeal No. C/75930/15 has been filed by Shri Arunabh Chakraborty. The appellant is an employee of M/s. Sherowali Trade & Transport, Agartala. The Commissioner (Appeals) observed that during his

tenure as a Manager of the said Transport Company M/s. Abhishek Textiles, consigned the goods to M/s. Krishna Textiles, Agartala which was found by the investigating officers as false since there is no existence. It is observed by the Commissioner (Appeals) that the appellant being an employee of the Transport Company has to carry out his duties properly and also verify the genuineness of the goods and documents while same goods are transported by the Transport Agency for illegal export by an unauthorised route to Bangladesh. The Learned Counsel submitted that there is no material available on record that Shri Arunabh Chakraborty, the appellant, had any knowledge of the alleged smuggling of the goods and therefore the imposition of penalty on the appellant is not justified.

7. I find from the record that the allegation is that the seized goods namely Cough Syrup and Cough Linctus of huge quantity were admittedly smuggled to Bangladesh. The appellant is the Manager of the Transport Company and responsible for loading of the goods. He has not come up with reasonable explanation against the charges labeled against him. Therefore, the imposition of penalty is justified. I agree that the quantum of penalty is excessive as the appellant is merely an employee of the Transport company.

8. In view of the above discussion, the Appeal No. C/76985/2015 filed by Satya Ranjan Saha is dismissed as infructuous. Appeal No. C/75930/15 filed by Shri Arunabh Chakraborty, the amount of penalty is reduced to Rs.10,000.00 (Ten Thousand) only.

(Pronounced in the open court on 27.03.2018.)

SD/
(P.K.Choudhary)
Member(Judicial)

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