CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
EAST ZONAL BENCH: KOLKATA

Appeal No. : C/76086/2015-SMC, C/76087/2015-SMC, C/76088/2015-SMC

[Arising out of the Order-In-Original - CCP-NER-09-2015, dated - 27/08/2015, passed by Commissioner of CUSTOMS(PREVENTIVE) - SHILLONG, Order-In-Original - CCP-NER-10-2015, dated - 27/08/2015, passed by Commissioner of CUSTOMS(PREVENTIVE) - SHILLONG, Order-In-Original - CCP-NER-13-2015, dated - 08/09/2015, passed by Commissioner of CUSTOMS(PREVENTIVE) - SHILLONG]

1.Nitish Ranjan Paul **..Appellant (s)**
2.Shri Sanjit Ranjan Paul
3.Shri Shyamal Ghosh

Vs.
1.C.C.E. & S.T.-Shillong **....Respondent (s)**

Appearance:
Shri Apratim Bhattacharjee, Advocate **....For Appellant**

Vs.
Shri S.K.Naskar, AC(AR) **.... For Respondent**

CORAM:
Hon'ble Shri P. K. Choudhary,Judicial Member

Date of hearing : 29/05/2018

Date of Pronouncement : 14/09/2018

ORDER No. FO/76624-76625/2018

Per Shri P. K. Choudhary:

The dispute in all the appeals are common, hence all the three appeals are taken up together for disposal.

The facts of the case in brief are that there was a huge misappropriation of government revenue (import duty) at the Land Customs Station, Khowaighat, Tripura. The incidence of misappropriation of customs duty came to the knowledge of the Senior Officers of the Customs Department in the month of February, 2012. Appellants have imported cement under valid import licence through Authorised Land Customs Station. The bill of imports were duly recorded in the Bills of Lading in Bangladesh Land Customs Station and were also recorded in the bills of entry register at the Land Customs Station, Khowaighat, Tripura. It is the case of the appellants that the misappropriation of government revenue was not against the importers but against the officers posted at the Land Customs Station, Khowaighat during the period under investigation. The Commissioner vide individual adjudication orders passed the following Order:

> *" In Appeal No.C/76087/2015, Appellant :Sanjit Ranjan Paul, Order-in-Original No.CCP/NER/13/2015 dated 08.09.2015, Show Cause Notice dated Nil*
>
> *Order*
>
> *7. I Confirm the demand of Customs duties amounting to Rs.15,05,299/- (Rupees fifteen lakh five thousand two hundred and ninety nine) only on Shri Sanjit Ranjan Paul under Section 28(8) of the Customs Act, 1962.*
> *8. I order Shri Sanjit Ranjan Paul to pay interest as accrued in terms of Section 28AB/28AA of the Customs Act, 1962.*
> *9. I impose a penalty of Rs.15,05,299/- (Rupees fifteen lakh five thousand two hundred and ninety nine) only on Shri Sanjit Ranjan Paul under Section 114A of the Customs Act, 1962.*
> *10. I impose a penalty of Rs.5,00,000/- (Rupees five lakh) only on Shri Sanjit Ranjan Paul under Section 114AA of the Customs Act, 1962.*
> *11. I impose a penalty of Rs.25,00,000/- (Rupees twenty five lakh) only on Shri Sanjit Ranjan Paul under Section 112(b)(ii) of the Customs Act, 1962.*
> *12. I do not order confiscation of the imported goods in the instant case since the same is not available for confiscation."*
>
> *" In Appeal No.C/76086/2015, Appellant :Shri Nitish Ranjan Paul, Order-in-Original No.CCP/NER/09/2015 dated 27.08.2015, Show Cause Notice dated 23.01.2015.*

<u>Order</u>

8. I Confirm the demand of Customs duties amounting to Rs. 7,06,055 (Rupees seven lakh six thousand fifty five) only on Shri Nitish Ranjan Paul under Section 28(8) of the Customs Act, 1962.

8. I order Shri Nitish Ranjan Paul to pay interest as accrued in terms of Section 28AB/28AA of the Customs Act, 1962.

9. I impose a penalty of Rs. 7,06,055 (Rupees seven lakh six thousand fifty five) only on Shri Nitish Ranjan Paul under Section 114A of the Customs Act, 1962.

10. I impose a penalty of Rs.5,00,000/- (Rupees five lakh) only on Shri Nitish Ranjan Paul under Section 112(b)(ii) of the Customs Act, 1962.

11. I do not order confiscation of the imported goods in the instant case since the same had already been cleared long back and not available for confiscation"

" In Appeal No.C/76088/2015, Appellant :Shri Shyamal Ghosh, Order-in-Original No.CCP/NER/10/2015 dated 27.08.2015, Show Cause Notice dated 23.01.2015.

<u>Order</u>

7. I Confirm the demand of Customs duties amounting to Rs. 4,15,877/- (Rupees four lakh fifteen thousand eight hundred and seventy seven) only on Shri Shyamal Ghosh under Section 28(8) of the Customs Act, 1962.

8. I order Shri Shyamal Ghosh to pay interest as accrued in terms of Section 28AB/28AA of the Customs Act, 1962.

9. I impose a penalty of Rs. 4,15,877/- (Rupees four lakh fifteen thousand eight hundred and seventy seven) only on Shyamal Ghosh under Section 114A of the Customs Act, 1962.

10. I impose a penalty of Rs.4,00,000/- (Rupees four lakh) only on Shri Shyamal Ghosh under Section 112(b)(ii) of the Customs Act, 1962.

11. I do not order confiscation of the imported goods in the instant case since the same had already been cleared long back and not available for confiscation"

Hence the present appeals before this Tribunal.

2. Ld. Advocate appearing on behalf of the appellants submits that the appellants had deposited the import duty at the Land Customs Station at the

time of import and the Officers some time issued TR-V and some time they did not issue TR-V. The appellants were ordered to produce all import related documents to the investigating team to examine the issue. The documents as ordered for were duly submitted. Summons were issued from time to time to appear before the authorities with all the available records, which were duly complied with. All the copies of bills of entry with other documents were taken into custody by the investigating team duly acknowledging the same to the appellants. Show Cause Notices were issued alleging that the appellants did not pay the duties of customs in respect of cement imported by them during the period from 01.04.2010 to 31.03.2012 by way of collusion, wilful misstatement and suppression of facts. Ld. Advocate strongly argued that the show cause notice was issued for non-payment of customs duty of cement which were imported through Balla Land Customs Station, Bangladesh to Land Customs Station, Khowaighat, Tripura, India. During the investigation of relevant documents including bills of entry for the period 2009-2010, 2010-2011, 2011-2012 and also bills of lading the same were taken into custody by the Customs Authority towards investigating the matter and the appellants were informed that the documents were lying in Shillong. Ld. Advocate vehemently argued that the incidence of misappropriation of customs duty was well-known to the Customs Department in the month of February, 2012 itself, however the show cause notices were issued after three years i.e. in 2015. Hence, the proceedings are barred by limitation.

3. Ld. DR reiterates the orders of the Adjudicating Authority.

4. Heard both sides and perused the appeals records.

5. The whole dispute is regarding irregularities in import through Land Customs Station, Khowaighat under Agartala Customs Division. The Bench on 05.04.2018 directed the ld.DR to file copy of the final enquiry report of the

investigation. On 10.05.2018 copy of the final enquiry report C.No.IV(16)01/Cus/Misc/A&R/15-16 dated 10.04.2018 which runs in 32 pages was submitted. The gist of the statements of the appellants as recorded by issuing summons are as under:

(i) Shri Nitish Ranjan Paul engaged in importation through Khowaighat LCS from March 2010. On his request his bank in India sent Advance TT to his Bangladesh exporter. As stated he had sent around 25 advance TTs during March 2010 to March 2012. His imported commodities were cement/bricks/stone chips etc. He could not produce Bill of Entries for 12 TTs, however he has commercial invoice, packing list etc. against these 12 TTs. He stated that he has not received Bill of Entries for these 12 TTs. He paid Customs duty at the LCS, but sometimes TR-5 challan counterfoil was not given to him.

(ii) Shyamal Ghosh imported cement/crush stone since 2010 against advance TT. About 13 advance TT he had sent to Bangladesh. Some Bill of Entries he produced as proof of import but not all. He stated that Customs Officers had not given all the Bill of Entries. He used to pay Customs Duty in cash against TR-5 Challan, but he had not received the counterfoil of TR-5 Challan.

(iii) Shri Sanjit Ranjan Paul engaged in import business since 2009-2010. He used to import Cement, Plastic Door, Iron Rod, Bricks and stone chips. His bank in India used to sent advance TT on his request. As a proof import he used to produce Bill of Entries, Truck Challan, Commercial Invoice to Banks. He had produced all proof of import to his bank. He used to pay custom duty against TR-5 Challan. For every consignment he had Bill of Entries as proof of import. He is having his Balance Sheet for his business and produced it to the Income Tax

Department every year. He told that BSF used to maintain Gate Register at the gate and always used to take signature of the importer or his agent. Shri Sanjit Ranjan Paul, Importer has sent all relevant documents (self attested) to investigation team at Shillong and could not appear due to his illness. All original Bill of Entries of Shri Sanjit Ranjan Paul, Importer was resumed and another importer Shri Ranjit Kr Paul submitted self certified copies of Bill of entries and original copies of B.E. was resumed. Shri Nitish Ranjan Paul, Importer has submitted self attested copies of Bill of entries as proof of import.

6. The relevant portions of the enquiry report dated 10.04.2018 are worth reproducing.

> *"It is probed beyond doubt with corroborating evidence that all the Bangladesh documents coming along with Import consignments were received by him/them with his dated seal and signature, after that they cleared the import consignment on the same day after doing duty assessment and collecting Customs duty and returned only Bangladesh documents. After that they conveniently put another numbers on the Bill of Export by applying correcting fluid and put another number to show less Import consignment received. As per Bill of entry Register they have not recorded about 75 consignments during 2010, 2011 and 2012 up to February. This fact has to be verified with the overseas enquiry report. The number of imported consignments missing i.e. not recorded in the official reports and quantum of Revenue involved in the missing, non-recorded consignments is to be quantified after receipt of Bangladesh documents.*
>
> *The Sepoy had identified at least 04(four) forged Bill of entries and also identified the handwriting written in the duty realised portion of the Bill of entries but he did not identify the initial there. He had written it in the office itself and the initial put there appears to have been put by one of the three persons at the LCS i.e. Inspector, the Sepoy or the Farash which may be verified by FSL test. He cannot shirk his responsibility in this regard.*
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> *Rule 10(5),(6) and (7) of CCS(CCA) Rule provides that in departmental action, the total period of investigation and disciplinary proceedings should not ordinarily exceed six months.*

In that case the six months period is over in first week of October, 2012. In the instant case the enquiry neither is confined within the Commissionerate nor within the country but a foreign country i..e the exporting country's documents is very vital for a logical conclusion of the case. Therefore, the six months period does not appear to be applicable in this case. Till date nothing has been received from Bangladesh Customs. Therefore the final investigation report is submitted along with available evidence in the case. It is not feasible to delay further for submission of the final report for want of the overseas enquiry report from Bangladesh Customs as one of the suspended officer Shri S.K.Mazumder, Inspector will be superannuating on 31.01.2013"

7. I observe that the enquiry report finally concludes by saying that the enquiry of this case is neither confined within the Commissionerate nor within the country but a foreign country and the exporting country's documents are very vital for logical conclusion of the case. Accordingly the six months period for completion of investigation is not applicable in the said case. As such, till date, nothing has been received from the Bangladesh Customs and hence the final investigation/enquiry report is filed along with available evidences in the case.

8. I find that it is evident from the final enquiry report filed by the Additional Commissioner, Customs and it is quite surprising to note that there is nothing on record in the hands of the officers posted at Khowaighat LCS to prove the case and all documents are only to be obtained from the Bangladesh customs department but most unfortunately till date nothing has been received from the Bangladesh Cusotms. Such plea as adopted herein is not at all tenable in the eye of law.

9. I find that there is nothing on record to show what disciplinary action has been taken by the customs department against the officers who were on duty during the period when such irregularities and infirmities in maintenance of Government records took place.

10. I also find that it is also evident from the final report that the investigation cannot be proceeded with any further until documents pertaining to export are received from Bangladesh Customs Department.

11. I find that the enquiry started in 2012 and final enquiry report was filed in 2018 only and till date the investigation is dormant and in such view of the matter passing such orders which are under challenge are ipso facto bad in law.

12. In view of the above discussions and under the facts and circumstances of the case the impugned orders cannot be sustained and the same are set aside. The appeals filed by the appellants are allowed.

(Pronounced in Court on 14/09/2018)

(Shri P. K. Choudhary)
Judicial Member

Sujoy Singha