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

Customs Appeal No. 76666 of 2018

Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/508/2018 dated 21.02.2018 passed by the Commissioner of Customs (Appeals), Kolkata.

M. S. Glass Traders Pvt. Ltd.
2-A, Kaviraj Row,
Kolkata-700073.

….Appellant (s)

Vs.

Commissioner of Customs (Appeals), Kolkata.
Customs House, 3rd Floor,
15/1, Strand Road,
Kolkata-700001.

….Respondent (s)

Appearance:
Shri B. N. Bandopadhyay, Advocate & Shri Debi Parbat, Advocate for the Appellant (s)
Shri S. Guha, Authorized Representative for the Respondent(s)

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

Date of Hearing:-11 February 2020

Date of Pronouncement: -28th July 2020

FINAL ORDER No. 75375/2020

P.K.Choudhary :

The Appellant is engaged in the business of trading in glass products. In the present case, the Appellant had sold the consignment bearing Bill of Entry No. 418530 dated 07th July 2008 filed by M/s Trade Development Combine to the said importer on High seas. Departmental officers inspected the consignment, which was provisionally cleared on payment of duty, calculated in terms of contemporaneous imports and submission of bank guarantee. Thereafter, the Department conducted an investigation wherein the statements of the Appellant and the CHA were recorded. The importer did not respond to the summons issued by the Department.

Accordingly, Show Cause Notice dated 24.04.2012 was issued to the Importer, the Appellant and the CHA. The Importer failed to file a reply to the said Notice. On the basis of the replies received from the Appellant and the

CHA, the Adjudicating Authority passed the Order-in-Original No.KOL/CUS/ADC/2701/ADJN (PORT)/2012 dated 05.11.2012, whereby he confirmed differential customs duty, interest and penalty as proposed in the Show Cause Notice. On appeal, the Commissioner (Appeals) rejected the appeal of the Appellant. Hence, the present appeal before this Tribunal.

2. Heard both sides and perused the appeal records.

3. I find that it is the case of the Department that the declared value of the consignment in question was much lower than the contemporaneous imports. On the basis of the statement of the CHA, the Department concluded that the Appellant was hand-in-glove with the importer and had intentionally undervalued the goods to evade duty. Accordingly, a penalty of Rs.1,00,000/- has been imposed on the Appellant under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962.

4. I find that the case of the Appellant is that they had been denied an opportunity of personal hearing by the Adjudicating Authority and therefore, the order passed by the Adjudicating Authority was in clear violation of the Principles of Natural Justice. The Appellant further stated that since the very beginning, they had been seeking cross-examination of the CHA, as the entire case of the Department was built on the basis of the statement of the CHA, which was denied to them. Therefore, the Appellant submitted that the denial of opportunity of cross-examination constituted gross violation of their rights. However, it is the Department's contention that the Appellant failed to appear on the schedule date of personal hearing and therefore, the Appellant was prevented from cross-examining the CHA.

Further, the Department has contended that the CHA has stated that the amount of Customs duty payable for the said consignment was given to them by the Appellant by way of a Demand Draft, which was denied by the Appellant. However, I find that the Department has failed to substantiate this contention by bringing on record any evidence to this effect.

5. In the present case, I find that since the statement of Mr. Kuntal Mitra (CHA) has contributed substantially to the case made out by the Department against the Appellant, the Department ought to have granted an opportunity of cross-examination to the Appellant. The process of cross-examination is not a mere empty formality but a part of an assessee's right to put forth a proper defence. The reasoning given by the Department for denying the cross-examination to the appellant, that they failed to appear on the

appointed date is not acceptable in as much as the Appellant had made the request for providing cross-examination at the adjudication stage.

I find that the Hon'ble Gujarat High Court in **Manek Chemicals Pvt. Ltd. v. Union of India** [2016 (334) ELT 302 (Guj.)] has held that cross-examination is an integral part of the Principles of Natural Justice. Therefore, by denying an opportunity of cross-examination to the Appellant, the Adjudicating Authority has acted in violation of the Principles of Natural Justice.

6. In view of the above discussion, the matter is remanded to the Adjudicating Authority to allow the Appellant an opportunity for cross-examination of the CHA and pass an order after considering the evidence on record.

7. The present appeal is disposed on the above terms.

(Pronounced in the open court on. 28 July 2020.)

Sd/-
(P. K. Choudhary)
Member (Judicial))

Tushar Kr.