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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 77599 of 2018

(Arising out of Order-in-Appeal No.02/CUS(A)/GHY/18 dated 19/02/2018, passed by the Ld. Commissioner (Appeals), CGST, Central Excise and Customs, Guwahati-781005 (Assam))

Md. Mustafa Khan
(H. No.-18, Musafir Khana, Islampur, Guwahati-781012, Assam)

Appellant

VERSUS

Commr. of Customs (Preventive), Shillong
(Custom House, 110, M. G. Road, Shillong-793001, Meghalaya)

Respondent

With

(i) Customs Appeal No. 77600 of 2018 (Md Mustafa Khan Vs. Commr. of Customs (Preventive), Shillong (ii) Customs Appeal No. 77601 of 2018 (Md Mustafa Khan Vs. Commr. of Customs (Preventive), Shillong (iii) Customs Appeal No. 77602 of 2018 (Md Mustafa Khan Vs. Commr. of Customs (Preventive), Shillong

(i) (Arising out of Order-in-Appeal No.03/CUS(A)/GHY/18 dated 19/02/2018, passed by the Ld. Commissioner (Appeals), CGST, Central Excise and Customs, Guwahati-781005 (Assam))

(ii) (Arising out of Order-in-Appeal No.01/CUS(A)/GHY/18 dated 09/02/2018, passed by the Ld. Commissioner (Appeals), CGST, Central Excise and Customs, Guwahati-781005 (Assam))

(iii) (Arising out of Order-in-Appeal No.04/CUS(A)/GHY/18 dated 19/02/2018, passed by the Ld. Commissioner (Appeals), CGST, Central Excise and Customs, Guwahati-781005 (Assam))

APPEARANCE :
Mr. Sanjib Das, CA for the Appellant
Mr. Tariq Suliaman, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75369-75372/2024

Date of Hearing : 28 February 2024
Date of Decision: 28 February 2024

PER R. MURALIDHAR:

The Customs (Preventive), Shillong intercepted 4 trucks and noticed that total 53 Cattle Heads were being transported and seized the same.

Customs Appeal Nos. 77599-77602 of 2018

Detailed investigation was carried out. On the ground that the Cattle heads were being transported so that they are ultimately smuggled to Bangladesh, Show Cause Notice was issued to the owner of the Cattle Heads, Md. Mustafa Khan who is the Appellant in all the four Appeals. Proceedings were initiated truck-wise. Therefore, four Show Cause Notices were issued and after due process four Orders in Original were passed. The Adjudicating Authority confiscated the Cattle Heads giving option to the Appellant to redeem the same on payment of Redemption Fine. He also imposed penalty of Rs. 50,000/- in each of the OIOs passed.

2. Being aggrieved, the Appellant filed their Appeals before the Commissioner (Appeals). The Commissioner (Appeals) after due process dismissed the Appeals. Therefore, the Appellant is before the Tribunal.

3. The relevant details are as per the following table:-

SI No.	Truck No.	Appeal No.	Duty Amount	Penalty amount
01.	AS-01-BC-0588	C/77599/2018	15 cattles= 1,20,000/-	50,000/-
02.	AS-01-AC-2258	C/77600/2018	13 Heads= 1,04,000/-	50,000/-
03.	ML-04-9256	C/77601/2018	13 Heads= 1,04,000/-	50,000/-
04.	AS-01-T-9357	C/77602/2018	12 Heads= 96,000/-	50,000/-

4. The Learned Chartered Accountant appearing on behalf of the Appellant submits that the Department has not brought in any evidence to show that the Cattle Heads were actually being transported to Bangladesh. All the recorded Statements of various persons have confirmed that the Cattle heads were being sent to Aizawl or Gumrah (Assam). There is no Confession Statement given by any person to the effect that the Cattle Heads were being smuggled to Bangladesh. Therefore he submits that the entire investigation has been taken up on presumptions and assumptions

without any corroborative evidence. Accordingly, he prays that the present Appeals may be allowed.

5. The Learned AR takes me through the Show Cause Notice and OIO. He points out that the trucks drivers were carrying Challans showing that the goods were being transported by M/s. Benjamin Wallang, Civil & Army Contractor & General Order Supplier, 'Orion View, Red Hill Road, P.O. Laitumkhrah, Shillong. He was shown as the consignor and the consignee is Shree K. K. Mamuna, Aizawl, Mizoram. On investigation, it has been found that Benjamin Wallang had expired long time back in the year 2001 and his wife has confirmed that they have closed this firm and no transaction was being carried out by her under this firm name and this Challan was not issued by them.

6. The Learned AR submits that the Appellant was deliberately transporting the cattle with the help of a fraudulent Challan and not by way of normal challan which should have been issued by him in case he was the consignor. Therefore, he justifies the confiscation of Cattle Heads and penalties imposed on the Appellant.

7. Heard both sides and perused the Appeal papers and relevant documents.

8. I find that at the time when the trucks were intercepted, the drivers were carrying the Challan purported to be consigned by Benjamin Wallang, Civil & Army Contractor & General Order Supplier, dispatching the same to K. P. Mamuna, of Aizawl. The truck drivers have stated in the recorded Statement that the consignment was booked by present Appellant Md. Mustafa Khan and was to be delivered at Gumrah (Assam). Subsequently the wife of Mr. Benjamin Wallang in her Statement stated that Mr. Benjamin Wallang had expired on 20/11/2001 and his business was closed immediately thereafter. The purported buyer Mr. K. P. Lalmunawana has initially given a Statement that he has placed order on Md. Mustafa Khan at

Guwahati for delivery of 53 Cattle Heads. He has also submitted that he holds the permit to deal in such cattle sales & purchase transactions for which Licence has been issued by the Government of Mizoram. Subsequently, this Person Shri K. P. Lalmunawna has retracted the Statement and has stated that he has not placed the Order on Md. Mustafa Khan for the Cattle. However, he has stated that he has been dealing for Mustafa Khan for supply of Cattles from time to time.

9. On going through the Grounds on which the present proceedings were initiated against Md. Mustafa Khan, the relevant portion of SCN reads as under;-

> *viii. Md. Mustafa Khan, Joynul Ali @ Joynul Haque have stated that the said <u>cattle would be transshipped at Gumrah (Assam) and sent to Aizawl, Mizoram and the Challan found in the seized vehicle covering the cattle also showed that the truck was going to Aizawl. However, the driver of the said truck in his statement has mentioned that the said cattle would be unloaded at Gumrah (Assam)</u>. He never stated that the said cattle would be transshipped at Gumrah and then sent to Aizawl. Therefore, the question of transshipment cattle at Gumrah (Assam), does not arise at all. Therefore, it is proved beyond doubt that Md. Mustafa Khan and Md. Joynul Ali have taken the plea of transshipment at Gumrah (Assam) to escape penal provisions under Customs Act, 1962.*

10. A careful reading of the above details shows that the truck was intercepted within India and as per the documents, the Cattle were to be transported to Aizwal and as per the drivers, they were to be delivered at Gumrah. Neither the drivers nor Md. Mustafa Khan or any other person has stated that ultimately the Cattles were to be smuggled to Bangladesh. Even the purported buyer Shri K. P. Lalmunawna has told that he has proper license to deal with livestock and has been having regular business transaction with Md. Mustafa Khan. Therefore, it is not known as to how the Revenue would have directly come to a conclusion that the Cattle Heads

were being smuggled to Bangladesh with no proper corroborative evidence whatsoever. Therefore, I find that the impugned orders are not sustainable in respect of the confiscation Order for the seized Cattles. Hence, I set aside the Confiscation Order in respect of the confiscated Cattle Heads.

11. So far as the penalties imposed on Md. Mustafa Khan is concerned, I find that he has fraudulently used the Challan belonging to the some other party so as to conceal his own identity when the Cattle Heads were being transported. Because of his such an action, not only cattle were seized but also the transporting trucks have been seized and confiscated and penalties have been imposed on the truck owners and truck drivers. For the action taken in respect of the truck owners and drivers, the present Appellant should be held fully responsible. Therefore, I am not inclined to interfere with the penalties imposed in all the four Appeals. I dismiss the prayer to set aside the penalties imposed on them.

12. As consequence, the Appellant would be eligible to get the value of the confiscated Cattle and Department will recover the penalty amount from this amount and pay the balance amount to the Appellant.

13. The Appeals are disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja