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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75544 of 2014

(Arising out of Order-in-Original No. KOL/CUS/PORT/27/2014 dated 31.03.2014 passed by the Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700 001)

M/s. Jaiswal Import Cargo Services Limited **: Appellant**
4 No: Commercial Building, 1st Floor,
J.J. Complex, 23, Netaji Subhas Road,Kolkata – 700 001

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 2nd Floor, 15/1, Strand Road,Kolkata – 700 001

APPEARANCE:

None for the Appellant

Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75846 / 2024

DATE OF HEARING / DECISION: 01.05.2024

Order : [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order for imposition of penalty of Rs.3,00,000/- under Section 112(b) of the Customs Act, 1962 on the allegation that they have not complied with the provisions of the Customs House Agents Licensing Regulation (CHALR), 2004 and for not making true and correct declaration while filing the Bill-of-Entry.

2. The facts of the case are that M/s. Eagle International, New Delhi imported one consignment and filed the Bill-of-Entry on 08.11.2012 through the appellant for clearing the goods declared as 61520 pieces of "Water Purifier Spare Parts" declared at the rate of USD 12764.80 (CF) equivalent to Rs.6,96,320/- (CF). The goods were assessed in the

Assessing Group on the basis of invoices submitted by the importer and the declaration made in the Bill-of-Entry after enhancing the values of two out of the five items as amplified in the Bill-of-Entry. The importer paid the duty as assessed.

3. In the meantime, intelligence was gathered by the Special Investigation Branch to the effect that certain unscrupulous importers were importing water filter parts by mis-declaring the description of the goods and resorting to gross undervaluation so as to evade huge Customs duties. Therefore, the impugned consignment was taken for investigation and on examination of the goods at docks, it was noticed that the goods were grossly mis-declared in terms of their value and description.

3.1. Accordingly, proceedings were initiated against the importer as well as the appellant and vide the impugned order, it was alleged against the appellant that they had not verified the antecedents of the importer and had failed to comply with the provisions of the CHALR, 2004. Therefore, a penalty of Rs.3,00,000/- was imposed on the appellant.

4. Aggrieved from the said imposition of penalty, the appellant is before us.

5. Today when the matter was called for hearing, none appeared on behalf of the appellant nor was there any request for adjournment received from them.

6. The Ld. Authorized Representative for the Revenue submitted that during the course of investigation, it was alleged that the appellant was engaged in the activity of undervaluation and mis-declaration of the goods in question and the importer

was not traceable, but later on, the appellant was able to provide the details of the importer, who ultimately appeared before the authorities and joined the investigation.

7. After hearing the Ld. Authorized Representative for the Revenue, a query was made to the Ld. Authorized Representative as to whether any proceedings had been initiated against the appellant herein under the provisions of the CHALR, 2004 or not, which was answered in the negative.

7.1. We observe that it is alleged that the appellant has contravened the regulations under the CHALR, 2004, whereas the penalty has been imposed on them under Section 112(b) of the Customs Act, 1962. As no proceedings have been initiated against the appellant for violation of the regulations under the CHALR, 2004, therefore, we hold that no penalty can be imposed on the appellant under Section 112(b) of the Customs Act for violation of the provisions / regulations of the CHALR, 2004. In that view, we hold that the penalty imposed on the appellant is not sustainable.

8. Accordingly, the impugned order *qua* imposition of penalty on the appellant is set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd