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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 142 of 2009

(Arising out of Order-in-Original No.07/CUS/CC/ADJN/RXL/08 dated 13.01.2009 passed by Commissioner of Customs, Patna)

Shri Vyas Prasad, S/o Shri Jokho Ram,
(57, Naga Road, Raxaul)

Appellant

VERSUS

Commr. of Customs, Patna
(Birchand Patel Path, Central Revenue Building, Patna)

Respondent

With

(i) Customs Appeal No. 143 of 2009 (Binda Yadav Vs. Commr. of Customs, Patna) (ii) Customs Appeal No. 144 of 2009 (Umesh Prasad Vs. Commr. of customs, Patna), (iii) Customs Appeal No. 146 of 2009 (Kanti Prasad Vs. Commr. of Customs, Patna) (iv) Customs Appeal No. 147 of 2009 (Umesh Sah Vs. Commr. of Customs, Patna

(i-iv) (Arising out of Order-in-Original No.07/CUS/CC/ADJN/RXL/08 dated 13.01.2009 passed by Commissioner of Customs, Patna)

APPEARANCE :

Mr. N. K. Chowdhury, Advocate for the Appellant
Mr. S. Chakraborty, Authorized Representative for the Respondent

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

FINAL ORDER NO. 76218-76222/2024

Date of Hearing : 26/06/2024
Date of Decision: 26/06/2024

PER R. MURALIDHAR:

These Appeals were filed in 2009. The main issue in this case is that of seizure and confiscation of 170.835 Metric Tons of pulses valued at Rs. 52,29,772/-. The Appellants hereunder have filed the Appeal being agitated by the penalties imposed on him. The penalties imposed on the Appellants are as under:-

SI No.	Appeal No.	Appellant	Penalty (in Rs.)
1.	Vyas Prasad	C/142/2009	50,00,000/-
2.	Umesh Prasad	C/144/2009	30,00,000/-
3.	Kanti Prasad	C/146/2009	20,000/-
4.	Binda Yadav	C/143/2009	20,000/-
5.	Umesh Sah	C/147/2009	20,000/-

2. On the main noticee, Shri Naval Singh, a penalty of Rs. 70,00,000/- has been imposed and on another co-noticee, Shri Deosharif Ansari a penalty of Rs. 30,00,000/- has been imposed. Both of them have filed Writ Petitions before the Hon'ble High Court of Patna. As per the enquiries taken up by the office of the AR, as on date these Appeals are still pending at the High Court.

3. In respect of the Appellant, Vyas Prasad (C/142/2009), he had also approached Patna High Court wherein the High Court had directed him to take up the matter before the Tribunal.

4. This Tribunal vide Stay Order No. S-446-452/KOL/2009 imposed a penalty of Rs. 3,00,000/- on Vyas Prasad which has already been deposited by him. In respect of the Kanti Prasad (C/146/2009), Binda Yadav (C/143/2009) & Shri Umesh Sah (C/147/2009), taking into consideration that they were only employees, full pre-deposit waiver was granted by the Tribunal vide Stay Order dated 14/10/2009.

5. This matter has been pending for more than 14 years and in order to give a proper closure to the pendency, the Appeals filed by the above Appellants are listed today for hearing, with the consent of the Learned AR and the Learned Counsel.

6. The Learned Counsel appearing on behalf of the Appellants submits that the main kingpin in the entire episode are M/s Naval Singh and Deosharif Ansari. Both of them have filed the Writ Petitions before the Hon'ble Patna High Court and are not pursuing the case, because of which the present Appellants are suffering since the penalties have been confirmed against them. He submits that Vyas Prasad is only the owner of the godown and no case was made out about any role played by him in the smuggling activity in connivance with Naval Singh and Deosharif Ansari. He submits that after taking into consideration these facts, the Tribunal was kind enough to waive the entire pre-deposit when the Appeal had come up for Stay hearing. In respect of the Kanti Prasad, Umesh Sah & Shri Binda Yadav, he submits that they are employees of firm and were not in any way involved in the alleged smuggling activities. In respect of the Umesh Prasad, he submits that no concrete case has been made out by the Department to allege that he had connived with Shri Naval Singh and Shri Deosharif Ansari. Hence, he submits that the penalty of Rs. 30,00,000/- is quite harsh him. The appellants are not in a position to properly defend their cases but they have appeared and made out their case today opposing the penalty imposed on them. In view of the above, he prays that the penalty imposed on the five Appellants may be set aside.

6. The Learned AR submits that after the detailed investigation, it was found that pulses with the value of Rs. 52,29,772/- were being smuggled to Nepal and the Appellants were involved in one way or other in the smuggling activity. Therefore, he justifies the penalties imposed on them.

7. Heard both sides and perused the Appeal papers and other relevant documentary evidence.

8. Admittedly the two main noticees, Naval Singh and Deosharif Ansari have been avoiding attending the hearings before this Tribunal by conveniently filing the Writ Petitions before Patna High Court and are not even pursuing the Writ Petitions because of which the other Appeals have been kept pending for the last more than 14 years.

9. In case of Shri Kanti Prasad, Shri Umesh Sah and Binda Yadav this Bench had gone into the roles while hearing the Stay Petitions and has held as under:-

> *7. "In respect of Shri Vyas Prasad, we find that he is only owner of the property where Kuber Bhandar is situated. <u>Shri Kanti Prasad, Shri binda Yadav and Shri Umesh Sah are only employee of Shri Naval Singh. Therefore, after taking facts and circumstances of the case, the pre-deposit of penalties imposed on these applicants are waived for hearing of the Appeal and recovery of the same is stayed during pendency of the Appeal. The Stay Petitions filed by Shri Vyas Prasad, Shri Kanti Prasad, Shri Umesh Sah are allowed unconditionally." [Emphasis supplied]</u>*

10. Keeping in view taken by the Bench at the time of Stay Hearing, we do not see any merit in the penalties imposed on these Appellants. Accordingly we set aside the penalties imposed under the OIO and allow their appeals. [Appeal No. C/142/2009, C/146/2009, C/143/2009 and C/147/2009]

11. In respect of the Umesh Prasad (C/144/2009), this Bench while hearing the Stay Petition has given the following findings:-

> *"6. We find that in this case six trucks loaded with pulses valued at Rs.52,29,772/- (Rupees Fifty Two Lakhs Twenty Nine Thousand Seven Hundred and Seventy Two only) were confiscated on the ground that the same were for smuggling to Nepal. Pulses are prohibited item for export. The drivers of the trucks during investigation gave detailed statement to the effect that they were directed to stand near petrol pump and to get further instruction from Shri Umesh Prasad, Applicant and Shri Deosharif Ansari, Applicant and one of the drivers also disclosed that the trucks were to be unloaded at a village which is one kilometers away from Indo-Nepal border and the pulses were to be further transported to Nepal by tractors. Further, we find that adjudicating authority also find that there are major discrepancies in the accounts of Kuber Bhandar and also showing the receipt of money from Nepal. The case law relied upon by the Applicants will not help the case of the Applicants and these decision are on the basis of*

different facts. In these circumstances, we find it is not a fit case for total waiver of penalties imposed on Shri Naval singh, Shri Umesh Prasad and Shri Deosharif Ansari. Only financial hardship pleaded by the Applicants is that the pre-deposit of amounts of penalties will cause undue hardship. Keeping in view the facts and circumstances of the case and financial hardship the Appplicant Shri Naval Singh, Shri Umesh Prasad and Shri Deosharif Ansari are directed to deposit an amount equal to 10% of the penalties imposed on the Applicants within eight weeks. On deposit of the above-mentioned amount the pre-deposit of remaining amount of penalties are waived and recovery of the same is stayed during pendency of the appeal."

[Emphasis supplied]

12. From the above notings of the Tribunal, we find that Umesh Prasad was found to be acting along with Naval Singh and Deosharif Ansari in the entire transaction. Considering these facts, this Bench had directed him to pre-deposit 10% of the penalty amount of Rs. 30,00,000/-. We find from the records that the Appellant has pre-deposited Rs. 3,00,000/-.

13. The above noting of the Tribunal says that the Umesh Prasad had played some role in the entire episode. However, considering the fact that the value of the confiscated goods amounts to Rs. 52,29,772/-, we take the view that penalty of Rs. 30 lakhs imposed is not commensurate with the role played by him. We reduce the penalty to Rs. 3 lakhs on the Umesh Prasad which stands paid by him as pre-deposit. Thus, the Appeals stands partly allowed in the case of Umesh Prasad.

14. The appeals are disposed off in the above terms.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja