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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75888 of 2024

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/KS/109,110/2024 dated 20.02.2024 passed by Commissioner of Customs(Appeals), Kolkata)

M/s. Impressive Cargo Logistics **: Appellant**
15, Bompass Road, 3rd Floor, Kolkata-700 029

VERSUS

Commissioner of Customs, Kolkata. **: Respondent**
15/1, Strand Road, Kolkata-700 001.

With

Customs Appeal No. 75889 of 2024

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/KS/110/2024 dated 20.02.2024 passed by Commissioner of Customs(Appeals), Kolkata)

Shri Abhijit Basu **: Appellant**
Proprietor of M/s. Impressive Cargo Logistics
15, Bompass Road, 3rd Floor, Kolkata-700 029

VERSUS

Commissioner of Customs, Kolkata. **: Respondent**
15/1, Strand Road, Kolkata-700 001.

APPEARANCE:

Dr. S.K.Mohapatra & Mr. Sudipta Ghosh, Advocates for the Appellant

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO.77108-77109 / 2024

DATE OF HEARING :06.09.2024

DATE OF DECISION:06.09.2024

Order : [Per Shri Ashok Jindal]

The appellants are in appeal against the impugned order wherein penalty of 75,000/- each has been imposed on the main appellant being Custom Broker under Section 114 AA of the Custom Act and its proprietor under Section 114 (iii) of the Customs Act, 1962.

2. The facts of the case are that it was alleged against the appellants that the appellants have filed shipping bills on behalf of the exporter M/s. Bagaria Aluminium Alloys Pvt. Ltd. for export and declared the goods as 'Part of Section Rolling Mills' by claiming reward under RODTEP scheme but on examination, it was found that the goods are rusty and used though specific declaration was not made in any of the export documents.

3. In that circumstances, it was alleged that the exporter has misdeclared the goods and the appellant has filed the shipping bills for export of the said goods alleging that they are having the knowledge that the goods in question are "Old and Used Parts of Section Rolling Mill". Therefore, they have willfully misdeclared the description of goods and value thereof.

4. In that circumstance, the Show Cause Notice was issued to the appellants under the Custom Act, 1962 to impose penalties and by the way of impugned order penalties were imposed of Rs. 75000/- on each of the appellants.

5. Against the said order, appellants are before me.

6. The Ld. Counsel appearing on behalf of the appellants submits that the Custom Broker is a proprietorship concern in the name of M/s. Impressive Cargo Logistics. Therefore, no penalty can be imposed on its proprietor.

7. Therefore, penalty imposed on the proprietor, the appellant No. 2 is to be set aside.

8. With regard to imposition of penalty on the Custom broker this is his contention that in past also, the appellant had filed the Shipping Bills and goods were tested and found to be "Old and Used Parts of Section Rolling Mills" but were allowed to be exported.

9. In that circumstances, as the Department itself is allowing the export of the said goods and did not find any discrepancy therefore, no penalty is imposable.

10. On the other hand, Ld. Authorized Representative supported the impugned order.

11. Heard the parties and considered the submission.

12. I find that it is a fact on record that in past also the said exporter is declaring the said goods as 'Part of Section Rolling Mills' which was found actually on examination as 'Old and Used parts of Section Rolling Mills' and were allowed to be exported.

13. In that circumstances allegation of misdeclaration and undervaluation by the appellant does not survive. Therefore, I hold that no penalty is imposable on the appellants. Accordingly, the penalties imposed on the appellants are set aside.

14. In these terms, appeals are allowed.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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