IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/87434/2017

[Arising out of Order-in-Original No: PCCP/ADJ/AKJ/01/2017 dated 22nd June 2017 passed by the Commissioner of Customs (Preventive), Mumbai.]

Ashok T Sadrangani …*Appellant*

versus

Commissioner of Customs (Preventive)
Mumbai ***…Respondent***

Appearance:

Shri Prasad Paranjape, Advocate for appellant

Shri Sandeep R Nair, EO (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 04/12/2017
Date of decision: 04/12/2017

ORDER NO: ____________________________

Appellant is before the Tribunal for the second time seeking to quash the penalties imposed upon him under section 112 of Customs Act,1962 for alleged participation in the illicit import of cigarettes and other consumable goods by his alleged presence at the time of re-packing after clearance of the goods. On the earlier occasion the matter was remanded back to the original authority with the specific direction that

> *'7.6 The de-novo adjudication qua the appellant shall be conducted in accordance with law after supplying him a copy of the show cause notice and all the relied upon documents which shall also include these statements. The Appellant shall be granted sufficient opportunity to file his reply to the show cause notice. Thereafter, the matter shall be adjudicated expeditiously after complying with the principles of natural justice. The appellant shall cooperate in the adjudication proceedings.'*

2. It is the contention of Learned Counsel for the appellant that, in accordance with the directions of the Tribunal, they had been provided with the relied upon documents following which they had sought cross-examination of witnesses who had deposed against the appellant. It is his contention that as the entire case against the appellant has been built on these statements, the defence should have been allowed the cross-examination which was denied to them.

3. Learned Authorised Representative contends that the adjudicating authority has elaborated upon the role of the appellant and has also recorded his conclusion that the appellant had not furnished adequate justification for cross-examination which, in accordance with section 139 of Customs Act, 1962, suffices for proceeding with the adjudication without granting that opportunity. Learned Authorised Representative also pointed out that the request for cross-examination was not specific as all the witnesses, who had been subject to deposition under section 108 of the Customs Act, 1962, were called for by appellant.

4. Taking note of the rival submissions, and on perusal of the records, it is seen that the appellant has indeed been vague in justifying the objective for cross-examination of witnesses. However, it is the further submission of the appellant that only two witnesses are germane to the case made out against him. In view of this limited request, it would be only be appropriate that the adjudicating authority should allow cross-examination of these two as provided in section 138B of Customs Act, 1962. Furthermore, it is seen from the impugned order that penalty has been imposed on the appellant under both sections 112(a) and 112(b) of Customs Act, 1962. Section 112(a) and 112(b) are mutually exclusive provisions contingent upon the nexus with the goods and, therefore, the imposition of penalty under both sections is also not legal and proper.

5. In view of the above, the impugned order is set aside and the matter remanded back to the adjudicating authority to decide the matter afresh after granting the request of the appellant for cross-examination of Shri Shailesh K Thakker and Shri Rajesh Hemandas Bhagia.

6. Appeal is disposed off as above.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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