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

Appeal No. C/86180 & 86181/2013

(Arising out of Order-in-Original No. CCP/ADJ/APSS/03/2012 dated 17.12.2012 passed by Commissioner of Customs, Mumbai)

Shri Kishore Narayan Bambale **Appellant**
Shri Rajendra Manjenath Chandekar

Vs.

Commissioner of Customs (Prev.) **Respondent**
Mumbai

Appearance:

Shri A.M. Sachwani, Advocate for appellant
Shri M.K. Mall, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 23.07.2018

FINAL ORDER NO. A/87231-87232/2018

Per: S.K. Mohanty

Heard both sides and examined the case records.

2. Imposition of penalties on the appellants is the subject matter of the present dispute. Penalties were imposed on the appellants on the ground that four original post parcels were changed to dummy post parcels, which brought illicit goods from abroad. The department proceeded against the appellants on the ground that they were involved in smuggling activities. Proceedings were initiated against the appellants on the basis of statements dated 05.06.1999 recorded from Shri Dattu Govind

Wankhede, Driver of post parcel van No. MH-01-H-1649 and Shri Rajendra Rawjee Naik, Postal Hamal of Foreign Post Office. On perusal of the statements furnished by those two witnesses before the learned Additional Chief Metropolitan Magistrate, Mumbai and observations recorded on 11.04.2016 by learned CMM, I find that those two witnesses retracted their statements recorded earlier before the DRI officers. Further, I also find that cross examination of witnesses specifically requested for by the appellants in the reply to show cause notice has not been acceded to by the adjudicating authority. From other materials available on record, I do not find any plausible evidence being produced by the Revenue to decide the case against the appellants. Since statute mandates that sufficient and cogent evidences should be produced by the department for invocation of penal provisions, which in my considered opinion, in this case, is absent, I am of the view that penalties imposed on the appellants cannot be sustained for judicial scrutiny.

3. Therefore, I do not find any merits in the impugned order, so far as it imposed penalties on the appellants. Accordingly, after setting aside the penalties, the appeals are allowed in favour of the appellants.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk