CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 925 of 2009

[Arising out of Order-in-Original No: 87/2009-CC(Imp)/JNCH dated 1st May 2009 passed by the Commissioner of Customs (Import), Nhava Sheva.]

Moin Heera … ***Appellant***
238 Abdul Rehman Street, Room No. 5, 2nd floor, Mumbai

versus

Commissioner of Customs (Import) ***…Respondent***
Pune – II

APPEARANCE:

Shri MS Murthy, Advocate for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE DR D M MISRA, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/88446 / 2018

DATE OF HEARING: 08/10/2018
DATE OF DECISION: 08/10/2018

PER: C J MATHEW

M/s Moin Heera is in appeal against imposition of penalty of ₹3,00,000/- under section 114AA of Customs Act, 1962 following proceedings initiated, and completed, against M/s Yash Trading Company for importation of goods against bill of entry no. 663235/03.10.2008 that were intercepted before clearance and earlier imports against bills of entry no. 615290/29.09.2008, 606048/16.09.2008 and, 624899/29.09.2008 for a total value of ₹13,90,746.

2. According to Learned Counsel for the appellant, it was alleged that the imports were effected by the appellant herein in the name of M/s Yash Trading Company to suppress the correct value with intent to evade duty. The findings were based on statements of the proprietor of M/s Yash Trading regarding consultation with the appellant at every stage of documentation and investment in the imported goods.

3. Learned Authorised Representative submits that the evidence overwhelmingly justifies the imposition of penalty against the appellant. However, on perusal of the relevant portion of the order, we find that there is a contradiction; on the one hand it is asserted that the proposed valuation under Customs Act, 1962 cannot be sustained and that the actions of the appellant, in relation to the impugned goods, could well be normal financial transactions but at the same time, the original authority has identified the appellant as the person with most interest and highest stakes in the investment of the impugned goods and, thus, motivated to encourage the proprietor of M/s Yash Trading in starting the business and obtaining of the

necessary documents. In the context of the glaring inconsistency, we are not inclined to sustain the imposition of penalty on the appellant.

4. Therefore, we set aside the impugned order and allow the appeal.

(Pronounced in open court)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as030610061707*