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

CUSTOM APPEAL NO.85084/2018

(Arising out of Order-in-Appeal /Original No. COMMR/AKG/05/2017-18/ADJN ACC (X) dated 22.05.2017 passed by the Commissioner of Customs – IV (Export), Mumbai)

DIPAK DATTA : **Appellant**
132 Daspara Road, Thakurpukur,
Kolkatta 700 063

VS

C.C. MUMBAI (AIR CARGO EXPORT) : **Respondent**
Air Cargo Complex,
Sahar Andheri (E),
Mumbai, Maharashtra

Appearance

None for Appellant

Shri M. K. Sarang ADC(AR) for Respondent

CORAM:

Hon'ble Shri P Anjani Kumar, Member (Technical)

FINAL ORDER NO. A/86382/2019

Date of hearing : 06.08.2019
Date of decision : 06.08.2019

Per : **P Anjani Kumar, Member (Technical)**

On going through the records of the case, it is seen the case was listed on various occasions i.e. 23.03.2018, 20.04.2018, 18.05.2018, 20.07.2018, 10.09.2018, 19.11.2018, 07.01.2019, 11.02.2019, 25.03.2019, 25.04.2019 & 18.06.2019.

2. On going through the records of the case, it is further seen that the Appellant vide letter dated 07.02.2019 have requested for disposal of the matter in terms of the letter submitted by him. Wherein he contents that he was a Manager of the CHA firm i.e. M/s. R. S. Aurunachalam which is a proprietorship concern to proprietor who passed away on 13.03.2013. The business of the firm has stopped and they have no money to pay to the Advocate. They relied upon the following cases:

i) World Cargo Moves v/s. CC Custom, New Delhi 2002(139) ELT 408 (Tri. Delhi)

ii) Surajit Bakshi V/s. CC Preventive, Mumbai 2007 (209) ELT 111 (Tri. Mum)

iii) Shah and Mehta v/s. Commissioner of Customs, Mumbai 2005 (192) ELT 928 (Tri. Mum)

iv) CCE Chandigarh v/s. Shree Ambika Steel Industries 2013 (288) ELT 420 (Tri. Delhi)

3. Learned AR for the Revenue submits that the role of Shri Dipak Datta has been discussed in the OIO in elaborate manner. Learned Commissioner has observed that Shri Manish Amlani, Shri Sudham Haribhau Bhor and Shri Dipak Datta look a

fter customs clearance of the import affected in the names of Shri Mahavir Industries and Shri Anupam Industries as per various post these three people were aware that Shri Sunil Gupta was actual owner of the said firm even though his name was not mentioned in any of the documents. They did not take any step to ascertain the exact nature and genuineness of the documents or the consignment imported by the said firm which resulted in the evasion of duty by way of misuse of exemption Notification 25/99 Custom 28.02.1999. On going through the records of the case we find that the Appellants have not submitted any new facts to defend himself except stating that he was a Manager of CHA firm which is not functioning after the death of the proprietor.

4. We find that factual circumstances of the instant case are different from the case law submitted by the Appellant. I find that the same may not be of any rescue to the Appellant. I find that the role of the Appellant is established in the Act of commission and omission on the part of Shri Sunil Gupta. However, looking in the request of the Appellant made on the basis that his financial position is not sound also considering and the fact that he was only an employer of the CHA, I am inclined to reduce the penalty to Rs.50,000/-. The appeal is disposed on the above terms.

(Order dictated and pronounced in open court)

(P Anjani Kumar)
Member (Technical)

HM