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

REGIONAL BENCH – COURT NO.I

CUSTOM APPEAL NO. 86267 of 2013

(Arising out of Order-in-Original No.89/2012/CAC/CC(I)/AB/VI dated 28.12.2012 passed by The Commissioner of Customs (Import), Mumbai)

Shri Prakash Chandra Pandya : **Appellant**
Room No.504, 5th Floor, Shree Siddhi Apartments,
Bal Rajeshwar Road, Mulund (W)
Mumbai 400 080

VS

Commissioner of Customs (Import), Mumbai : **Respondent**
New Customs House, Ballard Estate,
Mumbai 400 001

WITH

1) **CUSTOM APPEAL NO. 86268 of 2013 (Shri Nandgopal Naidu)**

   (Arising out of Order-in-Original No.89/2012/CAC/CC(I)/AB/VI dated 28.12.2012 passed by the Commissioner of Customs (Import), Mumbai)

2) **CUSTOM APPEAL NO. 86269 of 2013 (Shri Prakash Chandra Pandya)**

   (Arising out of Order-in- Original No.2/2012/CAC/CC(I)AB/VI dated 04.01.2013 passed by the Commissioner of Customs (Import), Mumbai)

3) **CUSTOM APPEAL NO. 86505 of 2013 (M/s. Estelle Impex & its Proprietor Stalin Dayanand**

   (Arising out of Order-in- Original No.CAO No.2/2012/CAC/CC(I)AB/Gr.VI dated 04.01.2013 passed by the Commissioner of Customs (Import), Mumbai)

Appearance

Shri Anil Balani, Advocate for Appellant

Shri Dharmendra Singh, Supdt. (A.R.) for Respondent

CORAM:

Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

ORDER NO. A/86457-86460/2019

Date of hearing : 09.08.2019
Date of decision : 09.08.2019

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

Brief facts of the case are that the officers of Customs preventive Mumbai received the information that Shri Prakash Chandra Pandya and Nandgopal Govind Swami Naidu (aka Gopi Naidu) were importing different Gym equipment through M/s Estelle Impex and were evading customs duty by undervaluation and misdeclaration of the goods. Accordingly business premises of M/s. CNG & Co. and Shrinath Enterprises were searched alongwith the premises of M/s. Telebrands. Different goods worth about 1.80 Cr. were detained at the premises on 18.04.2006 M/s. CNG & Co., M/s. Shrinath Enterprises, M/s. Rico Gems Corporation and M/s. Tele Products on 18.04.2006 and 04.05.2006. Investigation were conducted and show cause notice was issued to M/s. Tele-brands India Pvt. Ltd., M/s. Shrinath Enterprises and were adjudicated vide orders in Original dated 27.11.2012 and 03.12.2012. On the same investigation and set of evidences show cause notices dated 06.04.2010, on alleged undervaluation of imported cutting blades, was also issued to M/s. Estelle Impex, Shri Dayanand Stalin, (Proprietor of M/s. Estelle Impex), Shri Prakash Pandya (Partner of M/s. CNG & Co.), Nandgopal Naidu and Niranjan Putran (Proprietor of Swastik Shipping Agency, CHA) seeking to enhance the assessable value declared, confirming differential duty alongwith interest while proposing to impose penalty on Prakash Pandya, (partner of M/s. CNG & Co.), Dayanand Stalin (Proprietor of M/s. Estelle Impex), Nandgopal Naidu and Niranjan

Putran (Proprietor of Swastik Shipping Agency, CHA). The Show Cause Notice was confirmed by OIO No.02/2013 dated 04.01.2013. Appeals Nos. C/86505/2013 (Estelle Impex and Proprietor Dayanand Stalin); C/86267/2013 (Prakash Chandra Pandya); C/86268/2013 (Nandgopal Naidu) and C/86269/2013 (Prakash Chandra Pandya) were filed.

2. Learned Counsel for the Appellants submits that the proceedings against M/s. Tele-brands on conclusion of same investigation and same set of evidences have reached CESTAT and CESTAT Mumbai vide its order A/3917 to 3925/2015 – WZB/CB dated 04.12.2015 has set aside the impugned order therein which relied upon identical / similar set of evidence. The evidence relied upon by the Commissioner is email of Prakash Pandya; NIDB data and retracted statement of Shri Prakash Pandya. The CESTAT has already rejected the evidence in the case of Tele-brands (India) Pvt. Ltd and Rico Gems. The said order was not challenged by the department, hence it attained finality and is binding. Learned Counsel submitted that the impugned order imposes penalty under Section 114AA which was introduced w.e.f. 13.07.2006 and was not in existence when the Bill of Entry was filed on 15.05.2006. He further submitted that CESTAT in the case of Bosch chassis E-System India Ltd. 2015 (325) ELT 372 T has struck down penalty under Section 114AA.

3. Learned Authorised Representative for the department has reiterated the findings in the OIO.

4. Heard both sides and perused the records of the case. The Learned Counsel for the Appellants submits that the investigation into the impugned case is offshoot of investigation conducted against CNG & Co. and Tele-brands India Pvt. Ltd. The evidence relied upon by the department is identical/similar. Therefore, following the ratio of tribunal judgement in Tele-brands India Pvt. Ltd (supra) the impugned order may be set aside. We have gone through the records of the case and find that the investigation involves same set of evidence and persons. The investigation relies heavily on email purported to have been sent by Shri Prakash Pandya. We find that Tribunal in the case of Tele-brands (supra) has held that

> *7. We observed that the department heavily relied upon the statements of Shri Prakashchandra Pandya and Shri Nandgopal Govindwamy Naidu. We find that both the persons have retracted their so called confessional statements vide letter dated 31.7.2006. Therefore, the said statements cannot be considered as confessional statements. The Ld. Special Consultant appearing on behalf of the Revenue relying on judgement of K.P. Addul Majeed (supra) (2014 (299) ELT 108(tri)) submits that the retraction letter was addressed to the Commissioner, whereas the retraction should be necessarily addressed to the officer before whom statement was given. On perusal of the copies of the said retraction letter submitted to the Commissioner, produced by the Ld. Counsel, it clearly shows that the said letter has been marked and reached to the concerned investigating officers. Therefore, even the retraction letter is addressed to the Commissioner but since it has reached to the concerned officer, it is as goods, as submitted to the said investigating officer. Moreover, if at all there is any objection of the department on the said retraction, nothing prevented the department officers to reject the same with cogent reason or to record a counter statement in context with the retraction. WE have seen that no such effort was shown by the department in such situation; the retraction letter cannot be discarded. We are therefore, of the view that statements which were retracted cannot be accepted as evidence.*
>
> *7.6 The source of the alleged email correspondence with the suppliers is not disclosed. Such email correspondence from undisclosed sources were shown to prakash on 3rd May, 2006 and his confessions were recorded. However, para 5.3 of the notice records that on 29.06.2006 the seal of the computer was broken for the first time and print outs were obtained. Even further the computer print outs allegedly recovered from Prakash Pandya's computer, requirements of section 138C were not fulfilled. The authenticity of the documents therefore, is not beyond doubt for accepting the same as substantial evidence*
>
> *7.10. Thus, after detailed examination of facts and records, we find that the demand of differential duty and penal action cannot sustain in the facts of the instant case. Since the undervaluation of imported goods is not established, all the other confirmation such as confiscation of the goods, fines in lieu thereof, penalties on all the appellants being consequential to demand of duty, are also not sustainable. We make it clear that since this order is passed on merit, we are not addressing the limitation issue.*

5. We find that the instant case also relies on unauthenticated E-mail, retracted statements. We find that in view of the categorical findings by the Tribunal nothing survives in the case. In fact in the case against Tele-brands (Supra) some confirmation by the originating country was there, which was not relied upon by tribunal as the same was not authenticated and corroborated. Such communication also is not available in this case. We find that as the very reasons for rejection of transaction value are negated, reference to NIDB data is of no help. Therefore we hold that the impugned order is not tenable and therefore requires to be set aside. Accordingly, the impugned order is set aside and the appeals are allowed.

(Order dictated and pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

HM