CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 508 of 2009

(Arising out of Order-in-Original No. CAO No. 25/2009/CAC/CC/KS dated 13.02.2009 passed by the Commissioner of Customs (Adjn.), NCH, Mumbai)

Mukesh Nagindas Vora .... Appellant

Versus

Commissioner of Customs (Exp), Mumbai ... Respondent

Appearance:

Shri J.C. Patel, Advocate for the Appellant

Ms. Trupti Chavan, AC, Auth. Representative for the Respondent

WITH

Customs Appeal No. 525 & 526 of 2009

(Arising out of Order-in-Original No. CAO No. 25/2009/CAC/CC/KS dated 13.02.2009 passed by the Commissioner of Customs (Adjn.), NCH, Mumbai)

M/s Unimarine Agencies Pvt. Ltd. .... Appellant

Versus

Commissioner of Customs (Exp), Mumbai ... Respondent

AND

Customs Appeal No. 527 & 528 of 2009

(Arising out of Order-in-Original No. CAO No. 25/2009/CAC/CC/KS dated 13.02.2009 passed by the Commissioner of Customs (Adjn.), NCH, Mumbai)

Shamshuddin Abdul Aziz Shroff .... Appellant

Versus

Commissioner of Customs (Exp), Mumbai ... Respondent

Appearance:

Shri N.D. George, Advocate for the Appellant

Ms. Trupti Chavan, AC, Auth. Representative for the Respondent

AND

Customs Appeal No. 497, 498, 532 & 533 of 2009

(Arising out of Order-in-Original No. CAO No. 25/2009/CAC/CC/KS dated 13.02.2009 passed by the Commissioner of Customs (Adjn.), NCH, Mumbai)

H.P. Joshi & Co. **.... Appellants**
Kantilal H. Joshi
Sitara Shipping Ltd.
S.S. Sahi

Versus

Commissioner of Customs (Exp), Mumbai ... Respondent

Appearance:

None for the Appellant

Ms. Trupti Chavan, AC, Auth. Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86431-86439/2019

Date of Hearing: 16.08.2019

Date of Decision: 16.08.2019

Per: Dr. D.M. Misra

These appeals are filed against Order-in-Original No. CAO No. 25/2009/CAC/CC/KS dated 13.02.2009 passed by the Commissioner of Customs (Adjn.), NCH, Mumbai.

2. Briefly stated the facts of the case are that during the relevant period i.e. from January, 1999 to January, 2000 M/s Divya Enterprises exported readymade garments and ball pens to Russia and Dubai. The export to Russia were readymade garments and ball pens against 27 shipping bills involving

drawback of Rs.60,02,057/- and export of Men's Trousers against 20 shipping bills to Dubai involving drawback of Rs.18,18,142/-. Subsequently, in the year 2001 on the basis of investigation by Directorate of Revenue Intelligence (DRI), alleging that exports undertaken by M/s Divya Enterprises were over invoiced resulting into grant of excess drawback of Rs.78,20,199/-, show-cause notice was issued on 26.7.2002 under Rules 16 and 16A of the Customs and Central Excise Duties Drawback Rules, 1995 for recovery of the same with penalty. On adjudication, the demand was confirmed on M/s Divya Enterprises and penalties imposed on other noticees under Section 114(i) of the Customs Act, 1962.

3. Learned Advocate Shri J.C. Patel appearing for the appellant Mukesh Nagaindas Vora has raised a preliminary objection relating to jurisdiction of the DRI officers to issue show-cause notice under Rules 16 and 16A of the Customs and Central Excise Duties Drawback Rules, 1995. He has fairly submitted that even though the issue of jurisdiction has not been raised before the adjudicating Commissioner, however, in view of the settled principles of law, the issue of jurisdiction can be raised at any stage of the proceedings. In support, he has referred to the judgment of this Tribunal in the case of *Nylex Traders Vs. Commissioner of Customs (Prev.), Mumbai – 2011 (274) ELT 71 (Tri-Mum).* Further, he has submitted that this Tribunal in the case of *Hem Chand Gupta & Sons Vs. Commissioner of Customs (ICD), New Delhi – 2015 (330) ELT 161 (Tri-Del)* analyzing the issue of jurisdiction of DRI officers

held that DRI officers under Customs and Central Excise Duties Drawback Rules, 1995 being not a 'proper officer', hence recovery notices issued by DRI relating to duty Drawback is bad in law.

4. Per contra, learned AR for the Revenue submits that since the issue of jurisdiction has not been raised by the appellant before the adjudicating Commissioner, therefore, the same was not examined, hence the matter may be remanded to the adjudicating authority to consider the same and decide the issue.

5. In his rejoinder, the learned Advocates for the appellants have submitted that they have no objection in remanding the matter to the adjudicating authority.

6. I have carefully considered the submissions advanced by both sides. The principal issue raised by the appellant in this case while challenging the imposition of penalty on each of them is that since DRI Officer is not a 'proper officer' under Rules 16 and 16A of the Customs and Central Excise Duties Drawback Rules, 1995, therefore, the show-cause notice itself is not maintainable. Also, it is their argument that since the question of jurisdiction goes to very root of the matter, therefore, the same can be raised at any stage of the proceedings. I find that before the adjudicating authority admittedly the jurisdictional issue has not been raised. However, in view of the principles of law laid down in Nylex

Traders' case following the judgment of Hon'ble Supreme Court in the case of *Commissioner of Sales Tax Vs. Sarjoo Prasad Ram Kumar – (1976) 37 STC 533 (SC),* the issue of jurisdiction can be raised at any stage of the proceedings. This Tribunal observed as follows: -

> **"***6. In the instant case, it is true that the appellants namely M/s. Nylex Traders and Shri C.D. Shah had not raised any jurisdictional objection in their replies to the show-cause notice. They had not raised any such objection before the adjudicating authority at any other stage. As per the judgment of the Hon'ble Supreme Court in Sarjoo Prasad Ram Kumar's case (supra), they can be allowed to raise the jurisdictional objection in their appeals before the Tribunal. In other words, the dictum "An objection as to jurisdiction goes to the root of the case" operates in favour of the said parties. Their amendment applications are, therefore, liable to be allowed. It is ordered accordingly."*

7. The issue thus remains to be determined is whether the DRI officer has the power to issue show-cause notice under Rules 16 and 16A of the Customs and Central Excise Duties Drawback Rules, 1995 or not. This issue has been claimed to have been considered and decided by this Tribunal in *Hem Chand Gupta & Sons' case (supra).* In these circumstances, it is proper and appropriate at this stage to remand the matter to the adjudicating authority to consider the issue of jurisdiction and decide the case accordingly. All issues are kept open. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha