CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 470 of 2012

(Arising out of Order-in-Original No. 81/2011/CC(I), JNCH dated 28.02.2012 passed by the Commissioner of Customs (Import), JNCH, Nhava Sheva)

Commissioner of Customs (Import), Nhava Sheva .... **Appellant**
JNCH, Taluka – Uran, Dist. Raigad, Maharashtra - 400707

Versus

1. M/s Laxmi Trading Co. .... **Respondent**
1074-75, Gandhi Gali, Fatehpuri, Delhi

2. Mrs. Madhu Kapoor, Proprietor
BN-21, East Shalimar Baug, Delhi – 110008

3. Shri Arun Kapoor
BN-21, East Shalimar Baug, Delhi – 110008

Appearance:

Mrs. P. Vinitha Sekhar, JC, Authorized Representative for the Appellant
None for the Respondent (Adjn. Request)

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.A/86927/2019

Date of Hearing: 03.01.2019
Date of Decision: 03.01.2019

Per: S.K. Mohanty

Heard the learned A.R. for Revenue. None appeared for the Respondent.

2. Revenue has assailed the impugned order dated 28.02.2012 passed by the Commissioner of Customs (Import),

JNCH, Nhava-Sheva on the ground that non-imposition of penalty on the noticees under Section 114A is contrary to the statutory provisions and accordingly, the impugned order is liable to be set aside.

3. In this case, upon investigation into the matter of under valuation of imported poppy seeds, the department had proceeded against various persons, including the respondent, seeking for rejection of the declared value, demand of differential customs duty and for imposition of penalties. The show cause proceedings initiated by DRI were adjudicated vide the impugned order dated 28.02.2012, wherein by rejecting the declared value, the assessable value of the imported goods was enhanced and differential duty was confirmed on the respondents. Besides, the impugned order also imposed penalties under Section 112(a) and 112(b) on the respondents. Feeling aggrieved with the impugned order dated 28.02.2012 and another order dated 21.10.2013 passed by the Commissioner of Customs (Import), Nhava-Sheva and Mumbai, various noticees including the respondent herein have preferred appeals before this Tribunal, which were disposed of vide Order No. A/3446-3470/15/CB (M/4773-4784/15/CB) dated 20.10.2015. Vide the said order, the Tribunal has set aside the adjudication orders dated 28.02.2012 and 21.10.2013 passed by the Commissioner of Customs. Further, the Tribunal has also held that since on merits the appeals are allowed, question of penalty imposed

on the appellants does not arise and accordingly, while allowing the appeal, the Tribunal has granted consequential relief in favour of the parties to appeal.

4. In the present appeal, grievance of Revenue is that non-imposition of penalty under Section 114A *ibid* in the impugned order is not legal and proper. Since, the adjudged demands confirmed in the impugned order dated 28.02.2012 were set aside by the Tribunal vide order dated 20.10.2015 (supra) on merits, the prayer made by Revenue for imposition of penalty under Section 114A *ibid* cannot be sustained.

5. In view of above, we do not find any merits in the appeal filed by Revenue. Accordingly, same is dismissed.

(Operative portion of the order pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(S. Srivastava)
Member (Technical)

Hemant