CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Custom Appeal No. 546 of 2011

(Arising out of Order-in-Original Appeal No.41/2011 dated passed by the Commissioner of Customs (Export), Nhava Sheva, Dist: Raigad, Maharashtra – 400 707)

Narendra Singh Kohli **.... Appellant**
Previously r/a Casabella, 692
2 Khar Pali Road, Khar,
Mumbai – 400 052.

And Presently residing at:
29, Reginald Lamb Cr.
Markham, Ontario, L6B 0B4
Canada.

Versus

Commissioner of Customs (Export), **.... Respondent**
Jawaharlal Nehru Custom House
Nhava Sheva.

Appearance:

Shri Brijesh Pathak, Advocate for the appellant

Ms. Trupti Chavan, AC (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85693 / 2020

Date of Hearing: 06.02.2020

Date of Decision: 06.02 .2020

Per: P. Anjani Kumar

Brief facts of the case are that the CIU investigated a case of alleged wrong availment of the duty drawback by the appellant, Shri Gurumit Singh Kohli, allegedly floating various companies and proprietary concerns; it was allegedly found that no export had taken place but Bills of Lading were fabricated and forged; however, examination reports were said to be given by the officers. Show Cause Notice dated 27.3.2002 was issued on culmination of investigation. Adjudicating Authority passed the impugned order, dated 28.4.2011, imposing penalty of Rs.35 Lakhs under Section 114(iii) of the Customs Act, on the Appellant.

2. Learned counsel for the Appellant submits that the appellant was neither served copy of the Show Cause Notice nor personal hearing intimation; the impugned order has been passed in complete violation of principles of natural justice or fair play in Adjudication Proceedings; the impugned Order-in-Original records about personal hearing given to various Noticees and also the names of the Noticees who failed to appear or file reply but there is no record as to whether any personal hearing intimation was issued to the Appellant; hence, the impugned order on this ground alone deserves to be quashed and/or set aside.

2.1. Learned counsel further submits that much prior to issuance of Show Cause Notice, Special Crime Branch, CBI had also investigated this case, as regards alleged fraudulent export and misuse of drawback scheme by Shri G.S. Kohli, B.S. Chauhan, Manohar Badheka, M.I. Qureshi; export opinion on the handwriting, initials and signatures of concerned was obtained; a charge sheet was filed on 24.12.2004 for the offences only against Shri G.S. Kohli ; the Adjudicating Authority on this basis dropped the proceedings against B.S. Chauhan; M.I. Qureshi and Manohar Badheka; the role of the Appellant is alleged limited to being shown as proprietor of G.S.K. Exports; Adjudicating Authority finds, at Page 89 of Order-in-Original that the real beneficiary behind M/s. G.S.K Exports was Shri G.S. Kohli only and Shri G.S. Kohli only should be held liable for penal action; the Appellant was not even named as an accused in the FIR filed by the CBI; Adjudicating Authority confirmed that the forgery/manipulation was committed by Shri G.S. Kohli only; mere non-appearance at the time of investigation cannot be basis for imposing penalty of Rs.35 Lakhs on the Appellant under Section 114(iii) of the Customs Act, 1962.

2.2. Learned counsel further submits that relying on the finding of the Adjudicating Authority on others like S/Shri B.S. Chauhan, M.I. Qureshi and Manohar Badheka, proceedings against the Appellant should have been discharged; department had filed an Appeal against the proceedings dropped by the Adjudicating Authority against the above; Hon'ble Tribunal was pleased to uphold the finding of the Adjudicating Authority; moreover, none of the statements from various persons were recorded including the Customs Officers, imputed any knowledge about the alleged illegal activities by the Appellant; even on law of parity, the impugned order deserves to quashed and/or set aside in the interest of justice.

3. Learned Authorised Representative appearing on behalf of the Department reiterates the findings of Order-in-Original.

4. Heard both sides and perused the records of the case. The brief issue that requires consideration in the instant case is as to whether the appellant Shri Narendra Pal Singh @ Raju Kohli @ Rajender Singh Kochhar is liable to pay penalty as imposed by the Adjudicating Authority. We find from the records of the case that a case of fraudulent drawback arrangement investigated by Revenue and it was alleged that M/s. GSK Exports have availed drawback fraudulently by forging and manipulating documents without exporting any item. On completion of investigation, show-cause notice was issued to Shri G. S. Kohli, Proprietor of M/s. GSK Exports and Others. A show-cause notice *inter alia* proposed penalty against the appellant. The appellant submits that he was neither served show-cause notice nor intimated about the personal hearing; the CBI investigation on the same case nailed only Shri G.S. Kohli; learned Commissioner also dropped the proceedings against some of the noticees like Shri Balbir Singh; Shri M. I. Querishi of Crown Shipping Agency; Shri Manohar Badheka of Pal India Shipping Agency' Shri B. S. Chauhan, Appraising Officer; Shri Harsh Shrivastav, Appraising Officer; and Shri Rajesh Pamnani, Tally Clerk on the same ground; however, penalty against the appellant was imposed. We find that learned Commissioner has observed in para 6.7 that appellant had disappeared after the investigation was initiated and that the appellant has knowingly conspired with Shri G. S. Kohli in fraudulent drawback availment. It is seen that learned Commissioner has relied upon the statements of Shri G. S. Kohli and Shri Jagmohan Basant Singh Kohli. Therefore, we find that the submissions of the appellant that his case is similar to that of other noticees against whom proceedings were dropped by the Commissioner, are factually incorrect. However, we find that his role is limited to the allegation of being a front for operating the current account of M/s. G.S.K. Exports in Bombay Cooperative Mercantile Bank; two pay-in slips bear the signature of the appellant. To this extent, the appellant has abetted the crime of M/s. G.S.K. Exports. However, it is not clear from the show-cause notice or the Order-in-Original that if there was any financial gain obtained by the appellant. In such circumstances, we find that the penalty imposed is very high. Penalty should be commensurate with the offence committed. Therefore, we are inclined to reduce the penalty from Rs.35,00,000/- to Rs.5,00,000/- (Rupees Five Lakhs Only).

5. In view of the above, appeal is partly allowed by reducing the penalty imposed to Rs.5,00,000/-

(Operative portion of the order pronounced in open court)

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

(P. Anjani Kumar)
Member (Technical)

Sinha