CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 478 of 2010

(Arising out of Order-in-Original CAO No. 32/2010/CAC/CCMS dated 25.03.2010 passed by Commissioner of Customs (Adjudication), Mumbai)

Shri P.M. Khandelwal .....**Appellant**
H.R. Shetty& Co.
Office: Doctor House, 2nd Floor,
Room No.1, 124, Bazar Gate,
Street, Fort, Mumbai-400001

VERSUS

Commissioner of Customs (Export), Mumbai .....**Respondent**
New Custom House,
Ballard Estate,
Mumbai-400001

WITH

(i) Customs Appeal No. 489/2010 (Shri Brijesh Agarwal) (Arising out of Order-in-Original CAO No. 32/2010/CAC/CCMS dated 25.03.2010 passed by Commissioner of Customs (Adjudication), Mumbai)**;** **(ii) Customs Appeal No. 490/2010 (Shri Sailesh Agarwal)** (Arising out of Order-in-Original CAO No. 32/2010/CAC/CCMS dated 25.03.2010 passed by Commissioner of Customs (Adjudication), Mumbai)**;** **(iii) Customs Appeal No. 491/2010 (Shri Prakash Agarwal)** (Arising out of Order-in-Original CAO No. 32/2010/CAC/CCMS dated 25.03.2010 passed by Commissioner of Customs (Adjudication), Mumbai)**; (iv) Customs Appeal No. 492/2010 (Shri Kamlesh T. Desai)** (Arising out of Order-in-Original CAO No. 32/2010/CAC/CCMS dated 25.03.2010 passed by Commissioner of Customs (Adjudication), Mumbai)**;**

Appearance:
Shri Anil Balani, Advocate for the Appellants
Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87691-87695 / 2019

Date of Hearing: 23.10.2019
Date of Decision: 23.10.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that M/s. Rajnarayan Jwalaprasad, a partnership firm had obtained a quantity based Advance License No. 0329153 dated 16.11.1994 and imported 48 MTs of High Density Polyethylene (HDP) vide three numbers of Bills of Entry in December, 1994. The said firm procure the export goods namely, 'Casseroles' from the market and exported the same vide Shipping Bill No. 507037 dated 21.12.1994. The export goods were mis-declared as 'articles made of HDPE – Casseroles', whereas the goods were insulated Hot Pots (Casseroles) made of HDPE, Stainless Steel, Polyol and Isocynate. The goods were exported before the clearance of the imported goods. To show fulfilment of export obligation, the net weight of the export goods was mis-declared. Investigation carried out revealed that the actual weight of the goods declared by the manufacturer was much less than the net weight declared before the customs at the time of export by the merchant exporter M/s. Rajnarayan Jwalaprasad. On the basis of investigation, the department initiated show cause proceedings against the appellants, which culminated into the adjudication order dated 25.03.2010 (for short, referred to as the "impugned order"), wherein the exported goods were confiscated under Section 113 (d) and 113 (i) of the Customs Act, 1962 with option to redeem the same on payment of redemption fine of Rs. 1,00,000/-. Besides, the impugned order has imposed penalties under Section 112 (a) & (b) and Section 114 (i) & 117 *ibid* on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and perused the records.

3. On examination of the case records, it reveals that the appellant Shri Shailesh Agarwal was the working partner of M/s. Rajnarayan Jwalaprasad and had signed the import and export documents on behalf of the said firm. He also entered into High Seas Sale Agreement with Shri Minesh Shah of M/s. Deluxe

Export for import of goods under the license. Further, he also signed and obtained certificate of export and realization by manipulating the weight of the export goods. The other partners of the said firm namely, Shri Prakash Agarwal and Shri Brijesh Agarwal were aware of all the fraudulent activities undertaken by the said partnership firm. The said appellants have not adduced any plausible evidence in support of exonerating them from imposition of penalties. Thus, I am of the considered view that the impugned order, imposing penalties on Shri Shailesh Agarwal, Shri Brijesh Agarwal and Shri Prakash Agarwal is in conformity with the statutory provisions and as such, the impugned order cannot be interfered with at this juncture by the Tribunal, for taking a contrary view.

4. The other appellants Shri Kamlesh T. Desai and Shri P.M. Khandelwal were the CHAs, engaged by M/s. Rajnarayan Jwalaprasad for clearing the imported/exported goods. On perusal of the case records, I do not find that the said CHAs had actually involved in the fraudulent activities in support of exportation of the alleged goods. Hence, I am of the view that penalties imposed on them in the impugned order cannot be sustained.

5. In view of above, the appeals filed by Shri Shailesh Agarwal, Shri Brijesh Agarwal and Shri Prakash Agarwal are dismissed and the appeals filed by Shri Kamlesh T. Desai and Shri P.M. Khandelwal are allowed.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

HK