CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87594 of 2019

(Arising out of Order-in-Original No. COMMR./SAK/04/2018-19/ADJN.ACC(X) dated 21.02.2019 passed by the Commissioner of Customs (Export), Mumbai)

Shri Romy P Mehta **.... Appellant**
61, Panorama Building 203, Waleshwar Road,
Mumbai – 400006.

Versus

Commissioner of Customs (Export) Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri East,
Mumbai-400099.

WITH

Customs Appeal No. 87597 of 2019

(Arising out of Order-in-Original No. COMMR./SAK/04/2018-19/ADJN.ACC(X) dated 21.02.2019 passed by the Commissioner of Customs (Export), Mumbai)

M/s Unity Diamonds **.... Appellant**
Krishna Niwas, 5th Floor, Raja Ram Mohan Roy Road,
Charni Road East, Mumbai – 400004.

Versus

Commissioner of Customs (Export) Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri East,
Mumbai-400099.

Appearance:

Ms. Pooja Reddy, Advocate for the Appellant

Shri P. K. Acharya, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85370-85371/2023

Date of Hearing: 02.03.2023

Date of Decision: 02.03.2023

Per: Anil G. Shakkarwar

After hearing for some time, it was clear that the matter is related to denial of drawback to the appellant and imposition of the penalty to the other appellant. Provisions of Section 129 (A) of Customs Act, 1962 are reproduced below:-

> "(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -
>
> (a) a decision or order passed by the [1] [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority;
>
> (b) an order passed by the [2] [Commissioner (Appeals)] under section 128A;
>
> (c) an order passed by the Board or the [3] [Appellate Commissioner of Customs] under Section 128, as it stood immediately before the appointed day;
>
> (d) an order passed by the Board or the [4] [Principal Commissioner of Customs or Commissioner of Customs], either before or after the appointed day, under section 130, as it stood immediately before that day :
>
> [5] [**Provided** that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -
>
> (a) any goods imported or exported as baggage;
>
> (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
>
> (c) payment of drawback as provided in Chapter X, and the rules made thereunder :"

It is clear from clause (c) under first proviso to Section 129 (A) of the Customs Act, 1962 that this Tribunal does not have jurisdiction when the matter is related to payment of drawback. I, therefore, dismiss both the appeals being filed in wrong forum.

2. The appeals are disposed off in the above terms.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha