CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

CustomsAppeal No.85534 of 2019

[Arising out of Order-in-Original No.27/2018-19dated 20.11.2018passed by Commissioner ofCustoms, (Import-I), Mumbai]

M/s. Apco **Appellant**
B-9, VibhutiKhand, Gomti Nagar, Lucknow,
Uttar Pradesh, UP-226010.

Vs.

Commissioner of Customs-Mumbai-Import-I **Respondent**
New Custom House, Ballard Estate, Mumbai-400001.

Appearance:

ShriAnil Mishra, Advocate for the Appellant
ShriManoj Kumar,Joint Commissioner, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing:18.04.2023
Date of Decision:18.04.2023

FINAL ORDER NO. A/85855/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Original No. 27/2018-19 dated 20.11.2018 by the impugned order following has been held:- pg no. 43

> *I impose a penalty equal to the differential duty amounting to Rs. 73,00,663/- (Rupees Seventy Three Lakhs Six Hundred Sixty Three Only) confirmed vide Order-in-Original CAO No. 65/2010/CAC/CC(I) SHH Gr. VA dated 28.07.2010 read with Hon'ble CESTAT Order No. A/86750-86753/2018 dated 08.06.2018 plus the interest amount payable thereon [under Section 28AB (u/s 28AA w.e.f. 08.04.2011) of the Customs Act, 1962)] on M/s Apco Construction (P) Ltd (presently known as M/s ApcoInfratech Ltd.) under Section 114A of the Customs Act, 1962.*

2. This appeal filed by the appellant has challenged impugned order under Section 114A of the Customs Act, 1962 the penalty imposed on him inclusive of the interest amount payable there on.

3. We find the issue is settled by the Hon'ble Karnataka High Court in case of Sony Sales Corporation and Krishna Sales Corporation held as follows:-

11. In the backdrop of aforesaid well settled legal principles with regard to statutory interpretation we may notice relelvant extract of Section 114A of the Act, which reads as under:

114A. Penalty for short-levy or non-levy of duty in certain cases.- *Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:*

12. The aforesaid rule of statutory interpretation was referred to by constitution bench of the ***Supreme Court in 'INDORE DEVELOPMENT AUTHORITY VS. MANOHAR LAL AND OTHERS' , AIR 2020 SC 1496.*** *From perusal of the relevant extract of Section 114A, it is evident that the language employed by the legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative condition. The expression used is 'or' which is disjunctive between duty or interest and further use of expression as the case may be clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provides that in both the situations the person liable to duty would be liable to penalty equal to duty and person liable to interest would be liable to penalty equal to interest. Therefore, in view of law laid down by constitution bench of Supreme Court, the word 'or' cannot be interpreted as 'and'.*

4. Following the above decisions. We set aside impugned order to extent of penalty imposed including element to the penalty equivalent to the duty determined. Appellant has paid penalty equal to duty under Section 114A. Impugned order modified to this extent.

5. Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Rasika