CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 88606 of 2013

(Arising out of Order-in-Appeal No. MUM-CUSTM-SMP-344 to 347/12-13 dated 10.06.2013 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I)

Shri Gurudas Kamat.... Appellant
D2-30, Sancoale Industrial Estate,
Zuari Nagar, Goa.

Versus

Commissioner of Customs (Import), Mumbai.... Respondent
New Custom House, Ballard Estate,
Mumbai- 400 001.

Appearance:

Shri D. H. Nadkarni, Advocate for the Appellant

Shri Ashwini Kumar, Auth. Representative for the Respondent

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M/s Zuari Structural Works & Engineers .... Appellant
D2-30, Sancoale Industrial Estate,
Zuari Nagar, Goa.

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
New Custom House, Ballard Estate,
Mumbai- 400 001.

Appearance:

Shri Prasannan S. Namboodiri, Advocate for the Appellant

Shri Ashwini Kumar, Auth. Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86192 - 86193/2023

Date of Hearing: 09.08.2023

Date of Decision: 09.08.2023

Per: S.K. MOHANTY

These appeals are directed against the impugned order dated 10.06.2013 passed by the Learned Commissioner of Customs (Appeals), Mumbai. Vide the impugned order, the Learned Commissioner (Appeals) has upheld the adjudication order dated 27.12.2012, wherein the original authority had rejected the declared assessable value and re-determined the same at the higher value and also confiscated the goods under Section 111(m) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine of Rs. 3,03,000/-. Besides, the adjudication order has also imposed penalty on both the appellants under Section 114A *ibid*.

2. The appellants have assailed the impugned order on the ground that there is no mis-declaration with regard to value of the goods and as such, the goods in question cannot be confiscated under Section 111(m) *ibid* and also benefit provided under the first proviso to Section 114A *ibid* should be available inasmuch as the appellant M/s. Zuari Structural Works & Engineers had paid the entire duty amount along with interest during the course of adjudication proceedings and also paid 25% of the penalty amount within 30 days from the date of the adjudication order. The appellant also submitted that since the reduced amount of penalty attributable to the duty determined has been paid within the prescribed time limit, the requirements of Section 114A *ibid* was duly complied with and thus, the appellant was not required to pay any further amount for resolving the present dispute. The other appellant Shri Gurudas Kamat has stated that since, he is not an importer of the disputed goods, the provisions of Section 114A *ibid* cannot be applied for imposition of penalty inasmuch as penal provisions contained therein are attracted, in the eventuality of short levy or non-levy of duty on the imported goods and not on the person concerned, who is the partner of the importer’s company.

3. Heard both sides and perused the records.

4. In case, where the duty has been non-levied or short-levied, owing to the reason of collusion or any willful mis-statement or

suppression of facts, it has been mandated in Section 114A *ibid* that the person who is liable to pay the duty, as determined under sub-section (8) of Section 28 *ibid*, shall also be liable to pay a penalty equal to the duty so determined. However, the first *proviso* appended to Section 114A *ibid,* considers for payment of 25% of determined amount of duty, in the eventuality where such duty is paid within 30 days from the date of communication of the order. In the present case, payment of the disputed duty amount along with interest is not in question inasmuch as such amount was paid by the appellants during the course of investigation, and the same has also been appropriated in the adjudication order. Further, it is not the case of Revenue that the appellant M/s Zuari Structural Works & Engineers had not paid 25% of penalty within the period of 30 days from the date of communication of the adjudication order. In this context, the Learned Advocate appearing for the appellants has stated that the reduced penalty amount was deposited on 18.01.2013. Since the adjudication order was passed on 27.12.2012 and thereafter, within one month's time the penalty amount of 25% of the adjudged duty and interest was paid by the appellants, we are of the considered view that as per requirement of first proviso appended to Section 114A *ibid*, no subsequent proceedings shall be initiated by the Department for confirmation of the adjudged demand of penalty equal to the adjudged amount of duty and interest confirmed in the adjudication order. Therefore, the impugned order, to the extent it has upheld confirmation of the penalty amount equal to the adjudged amount of duty and interest on the appellant M/s Zuari Structural Works & Engineers cannot be sustained and accordingly, is liable to set aside. Hence, the impugned order upholding confirmation of equal amount of penalty is set aside and the appeal to such extent is allowed in favour of the appellant.

5. With regard to the appeal filed by Shri Gurudas Kamat, we find that he is a partner of the appellant M/s Zuari Structural Work & Engineers. Insofar as imposition of penalty under Section 114A *ibid* is concerned, the said provision can only be invoked in the case of the importer, engaged in importation of goods into India. Since, the appellant Shri Gurudas Kamat is not an importer of the subject goods in the present case and that the said statutory provision has already been invoked for short-levy or non-levy of duty on the importer, we

are also of the view that penal provisions contained in Section 114A *ibid* cannot be invoked for imposition of penalty on the appellant herein. Therefore, on this ground, the appeal filed by Shri Gurudas Kamat is allowed by setting aside the impugned order to this extent.

6. In the case in hand, with regard to confiscation of the goods and imposition of redemption fine on the appellants are concerned, we find that the appellant herein is ahigh sea's purchaser of the goods and filed the Bill of Entry for clearance of the goods from the customs custody. Since,all the related documents were submitted at the time of assessment of the goods in question, it cannot be said that the provisions of Section 111(m) *ibid* have been contravened, inasmuch as there is no mis-declaration of value and also acknowledging the fact that appellant should not be held responsible for mis-declaration of goods and confiscation of the goods, the original authority had rightly imposed penalty on M/s. Mallesh & Co. by invoking the provisions of Section 112(a) *ibid*. Since, the Department has recognized M/s. Mallesh & Co.,as High Sea seller and a distinct person in the transaction between the overseas seller and the appellant herein, in our considered view the appellant being the high sea's purchaser cannot be penalized for confiscation of the goods under Section 111(m) *ibid*. Therefore, the impugned order imposing redemption fine of Rs. 3,03,000/- on the appellant is set aside and the appeal is allowed in favour of the appellant.

7. Both the appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha