CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 67 OF 2006

[Arising out of Order-in-Original No: 128/2005/CAC/C(I)/AKP dated 30th November 2005 passed by the Commissioner of Customs (Import), Mumbai – I.]

Zarap Irani
Manager, ICICI Bank Ltd
ICICI Bank Towers, Bandra-Kurla Complex
Bandra (E), Mumbai - 40051 … ***Appellant***

versus

Commissioner of Customs (Imports)
New Customs House, Ballard Estate
Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 73 OF 2006

[Arising out of Order-in-Original No: 128/2005/CAC/C(I)/AKP dated 30th November 2005 passed by the Commissioner of Customs (Import), Mumbai – I.]

Anand T Kusre
General Manager In-charge, ICICI Bank Ltd
ICICI Bank Towers, Bandra-Kurla Complex
Bandra (E), Mumbai - 40051 … ***Appellant***

versus

Commissioner of Customs (Imports)
New Customs House, Ballard Estate
Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Darshit Jain, Advocate and Mr Mahesh Bhindora, Advocate for the appellants

Shri Sydney D'Silva, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86197-86198/2023

DATE OF HEARING: 22/02/2023
DATE OF DECISION: 18/08/2023

PER: C J MATHEW

Two individuals, Shri Zarap Irani and Shri Anand T Kusre – both employees M/s ICICI Bank Ltd, are before us challenging penalty of ₹ 4,00,000 and ₹ 5,00,000 respectively imposed under section 112 of Customs Act, 1962 in order[1] of Commissioner of Customs (Import), Mumbai-I which, while confiscating the goods under section 111(o) of Customs Act, 1962, had invoked section 28 of Customs Act, 1962 for recovery of duty foregone by recourse to notification no. 84/97-Cus dated 11th November 1997 on imports effected, *vide* bills of entry no. 480059/22.07.2004 and no. 931881/26.07.2004 filed by M/s Uhde India Ltd, for execution of project of M/s Rashtriya Chemicals & Fertilizers Ltd. The principal plea of the appellants is that the Tribunal had, in appeal of both M/s Rashtriya Chemicals & Fertilizers Ltd and M/s ICICI Bank Ltd, held

[1] [order-in-original No: 128/2005/CAC/C(I)/AKP dated 30th November 2005]

that duty was not leviable owing to substantive compliance with the intent of the said notification.

2. In the circumstances, it would be appropriate to consider, albeit briefly, the facts of the case as well as the said decision of the Tribunal. The impugned notification conferred benefit of duty exemption subject to production of certificate issued by executive head of 'project implementation authority' countersigned by an officer not below the rank of Joint Secretary in the 'line ministry' concerned. It was held by the adjudicating authority that the benefit had been wrongly availed as the certificate had not only not been countersigned by the 'line ministry' but also not by the purported signatory. The denial of exemption and confiscation thereto as well as the penalties thereon were challenged in appeal before the Tribunal. The Tribunal, consequent upon detailed examination, afforded the relief *supra* but, in doing so, delinked the appeals of all others save that of M/s Rashtriya Chemicals & Fertilizers Ltd and M/s ICICI Bank Ltd. Hence, the matters before us as well as the plea of the appellants that, as employees, they are not liable to penalties that the employer organization was relieved of in the order[2] of the Tribunal dated 1st July 2009 in *Rashtriya Chemicals & Fertilizers Ltd and another v. Commissioner of Customs (Import), Mumbai -I.*

3. On perusal of the order of the Tribunal, we note that, while

[2] [final order no. A/86681-86682/2021 in appeal no. 1627/2005 & no. 66/2006]

granting relief, the confiscation had been upheld and hence recourse to section 112 of Customs Act, 1962 is within the law; nonetheless, considering the facts and circumstances, the redemption fine under section 125 of Customs Act, 1962 was reduced to 'zero' and penalties set aside. However, as far as the present appellants are concerned, it was held that

> *'4.44 Certain officers of Appellant 1 and Appellant 2 and the officers of Department of Economic Affairs have been charged for getting forged signatures on the Project Implementation Authority Certificate. Our order in respect of the Appellant 1 and Appellant 2, should not be treated as giving relief to them in their appeals, which as stated earlier were delinked from these appeals.....'*
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> *4.45 In view of the above the appeals filed by the other co-noticees need to be considered separately on the basis of their roles played in the act of getting forged signatures on the Project Implementing Authority Certificates. Their appeals need to be decided on the merits of their case after hearing them. For this reason we have delinked those appeals from the present two appeals.'*

from which it would appear that the present appellants were not represented then and that, in the interests of justice, another opportunity to present their defence in the altered narrative of the case should be offered to them.

4. We have heard Learned Counsel for the appellants and Learned Authorized Representatives at length. In addition to the plea of

equitable treatment and lack of any motive, *de hors* that of serving the interests of their employer, several other grounds were also preferred.

5. Imposition of penalties under section 112 of Customs Act, 1962 on persons is triggered by finding that, in relation to goods liable to confiscation under section 111 of Customs Act, 1962, acts of omission and commission have rendered such outcome. The role of individuals must, therefore, be subjected to scrutiny in relation to the facts that have rendered the goods liable for confiscation. Undoubtedly, on that the Tribunal is categorical. The finding in the impugned order, insofar as the appellants herein are concerned, is that

> *'56. If there is a company/firm responsible for any offence there is always a human face behind the corporate veil who is equally responsible- In this case the two human faces of M/s ICICI Bank are Mr Anand T Kusre, Gen Manager-in-charge Technology Group and Mr Zarasp Irani, Manager. Shri Anand T Kusre was the person who forwarded the two certificates signed by their Executive Director, to the MOF under the cover of his letter dated 11.6.2004. This letter dated 11.6.2004 is one of the relied upon documents in the instant SCN. Instead of sending these letters directly to the MOF through post/courier he chose to forward it through a representative of RCF. He was aware that the Under Secretary(ADB), MOF, had informed him vide letter dated 5.7.2004 that MOF was not the appropriate LINE Ministry. Even then subsequently the two certificates were returned back to RCF for taking it back to MOF. This did not raise his suspicion as to how a Ministry which had officially declined to entertain the request for countersigning the*

certificates would entertain the request through a third party (RCF). The only conclusion is that it is a case of gross negligence, if not active complicity, for which Mr Kusure cannot seek redemption.

57. As regards Shri Zarasp Iranai, Manager, ICICI Bank Ltd, he was the person who prepared the two certificates and he was aware that both the certificates had been returned by the MOF stating clearly that MOF was not the Line Ministry. Even then he returned the certificates back to M/s RCF (without any covering letter) for taking up the matter with the MOF. He did not find anything suspicious when a forged letter dated 21.7.2004 purportedly signed by the Director ADB in the MOF was produced enclosing the Project Implementation Authority certificate duly signed by the Jt. Secretary MOF. In other words, within a span of two weeks the MOF changed its stand that it was not the LINE Ministry. without any further written reference from the ICICI bank. Further, the forged letter dated 21.7.2004 did not make any reference to the earlier letter dtd 5.7.2004 of the same section (ADB Section) of the Deptt. Of Economic Affairs, MOF. Further, in his statement dated 4.8.2004 to the DRI (refer para 10.2 above) he admitted that the Line Ministry was that nominated by the MOF for each Project and that for the instant project no such nomination had been made by the MOF at as per his knowledge. Shri Irani is, therefore, clearly responsible for his acts of commission and omission which have rendered the imported goods liable for confiscation making him liable for penal action u/s 112(a) of the Customs Act 1962.'

6. It appears that the factual matrix therein is inextricably enmeshed with the 'project implementation authority certificate' and

the relevance of that certificate to legal consequence of its validity has been decided by the Tribunal in the appeals of M/s Rashtriya Chemicals & Fertilizers Ltd and M/s ICICI Bank Ltd *supra*. There is, thus, material alteration of the narrative of the case and consequence. The roles of the appellants would need to be evaluated within the rubric of the altered narrative and it could well be that the impugned order, in such circumstances, lacks detail that may be necessary to decide the present appeals.

7. It would, therefore, be appropriate for the allegation against the two appellants to be considered afresh in adjudication for which purpose, we set aside the impugned order and remand the matter to the original authority for fresh decision. The two appellants herein should be afforded an opportunity to be heard in person in accordance with law.

8. The two appeals are, thus, remanded.

(Order pronounced in the open court on 18/08/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*