CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86096 of 2019

(Arising out of Order-in-Original No. CCP/ADJ/NC/01/2019 dated 17.01.2019 passed by the Commissioner of Customs (Preventive), Mumbai)

Shri Ashok T Sadarangani **.... Appellant**
103, Oceanic Cooperative Housing Society Ltd.'
Carter Road, Bandra, Mumbai – 400050

Versus

Commissioner of Customs (Prev), Mumbai **.... Respondent**
2nd Floor, New Custom House, Ballard Estate,
Mumbai - 400001

Appearance:

None for the Appellant
Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85065/2024

Date of Hearing: 02.02.2024

Date of Decision: 02.02.2024

Per: M.M. Parthiban

This appeal has been filed by Shri Ashok Tahilram Sadarangani (hereinafter referred to as 'appellant') against the impugned order dated 17.01.2019 passed for imposition of penalty of Rs.1,00,000/- (Rupees one lakh) on the appellant under Section 112(b) of the Customs Act, 1962.

2. When the matter was called up, none appeared for the appellant. The learned AR appearing for the Revenue submitted that on 10.05.2022, when the matter came up before the then Member (Technical), it was recorded that if the appellant either himself or through his counsel is not present for hearing next time, the appeal shall be dismissed for non-prosecution under Rule 22 of CESTAT (Procedures) Rules, 1982.

3. I find that subsequently opportunities of hearing had been given on 15.03.2023, 27.07.2023 and 18.12.2023 (last opportunity).

4. The brief facts of the case are that the appellant along with various persons have attempted to smuggle foreign origin cigarette of 'Benson and Hedges' brand into the country. However, on the basis of specific information, the Customs Officer of SIU, M&P Wing, Mumbai had intercepted the said smuggled consignment on 11.10.2000 and conducted detailed investigation resulting in issue of show-cause notice dated 05.04.2001 under which the appellant has been made as Noticee No. 9 seeking their written reply against the proposal for imposition of penalty under the provisions of Customs Act, 1962. The matter has been subsequently adjudicated and a penalty of Rs.1,00,000/- (Rupees one lakh) was imposed under Section 112(a) and (b) ibid vide Order-in-Original dated 31.01.2002. The said order was appealed before the Tribunal and the case was remanded for fresh determination as the original order did not disclose sufficient reasons for imposition of penalty. I also find that subsequently the said issue was adjudicated in the Order-in-Original dated 22.06.2017 maintaining the imposition of penalty on the appellant. The said case again came before the Tribunal for the second time seeking to quash the penalty imposed upon him and the matter was remanded back to the adjudicating authority to decide the matter afresh after granting the request of the appellant for cross-examination of Shri Shailesh K Thakker and Shri Rajesh Hemandas Bhagia vide Order No. A/92267/2017 dated 04.11.2017. I find that the impugned order dated 17.01.2019 has been issued in compliance with the Tribunal's order by providing sufficient opportunities to the appellant and the opportunity of cross-examination of the said two persons by the appellant. After taking into account the various facts and evidences as well as facts arising out of the cross-examination sought by the appellant, the learned Commissioner of Customs (Preventive), Mumbai had concluded that the appellant being aware that the cigarettes were smuggled in the said case and had imposed penalty of Rs.01 lakh on the appellant under Section 112(b) ibid.

5. I am constrained to note that the sufficient opportunities had been given to the appellant, and more specifically on 10.05.2022, 15.03.2023, 27.07.2023 and 18.12.2023 for the appellant to be present and plead his case. Even today, none had appeared for the appellant. Thus, it is very clear that the appellant is not interested in pursuing the legal remedy despite he being aware of the proceedings before the Tribunal as they had appeared earlier on two occasions before the Tribunal. Hence, I take up the case on merits of the case and with the consent provided by the learned AR for the Revenue.

6. This is a case of smuggling of foreign origin cigarettes along with cosmetics totally valued at Rs.1,10,77,667/- and the appellant was one of the noticee for having participated in the said smuggling activity. I also find that the personal hearing opportunities have been given by the original authority to the appellant on 20.08.2018, 22.11.2018 and 3.12.2018 and decided the issue on merits. In view of the detailed examination of the case, role played by the appellant and the decision taken by the learned Commissioner of Customs (Preventive), Mumbai, I do not find any grounds for entertaining the appeal of the appellant for setting aside the impugned order.

7. In the result, I uphold the impugned order dated 17.01.2019 and dismiss the appeal filed by the appellant.

(Operative portion of the order pronounced in court)

(M.M. Parthiban)
Member (Technical)

Sinha