CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 863 of 2012

[Arising out of Order-in-Original No. CAO No. 29/2012/CAC/CC/BKS dated 20.06.2012 passed by the Commissioner of Customs (Adjudication), Mumbai.]

Mr. Damodar Nayak ....Appellant
609, Churchgate Chambers,
5 New Marine Lines, Churchgate,
Mumbai – 400 020

VERSUS

Commissioner of Customs ....Respondent
(Export Promotion), Mumbai
New Custom House, Ballard
Estate, Mumbai – 400 001

APPERANCE:

Shri Mayur Shroff, Advocate alongwith
Shri Saurabh Mashelkar, Advocate for the Appellant

Shri Deepak Sharma, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86005/2024

Date of Hearing: 24.07.2024
Date of Decision: 26.09.2024

Penalty of ₹1,00,000/- imposed on Appellant under Section 112(b) of the Customs Act, 1962, as co-noticee to principal violator M/s. Sumira Plastic of the terms of DEEC schemes by diverting imported goods to local market without fulfilment of export obligation, is assailed in this appeal.

2. Fact of the case, in brief, is that one M/s Sumira Plastic, a partnership firm of present Appellant's sister and brother-in-law had obtained advance licenses under DEEC scheme as manufacturer-export had imported three consignments of plastic granules on 30.04.2004, 03.08.2004 and 06.05.2004 but violated the terms of advance license and ultimately sold away the finished goods to local market without following export obligation. It was put to show-cause notice, matter was adjudicated that resulted in imposition of duty, interest and penalty for those consignments and other consignments imported up to January, 2007. Appellant who claims itself to be job worker was also penalised under Section 112(b) of the Customs Act, 1962 for an amount of ₹1,00,000/-, which is assailed by him in the present appeal.

3. During course of hearing of the appeal, learned Counsel for the Appellant submitted that there were two co-noticees who stood on the same footing and penalised for the same amount for carrying out job work on behalf of the main noticee, whose appeal got dismissed for non-compliance of stay order, but this Tribunal *vide* its order No. A/85516/2022 dated 13.05.2022 in Appeal No. C/907/2012 had absolved liability of other co-noticees by setting aside penalty of ₹1,00,000/- imposed on him also as a job worker for which Appellant case is required to be determined in conformity to the same finding in which the case of other Appellant/co-noticee was decided.

4. In response to such submission learned Authorised Representative for the Respondent-Department submitted that this Appellant is a relative of the partners of main Appellant-Manufacturer and had done the act with full knowledge and information, for which penalty under Section 112(b) of the Customs Act was rightly imposed that needs no interference by this Tribunal. Responding to this learned Counsel for the Appellant submits that there was no *iota* of proof either in the form of oral or documentary evidence to justify the stand and relationship alone would not automatically make a person liable for any violation by the other related person to justify imposition of penalty.

5. I have gone through the case record and the judgment passed by this Tribunal in respect of the other co-noticee/job-worker but before going to the findings made by this Tribunal on the issue, it would be worthwhile to place it on record the findings of learned Commissioner made at para 3.8.5.3 that in view of the relationship, the Appellant was well aware of the fact that the raw materials supplied, for moulding buckets and shutter cones were meant for export and raw materials were imported duty free under DEEC scheme was not based on any reasoning as this observation of the Commissioner, as found from his order is not based on any other corroborative evidence to the effect that such blood relationship had made the Appellant easily accessible to the *modus operandi* of the manufacturing company namely M/s. Sumira Plastic, who allegedly violated the terms of DEEC scheme. Appellant has demonstratively

stated during his examination that after the payment made through cheque was bounced back, he served his relationship with the partnership firm M/s. Sumira Plastic from where her sister herself had resigned long back in 1996. Be that as it may, the relevant finding of this Tribunal in respect of other co-noticee Shri Kumar Sayani passed on dated 13.05.2022 runs as follows:

> *"… Only because the appellant knew Shri G.N. Pai cannot be a reason for claiming that the appellant was in hand in glove for the fraud committed by Shri Pai in diverting the goods imported by him under DEEC scheme. Appellant's company was acting in normal job work activities on the material provided by Shri G.N. Pai. It is not even the case of the Revenue that certain documents or certain evidences have been received showing that the appellant could be attributed with a positive knowledge about the imported nature of the goods…"*

In view of the above findings of this Tribunal in respect of other co-noticee and having regard to the fact that relationship would not automatically establish knowledge about any clandestine activity of the other related person, there is no point in taking a different view. I am, therefore, of the firm opinion that the observation made by this Tribunal in respect of the other co-noticee Shri Kumar Sayani would also apply to the present Appellant in absolving his liability since relationship could only be taken as a factor in valuation of goods and not in every other situation and therefore, in carrying forward the judicial precedent set by this Tribunal in this proceeding the following order is passed.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs (Adjudication), Mumbai *vide* Order-in-Original No. CAO No. 29/2012/CAC/CC/BKS dated 20.06.2012 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 26.09.2024)

(Dr.Suvendu Kumar Pati)
Member (Judicial)

Prasad