CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 86796 OF 2021

(Arising out of Order-in-Original C.A.O. No. 36/2021-22/CAC/CC(IMPORT-I)/MKK dated 13.07.2021 passed by the Commissioner of Customs (Import-I), Mumbai-400001.)

VINOD KUMAR CHAWLA
E-526, Greater Kailash-II, **Appellant**
New Delhi-110048.

Vs.

COMMISSIONER OF CUSTOMS, MUMBAI IMPORT – I
New Customs House, Ballard Estate, **Respondent**
Mumbai-400001.

WITH

CUSTOMS APPEAL NO. 86800 OF 2021

(Arising out of Order-in-Original C.A.O. No. 36/2021-22/CAC/CC(IMPORT-I)/MKK dated 13.07.2021 passed by the Commissioner of Customs (Import-I), Mumbai-400001.)

ASHEESH CHAWLA
E-526, Greater Kailash-II, **Appellant**
New Delhi-110048.

Vs.

COMMISSIONER OF CUSTOMS, MUMBAI IMPORT – I
New Customs House, Ballard Estate, **Respondent**
Mumbai-400001.

Appearance:
Shri Prithwiraj Choudhuri, Advocate, for the Appellant
Dr. Piyush Badhe, D.C. with Shri Ranjan Kumar, A.C. for the Respondent:

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Final Order No. 87441-87442/2024

Date of Hearing : 04/12/2024
Date of Decision: 04/12/2024

Heard from both sides on these two appeals filed by Shri Vinod Kumar Chawla and his son Shri Asheesh Chawla, on whom penalty of Rupees Twenty Lakhs and Rupees Ten Lakhs respectively were imposed and confirmed under section 112(a) of the Customs Act, 1962.

2. Learned counsel for the Appellants Mr. Prithwiraj Choudhuri submits that confirmed demand of Rs. 34,32,122/- concerning an import that took place way back in 1996, penalties were imposed on the Appellants which ultimately got reduced to this amount of Rupees Twenty lakhs and Rupees Ten lakhs respectively in *de novo* adjudication Order passed on 13.07.2021, on the basis of directions received from the Hon'ble Supreme Court of India, in an appeal preferred by these Appellants. He further submits that company is no more in existence and Appellants are quite old, who are suffering for more than 27 years in pursing their appeals at different forums with great difficulty and taking note of intention of legislature who themselves have reduced the penalty to the extent of maximum upto 10% in such situation u/s. 112(a)(ii) of the Customs Act, apparently for the reason that earlier penalty was too harsh and burdensome as personal penalty to be borne by the delinquents and therefore, quantum of penalty, which was specifically directed to be looked into by the Hon'ble Supreme Court of India, should have been confined to 10% at the maximum since the statute has undergone a change with effect from 2017 and order was passed in 2021. While not disputing the legality of the order passed establishing involvement by these two persons in the alleged transactions, he requested for leniency on the Appellants in view of the fact that one of them is more than eighty years of age and at the fag end of his life while the other Appellant is his son, not able to take care of his aged parents and family due to financial hardship.

3. Learned Authorised Representative Mr. Piyush Badhe objects to the submissions on the ground that penalty that was imposed has taken into consideration the prevailing statute at the time of importation that took place in 1996 and even penalty that was imposed on both of them was upto Seventy Five lakhs of Rupees at the first adjudication stage in 2001 and therefore, taking those into consideration the present order is passed after matter was

specifically remanded back by the Hon'ble Supreme Court of India to decide on the valuation and ultimately duty difference was determined as 34,32,112/- against which a meager penalty of Rupees Twenty Lakhs and Ten Lakhs respectively were imposed and that called for no difference by the Tribunal in the order passed by the Commissioner.

4. I have perused the case records and other relevant documents available therein. It is noticed that there were three components on which differential duties were confirmed against the importer and in respect of third component relating to these Appellants, differential duty as proposed was more than crore of rupees against which maximum penalty that was imposed at the relevant time was Seventy Five Lakhs but that was struck down by the Hon'ble Supreme Court. Even in the last *de novo* adjudication order, Learned Commissioner has imposed penalty of Rupees Twenty Lacs on Appellant Vinod Kumar Chawla and Rupees Ten lacs on Asheesh Chawla against the confirmed demand of more than Thirty Four lacs. This being the fact on record, it is to be taken on record that they had never imposed maximum penalty on the Appellants and had taken apparently different factors into consideration while imposing penalty.

5. However, after the amendment was given effect to in the penalty provision under section 112 with effect from 14.05.2017, that was apparently done by the legislature with the intention of reducing burden of the persons imposed penalty, I am of the considered view that ends of justice would better be served in imposing the maximum penalty on Appellant Vinod Kumar Chawla and 50% of it on Appellant Asheesh Kumar Chawla, to maintain parity with the order that was passed by the Commissioner in respect of both of them in his adjudication order and I do so.

The Order

6. The appeals are allowed in-part by modification of the order passed by the Commissioner on dated 13.07.2021 in reducing penalty amount imposed on Appellant Shri Vinod Kumar Chawla to Rs. 3.4 lacs and Rs. 1.72 lacs on Shri Asheesh Chawla respectively to be paid to the Respondent Department through challan with appropriate heading within two months of communication of this order on them.

7. Learned counsel for the Appellant takes the responsibility of communicating the order on the Appellants within 10 days hence.

(Dictated and pronounced in open court.)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

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