Common Order #35 to 48

% 23.05.2011

Present: Mr.Sanjay Jain, Sr. Advocate with Mr.Navneet Panwar and Ms.Ruchi Jain, Advocates for the appellants.
Mr.Mukesh Anand and Mr.Shailesh Tiwari, Advocates for the respondent.

+CUSAA Nos.11/2011, 13/2011, 14/2011, 15/2011, 16/2011, 17/2011, 18/2011, 19/2011, 20/2011, 21/2011, 22/2011, 23/2011, 24/2011 and 25/2011
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Having regard to the nature of order which we propose to pass in this set of appeals, it is neither necessary to admit the appeals formally setting the question of law involved nor is it necessary to take stock of the facts in detail. We may state, at the outset, that after hearing the counsel for the parties at length, we are of the opinion that these appeals have not been dealt with appropriately by the Tribunal in the impugned judgment whereby the Tribunal has upset the orders passed by the Adjudicating Authorities for these appellants and imposing a penalty of ₹1.00 lakh on each of these appellants.

To state in brief, the present case relate to seizure of Chinese fabric by officer of Directorate of Intelligence (DRI) from an Uzbekistani national, Ms.Olga Kozireva at the IGI Airport, New Delhi, pursuant to which investigation taken up by the officer of DRI regarding clearance of fabric by CIS national passengers. A thorough inquiry was

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conducted in which, as per the Department, it also transpired that certain Customs officers had also abetted/conspired with the other persons in wrongfully giving custom clearance to the said imports. The statement of one Mr.R.N. Zutshi, a co-officer, was recorded. On the basis of this statement and statements of other persons, 22 Customs officers along with various traders and Ms.Olga Kozireva were issued show-cause notices. The replies were filed by these officers as well as others. Thereafter order in original was passed by the Adjudicating Authority on 1st October, 2007. Vide this adjudication order, various passengers and their accomplishes were held guilty of dealing with smuggled goods and fastened with penalty under Section 112(A) and 112(B) of the Customs Act, 1962. We may state, at this stage, that in these appeals, we are not concerned with all those cases.

Insofar as 22 Customs Officers are concerned, the Adjudicating Authority discussed their role in the entire episode as per the charges made in the show-cause notices and also the defence put by them. Case of each such officer was discussed with reference to the evidence produced against such officers. Before undertaking this exercise in respect of each officer, the Adjudicating Authority spelt out the rule of evidence and the provisions of law which were to be kept in mind,

which are discussed from para 327 to 381. He also kept in mind the statement of Mr.Zutshi, on the basis of which these officers were implicated as well as role of Mr.Mamoor Khan. Another evidence in the form of print outs of telephone calls made by the traders as well as aforesaid alleged culprits, viz., customs officers, was also taken into consideration. The Adjudicating Authority thereafter indicated "analysis of charges on different dates". After taking note of all the aforesaid material and the degree of burden of proof, which was required in such cases, he ventured into the question of culpability of each such customs officers as can be seen from paras 427 onwards of the orders passed by the Adjudicating Authority. The Adjudicating Authority on a detailed discussion taking note of the alleged roles of each of these officers with reference to the evidence produced against such officers accepted the case of the respondents qua eight officers holding them guilty of abetment and imposed penalties thereagainst. However, insofar as other 14 customs officers were concerned (who are the appellants before us), the Adjudicating Authority was of the opinion that charge of connivance and abetment against them was not proved because of absence of sufficient evidence and charges proposed against them in the show cause notice were dropped. The Committee of Chief Commissioners of Customs reviewed the order in

original passed by the Adjudicating Authority and vide order dated 19.12.2007 authorised the respondent herein to challenge the order of exoneration passed by the Adjudicating Authority against 15 officers including the 14 appellants herein.

Armed with this authorization, that the aforesaid orders under Section 129(B) of the Customs Act, the respondent preferred appeals. The CESTAT has, by impugned order, allowed the appeals of the Department qua these 14 officers and has imposed penalty of ₹1.00 lakh against each of them. We may also point out at this stage that certain other persons against whom Adjudicating Authorities had passed the orders including traders etc. and importers of the fabric etc. had also preferred appeals against the order of the Adjudicating authority. In all, there were 35 appeals before the CESTAT which have been disposed of by common order dated 25.1.2011. The CESTAT has, in the first instance, discussed the appeals of all the traders on merits and dismissed the same. When the case of these appellants/customs officers was taken up, we find from the impugned order passed by the CESTAT that all these cases of these 14 officers were taken up together. The cases of these 14 appellants/customs officers are discussed in paragraph 19, which is divided into 13 sub paragraphs;

reading thereof would clearly reveal that the Tribunal has taken up these cases together and there is no discussion in respect of each such officers separately. This approach of the Tribunal is clearly wrong which resulted in an obvious error.

From what we have indicated above and on going through the orders passed by the Adjudicating Authority, it becomes manifest that the purported evidence which was led by the Department against these officers was different in nature in respect of each such officer. It was for this reason that cases of all 22 customs officers were taken up and dealt with separately with reference to specific evidence which were put against each of these officers by the Adjudicating Authority. However, the CESTAT went ahead with the presumption as if the role of each officer was common and similar in nature. Merely on the basis of the statement of Mr.Zutshi, the Tribunal has set aside the order of the Adjudicating Authority and holding that all these are guilty of abetment. This approach of the Tribunal is clearly against law which has seriously prejudiced the cases of each of the appellants. There specific defence which was different in nature from each other has not been discussed or dealt with. For this reason alone, we set aside the impugned orders which relate to the 14 customs officers/appellants herein and remit the case back to the Tribunal to decide the appeals

qua these 14 customs officers after dealing with merits of each case separately. We hope and expect that the Tribunal shall decide these appeals expeditiously and would endeavour to dispose of the same within six months. Parties shall appear before the Tribunal on June 13, 2011.

Copy of this order be given dasti to the counsel for the parties.

A.K. SIKRI, J.

M.L. MEHTA, J.

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