

GAHC030003342024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/12/2024

Robert Hauzel
Proprietor of M/s Rb, H General Enterprises, Kawnveng-2, Zemabawk, Aizawl

VERSUS

Union of India and 2 Ors.
R/b the Secretary, Department of Revenue, Ministry of Finance, 128-A/North Block,
New Delhi 2:The Commissioner of Customs (Preventive Division)

3:Assistant Commissione

Advocate for the Appellant : Mr. Jordan Rohmingthanga, Advocate

Advocate for the Respondents : Mr. Johnny L. Tochhawng,
SC, Custom Department

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of Hearing : 21.10.2024
Date of Judgment : 21.10.2024

JUDGMENT AND ORDER (ORAL)

(D. Baruah, J.)

Heard Mr. J. Rohmingthanga, the learned counsel appearing on behalf of the Appellant and Mr. J. L. Tochhawng, the learned Standing Counsel, Custom Department appearing on behalf of the respondent Nos.1, 2 & 3.

2. This intra-Court Appeal is directed against the judgment and order dated 10.05.2024 passed by the learned Single Judge in WP(C) No.87/2023 whereby the writ petition filed by the petitioner who is the Appellant in the instant proceedings was dismissed. For deciding the intra-Court Appeal, it is relevant to take note of certain facts which are narrated infra.

3. The Appellant herein claims to be engaged in the business of mobile phones etc. under the trade name and style of M/s Rb. H General Enterprises at Upper Bazar, Dawrpui, Aizawl. During the relevant period, i.e. from 2011 to 2014 while the Appellant was conducting his business, he purchased mobile phones of different make, namely, FLY mobile phones and Lemon mobile phones from distributors in Assam, namely, Jorhat Auto Accessories, H.O., Jhana Road, Jorhat-785001 and Unique Mercantile, Janpath Lane, Ulubari, Guwahati. These goods which were purchased by the Appellant were seized by the respondent No.3 on 22.04.2012 and 10.05.2012 while in transit via road from Assam to Aizawl, Mizoram in Byrnihat-Ri-Bhoi, Meghalaya and Mawiong, Meghalaya respectively. Pursuant thereto, the Appellant was issued two separate show cause notices dated 17.10.2012 and 02.11.2012 respectively under Section 124 of the Customs Act, 1962 (for short, 'the Act of 1962'). The appellant, upon receipt of the said show cause notices, replied to the same stating inter-alia that the mobile phones which were seized were purchased from Jorhat Auto Accessories, Guwahati, Assam complying all the formalities and by paying requisite taxes to the Taxation Department, Government of Mizoram and that the Appellant was no way involved in importing of the mobiles.

4. Be that as it may, two separate orders were passed by the Additional Commissioner of the Office of the Commissioner of Customs (Preventive), North Eastern Region dated 27.05.2013 and 04.06.2013.

By the order dated 27.05.2013, the Assistant Commissioner, i.e. the respondent No.3 herein had ordered for confiscation of the mobile handsets valued at Rs.26,33,378/- and the Appellant was given an option to pay a fine of Rs.2,00,000/- plus appropriate custom duty as leviable in lieu of the confiscation as provided for under the provision of Section 125 of the Act of 1962. In addition to that, an amount of Rs.1,00,000/- was imposed as penalty. It was further observed in the said order that the Appellant had deposited an amount of Rs.3,95,007/- and there was a direction to apportion/adjust the said security deposit towards fine and penalty so imposed and duty leviable in terms with the order dated 27.05.2013 and bond was directed to be released upon realization of the fine, penalty and the duty over other charges as leviable.

By the order dated 04.06.2013, the respondent No.3 confiscated the mobile handsets of foreign origin valued at Rs.45,01,453/- and gave the Appellant an option to pay a fine of Rs.4,00,000/- plus appropriate custom duty as leviable in lieu of confiscation under Section 125 of the Act of 1962. In addition to that, penalty of Rs.1,00,000/- was also imposed upon the Appellant. It is further observed that the Appellant had deposited an amount of Rs.6,75,218/- as security deposit which was directed to be apportioned/adjusted towards the fine and penalty so imposed and duty leviable in terms with the order dated 04.06.2013.

5. The records reveal that pursuant thereto, two separate orders were passed on 15.05.2014 whereby the Appellant was refunded an amount of Rs.59,746/- and Rs.1,14,944/-.

6. Subsequent thereto, on 22.08.2017, a recovery notice was issued whereby the amounts payable against the two adjudicating orders dated 27.05.2013 and 04.06.2013 after making adjustment from the security deposit already paid, was

adjudged as Rs.11,79,459/- and the Appellant was directed to pay the same.

7. We find it very pertinent at this stage to take note of that this recovery notice dated 22.08.2017 was put to challenge by the Appellant by filing a writ petition which was registered and numbered as WP(C) No.54/2018. This Court vide an order dated 29.11.2018 did not enter into the legality or validity of the recovery notice dated 22.08.2017 and instead taking into account that there being an alternative and efficacious remedy available, permitted the Appellant to approach the Appellate Authority with a specific direction that if such an Appeal is filed with an application for condonation of delay, the Appeal be decided on merits. Paragraph Nos. 5 to 7 of the order dated 29.11.2018 is reproduced herein below:-

“5. During hearing of the present case, it has been submitted that there is an Appellate Authority under the Customs Act, to which the petitioner should have filed his appeal against the recovery notice dated 22.08.2017. However, the appeal period has expired. It seems that the impugned recovery notice dated 22.08.2017, has been made on the basis of the orders dated 24.05.2013 and 03.06.2013. As a new recovery notice has been issued on 22.08.2017, after the earlier orders had been issued, this Court is of the prima facie view that the petitioner's case should be considered by the Appellate Authority on merit. However, as there will be a delay in filing the appeal by the petitioner, the petitioner's appeal, which will be accompanied by a condonation of delay application, should be considered fairly by the Appellate Authority.

6. Mrs. Dorothy Lalrinchhani, learned counsel for the respondent Nos. 1 to 3 submits that the Appellate Authority will consider the petitioner's application for condonation of delay in filing the appeal, fairly.

7. In view of the submissions made by the learned counsels for the parties and in view of the fact that there is an alternative remedy available, which can decide the petitioner's case on merit, the present writ petition is closed, with

liberty being given to the petitioner to approach the appropriate Appellate Authority under the Customs Act, with his grievance."

8. We find it further pertinent at this stage to take note that the Appellant though was given the opportunity by the learned Single Judge vide the order dated 29.11.2018 passed in WP(C) No.54/2018 to prefer an Appeal before the Appellate Authority, but the Appellant choose not to prefer any such Appeal. Under such circumstances, another notice was issued on 17.12.2021 by the Deputy Commissioner, Shillong, Customs Division asking the Appellant to pay the balance amount of custom duty of Rs.11,79,459/-. It is under such circumstances, the petitioner herein had again approached this Court by filing a writ petition being WP(C) No.87/2023 challenging the recovery notice dated 22.08.2017 and the subsequent notice dated 17.12.2021 and the various letters thereafter issued from time to time by the respondent No.3.

9. The learned Single Judge vide the impugned judgment and order dated 10.05.2024 dismissed the said writ petition holding inter-alia that the Appellant having been given an opportunity by this Court in its order dated 29.11.2018 to challenge the recovery notice and the Appellant having not challenged the same could not have re-agitated the matter again before the learned Single Judge by filing another writ petition in respect to the same subject matter. In addition to that, the learned Single Judge has also opined that the imposition made vide the recovery notice was in accordance with the provision of Section 125 of the Act of 1962. Being aggrieved, the present intra-Court Appeal has been preferred.

10. Mr. J. Rohmingthanga, the learned counsel appearing on behalf of the Appellant submitted that the learned Single Judge failed to take into consideration that the recovery notice dated 22.08.2017 as well as the

subsequent notice dated 17.12.2021 are beyond the jurisdiction of the respondent No.3 taking into account that the same was done not in conformity with Section 125 and Section 142 of the Act of 1962. The learned counsel for the Appellant further submitted that the adjudicating orders which were passed were of the year 2013 and it is only in the year 2017 powers were exercised purportedly in terms with Section 142 of the Act of 1962 and that too without any explanation. The learned counsel for the Appellant therefore submitted that these aspects of the matter ought to have been taken into consideration by the learned Single Judge while adjudicating the writ petition.

11. Per contra, Mr. J. L. Tochhawng, the learned Standing Counsel, Custom Department appearing on behalf of the respondent Nos.1, 2 & 3 submitted that the Appellant herein could not have again re-agitated the same issue which was rejected by the learned Single Judge vide the order dated 29.11.2018. The learned counsel for the respondents further submitted that on merit also the recovery notice which was issued was in consonance with the adjudicating orders and therefore the question of interference by the Writ Court was not at all envisaged. The learned counsel for the respondents further submitted that the cause of action arose upon the Appellant against the adjudicating orders dated 27.05.2013 and 03.06.2013 which have not been put to challenge. The recovery notice though was put to challenge in the earlier round of litigation, the learned Single Judge did not find it appropriate to decide the said challenge on merit rather relegated the Appellant to the Appellate Authority and the Appellant thereupon having not approached the Appellate Authority was bound to pay in terms with the recovery notice dated 22.08.2017. The learned counsel for the respondents further submitted that the reminder which have been issued in the year 2021 and the letters issued in the year 2022 would not give a fresh

cause of action to the Appellant to again approach this Court.

12. We have heard the learned counsels appearing on behalf of the parties and given our anxious consideration to their respective submissions. From a perusal of the materials on record, it is clear that vide the adjudicating orders dated 27.05.2013 and 04.06.2013, the respondent No.3 has duly adjudicated the issue whereby the Appellant was directed to pay the appropriate custom duty, fine as well as the penalty and the security deposits which were deposited were to be apportioned or adjusted accordingly. There is no challenge to those adjudicating orders dated 27.05.2013 and 04.06.2013 and as such, the same have attained finality. The recovery notice which was issued on 22.08.2017 is only giving effect to the adjudicating orders. The Appellant herein, on an earlier occasion, had challenged the said recovery notice dated 22.08.2017 and the learned Single Judge in WP(C) No.54/2018 vide the order dated 29.11.2018 did not enter into the merit and directed the Appellant to approach the Appellate Authority and also observed that if the Appellant approaches the Appellate Authority along with an application for condonation of delay, the Appellate Authority would decide the Appeal on merit.

13. The Appellant thereupon did not take any steps for filing an Appeal in spite of the liberty so granted. It is under such circumstances, the subsequent notice was issued on 17.12.2021. The issuance of the subsequent notice in our opinion do not give a fresh cause of action to the Appellant to again challenge the recovery notice dated 22.08.2017. Under such circumstances, the writ petition so filed was misconceived. Additionally, we have also perused the adjudicating orders dated 27.05.2013 and 04.06.2013 whereby there was a specific direction for payment of custom duty, fine and penalty. A perusal of the recovery notice dated 22.08.2017 would show that the same was drawn up in

consonance with the adjudicating orders which have attained finality. Therefore, on merits also the Appellant had no case.

14. We have carefully perused the impugned judgment and order passed by the learned Single Judge and it would apparently show that the learned Single Judge had duly addressed the issues while passing the impugned judgment and order dated 10.05.2024 passed in WP(C) No.87/2023. We, upon perusal of the same, do not find any illegality or infirmity in the impugned judgment and order passed by the learned Single Judge.

15. Accordingly, having not found any merit in the instant Appeal, the Appeal stands dismissed. In the peculiar facts and circumstances of the case, we are not inclined to impose any cost.

JUDGE

JUDGE

Comparing Assistant