

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

Cus.Appeal.No. 1 of 2015 ()

FINAL ORDER NOS. 21470-21472 OF 2014 OF
CUSTOMS,EXCISE&SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL
BENCH, BANGALORE DATED 19.08.2014

APPELLANT/APPELLANT:

M/S. RPS GLOBAL COURIER SERVICES
RESHMA NIWAS, RPS BUILDING, CHEPAZHANTHY P.O
TRIVANDRUM 695 587, REPRESENTED BY ITS PROPRIETOR

BY ADVS.SRI.P.A.AUGUSTIAN
SRI.M.A.BABY

RESPONDENT/RESPONDENT:

COMMISSIONER OF CENTRAL EXCISE ,CUSTOMS
CUSTOMS & SERVICE TAX, TRIVANDRUM

R1 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CE & CST

THIS CUSTOMS APPEAL HAVING BEEN FINALLY HEARD ON
22.05.2015, ALONG WITH CUA. 2/2015, CUA. 3/2015, THE COURT ON
01.06.2015 DELIVERED THE FOLLOWING:

Cus.Appeal.No. 1 of 2015

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A : TRUE COPY OF THE BOND AND BANK GUARANTEE

ANNEXURE B : TRUE COPY OF THE CIRCULAR NO.33/2010 DATED 7.9.2010.

ANNEXURE C : TRUE COPY OF THE CIRCULAR NO.21/2011 DATED 18.4.2011.

ANNEXURE D : TRUE COPY OF THE TRADE NOTICE NO.2/2012 DATED 3.5.2012.

ANNEXURE E : TRUE COPY OF THE SCN ISSUED VIDE F.NO.VIII/10/11/2013 CUS-ADJ/6823 DATED 12.07.13.

ANNEXURE F : TRUE COPY OF THE ORDER ISSUED VIDE C.NO.VIII/48/70/13 CCO (KZ) V DATED 11.7.2013.

ANNEXURE G : TRUE COPY OF THE REPLY TO SCN DATED 07.11.2013.

ANNEXURE H : TRUE COPY OF THE ORDER-IN-ORIGINAL NO. TVM-EXCUS-000-COM-14-13-14 DATED 06.01.14.

ANNEXURE I : TRUE COPY OF THE FINAL ORDER NO.21470-21472/2014 DATED 19.08.14.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

C.U.A Nos.1, 2 and 3 of 2015

Dated this the 1st day of June, 2015

JUDGMENT

Shaji P. Chaly, J.

Aggrieved by the common order in Customs Appeal Nos.21470 to 21472 of 2014 passed by the Appellate Tribunal dated 19.08.2014, which affirmed the order passed by the Commissioner of Central Excise, Thiruvananthapuram dated 06.01.2014, these appeals are filed.

2. The appellants are holders of courier registration certificates issued under Section 10 of Courier Imports and Exports (Clearance) Regulations, 1998 (hereinafter referred to as 'CIECR' for short) to act as authorised courier in Thiruvananthapuram International Airport for clearance of import and export goods under courier mode. Proceedings were initiated against the appellants on the ground that these courier agencies authorised to act as couriers were importing unaccompanied baggages of passengers and goods intended for trade or business in the guise of bona fide gifts in order to

illegitimately avail the benefit of duty free provisions granted for bona fide gifts under Notification No.171/1993-Cus. dated 16.9.1993 read with CIECR.

3. The appellants filed the bill of entry prescribed in CIECR and they have subscribed that the goods imported under the bills of entry, were only bona fide gifts etc. for personal use of a value not exceeding Rs.10,000/- and that the goods imported did not belong to the category of prohibited or restricted goods.

4. According to regulation 13(a) of the Regulation cited supra, the appellants have to obtain authorisation from each of the consignees. But it was found by the original authority as well as the Appellate Tribunal that the imports were made in the names nonexistent consignees and that the consignments were split into the name of different consignees and that there was no evidence to support that the impugned goods were bona fide gifts. The common feature in all the impugned orders is that the details of such persons whose names were shown as consignees and who are found to be nonexistent has not been brought on record.

5. It is the case of the appellants that the Commissioner of

Customs, Trivandrum without complying with the statutory formalities suspended all the courier licences belonging to the appellants in June 2012 and ordered a review of the facilities available with the authorised couriers registered under him. The said suspension orders issued against the appellants were set aside by the Chief Commissioner and notice was issued alleging that the goods imported from the year 2011 to 2012 were illegally imported goods. It is the further case of the appellants that without furnishing copies of the documents relied upon and without extending opportunity for cross-examination as sought by the appellants, vide its order dated 06.01.2014 the demand for customs duty and cess as proposed, with interest at the appropriate rate on the said amount, was confirmed.

7. Aggrieved by the same, appellants preferred appeals before the tribunal. The tribunal vide its common order, remanded the matter to the assessing authority and held as follows in paragraphs 7 to 10 respectively:

“7. Even if there is no authorisation, the question that arises is whether Revenue can demand duty for beyond one year when the Regulation itself requires authorisation should be kept only for

one year. In our opinion, prima facie, the demand can be limited only for a period of one year prior to issue of show cause notice, if authorisation has been obtained by the appellants and the authorisation relating to earlier periods could not be produced. Therefore what becomes important is that a proper conclusion as to whether authorisations were available, whether authorisations were obtained, whether authorisations were handed over to customs and there is also a dispute on the issue as to whether the officer who received the authorisation and other documents has to be cross-examined or not. Learned counsel submitted that it is the claim of the appellants that they had handed over the authorisation copies to the concerned Assistant Commissioner in Customs Airport and he also submitted that all they want is the documents if available to be given to them so that they can defend their case properly and we do not find any harm in this request. Therefore, the Commissioner concerned is requested to ensure that the officers in airport should ascertain whether documents were recovered from these agents and if available, appellants should be provided with copies. If not, we also do not find any harm in permitting cross-examination of the officers

whom the appellants claim to have handed over the documents, if requested for.

8. The next question which was not considered and which had made us realise that should have been considered is the fact that customs duty has been calculated on the basis of a uniform rate and bills of entry have not been assessed. For this purpose all the bills of entry have been treated as having been filed for unaccompanied baggage and provisions have been applied. The learned AR relied upon Section 44 of Customs Act, 1962 to submit that Department was right in undertaking the classification on this basis. Further, on going through the Section, we find that it is applicable only for passenger baggages and postal articles. The articles/goods brought through courier are not clearly covered by Section 44 of Customs Act, 1962.

9. Further, as already observed by us earlier, there is no evidence to show that these goods were unaccompanied baggage. If that is the case, then there has to be a finding in respect of each and every bill of entry that it is unaccompanied baggage and the declaration to that effect has to come from the consignor. If it is not unaccompanied baggage, the declaration has to come from consignees. Since we have only considered the stay application, we have to

accept the fact that whether the Department has proper evidence to show that these goods were unaccompanied baggages and therefore they have to be assessed as such cannot be answered by us since we are remanding the matter, we would not like to draw any conclusion.

10. We have already held in Indus Logistics case that once an authorisation is not produced, the courier agent becomes the importer. However, how the bills of entries should be assessed and whether it can be assessed as imported goods in the normal course or it should be assessed as UB and what is the correct legal position is required to be considered in detail and in this case, there is no such consideration. Under these circumstances, in view of the fact that we have already taken a view that beyond one year if the authorisation need not be kept, for the earlier period the department cannot reopen the issue unless there is evidence available to show that the authorisation was not available and the consignments were fictitious. For the period of one year also, the break-up of amount is not available and what is the correct rate of duty is to be determined. Under these circumstances, it would be appropriate that the matter should be remanded at this stage itself. Accordingly, all the impugned orders are set

aside and the matters are remanded for fresh decision on merits. We make it clear that none of our observations should come in the way of the Commissioner and Commissioner should proceed to adjudicate the matter after giving reasonable opportunity to the appellants to present their case and pass orders which would cover all the submissions made by the appellants and pass an order in accordance with law.”

5. We heard the learned counsel for the appellants and the learned standing counsel for respondent.

8. Even though several contentions are raised in the appeal memorandum, counsel for the appellants has confined his arguments only to one finding contained in paragraph 10 which is quoted hereunder:-

“We have already held in Indus Logistic's case that once an authorisation is not produced, the courier agent becomes the importer”.

9. The counsel further contended that with such a finding of the Appellate Tribunal, it will not be possible for the appellants to put forth their case before assessing authority on remand and in order to substantiate the said contention counsel

submits that the courier agents are having any liability to pay the duty that are due to be paid by the consignees. In order to substantiate the said argument, the learned counsel has drawn our attention to Regulations 11, 12 and 13 of CIECR, 1998. For a better appreciation of the argument advanced, we think it is only proper to extract the regulations cited supra:

“Regulation 11. Execution of bond and furnishing of security.- The Commissioner of Customs shall require the applicant to enter into a bond in such form with a security of [ten lakh] rupees in case of major international airports of Mumbai, Delhi, Calutta and Chennai and five lakh rupees in case of other airports and Land Customs Stations in cash or in the form of postal security or bank guarantee or National Savings Certificate in the name of the Commissioner of Customs for complying with the provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder. The condition of the said bond shall also be that the applicant shall agree to pay the duty, if any, not levied or short levied, with interest if applicable on any goods taken clearance by the Authorised Courier if in the opinion of the Assistant Commissioner of Customs or Deputy Commissioner of Customs the same cannot be recovered from the importer or the exporter.

Regulation 12. The authorized courier who has been registered under regulation 10 or has intimated in Form A to the Commissioner of Customs having jurisdiction over the Customs station from where he has to transact the business, shall furnish the bond and security as specified under regulation 11 for each Customs station.

Regulation 13. Obligations of Authorised Courier.- An authorized courier shall -

(a) obtain an authorisation, from each of the consignees of import goods for whom such Courier has imported such goods or consignors of such export goods which such courier proposes to export, to the effect that the Authorised Courier may act as agent of such consignee or consignor, as the case may be, for clearance of such import or export goods by the proper officer;

[**Provided** that for import consignments having a declared value of ten thousand rupees or less, the authorisation may be obtained at the time of delivery of the consignments to consignee]

(b) advise his client to comply with the provisions of the Customs Act, 1962 (52 of 1962) and rules and regulations made thereunder and in case of non-compliance thereof shall bring the matter to the notice of the Assistant Commissioner of Customs or Deputy Commissioner of Customs;

(c) exercise due diligence to ascertain the

correctness and completeness of any information which he submits to the proper officer with reference to any work related to the clearance of import goods or export goods.

(d) not withhold information communicated to him by an officer of Customs, relating to assessment and clearance of import goods as well as inspection, examination and clearance of export goods, from a client who is entitled to such information;

(e) not withhold any information relating to assessment and clearance of imported goods or of export goods, from the Assessing Officer;

(f) not attempt to influence the conduct of any officer of Customs in any matter pending before such officer or his subordinates by the use of threat, false accusation, duress or offer of any special inducement or promise or advantage or by the bestowing of any gift or favour or other thing or value;

(g) maintain records and accounts in such form and manner as may be directed from time to time by an Assistant Commissioner of Customs or Deputy Commissioner of Customs and submit them for inspection to the said Assistant Commissioner of Customs or an officer authorised by him, wherever required."

10. By placing reliance on regulation 11 counsel submitted

that the maximum liability prescribed under regulation 11 is only Rs.5,00,000/- and therefore, it was not legal and proper on the part of the assessing authority to impose the duty that payable by the consignees on the appellants. The said contention raised by the appellants cannot be sustained in view of the fact that as per regulation 12 the appellants are bound to furnish the bond and security as specified under regulation 11 which renders the appellants liable to pay the customs duty, if any, not levied or short levied, with interest, if applicable, on any goods taken clearance by the authorised courier if in the opinion of statutory authorities the same cannot be recovered from the importer or the exporter. Apart from this, as per Regulation 13 an obligation is cast on the authorised courier to obtain an authorisation from each of the consignees of the import goods for whom such courier has imported such goods or consignors of such export goods which such courier proposes to export to the effect that the authorised courier may act as an agent of such consignee or consignor, as the case may be, for clearance of such import or export goods by the proper officer. The proviso to the said regulation provides that for import consignments having a

declared value of ten thousand rupee or less, the authorisation may be obtained at the time of delivery of the consignments to consignee.

11. These regulations clearly show that an authorised courier, acts as an agent of the consignor or the consignee and they are bound to furnish bond as contemplated under the regulations. Thus a duty is cast on the authorised courier to act on behalf of the consignor and consignee and suffer the consequences as has undertaken by them under the Regulations and the bond furnished to the statutory authority. Therefore, having regard to the aforesaid facts and circumstances of the case and the regulations, we are of the considered opinion that the finding of the Appellate Tribunal cannot be found fault with and we hold so.

12. The counsel for the respondent on the other hand submitted that there are sufficient evidence and proof to prove the illegalities that are committed by these appellants as found by the assessing authority. In view of the remand order made by the tribunal to the assessing authority we are not inclined to express any opinion on this contention. The counsel for the

respondent has further contended before us that these appeals are not maintainable under law since any appeal involving questions with regard to duty of customs or to the value of goods for purposes as contemplated under Section 130(E)(b) of the Customs Act, 1962 has to be filed before the Hon'ble Supreme Court. To appreciate the said contention, Section 130E is quoted hereunder:

130E. Appeal to Supreme Court.-An appeal shall lie to the Supreme Court from--

(a) any judgment of the High Court delivered-

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment."

13. Relying on this provision, it was argued that the subject matter of the appeals relate to rate of duty of customs and the value of goods for purpose of assessment and that therefore these appeals are not maintainable. But we find that the subject matter of the case is relating to the alleged illegalities committed by the appellants while transacting the business as couriers carried on by them as per the regulation referred above and therefore such a contention raised by the counsel for the respondent is untenable and hence we hold that these appeals are maintainable before this Court.

In view of the facts and circumstances narrated above, we do not find any reason to interfere with the order passed by the learned tribunal and the appeals fail and the same are dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv