In the High Court of Judicature at Madras

Dated: 03.07.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR

and

The Honourable Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal Nos.1395, 1088 and 1378 of 2015

& Miscellaneous Petitions

Shyamlal Bachani
Jade Garden, Room No.202,
2nd Floor, Dr.Ambedkar Road,
Khar (West) - 400 052,
Maharashtra

..... Appellant C.M.A No.1395/15

Jatin Bachani
No.402, Amrith Nivas,
14th A Road, Santa Cruz (W),
Ramakrishna Mission Road,
Mumbai - 400 054.
Maharashtra

..... Appellant C.M.A No.1088/15

Deepak Bachani
Jade Garden, Room No.202,
2nd Floor, Dr.Ambedkar Road,
Khar (West) - 400 052,
Maharashtra

..... Appellant C.M.A No.1378/15

Vs.

1. The Commissioner of Customs (Airport & Air Cargo)
Integrated Cargo Complex,
Meenambakkam, Chennai - 600 027.

2. The Custom, Excise and Service Tax
Appellate Tribunal,
South Zonal Bench, Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

.... 2nd Respondents in the above C.M.As

APPEALs under Section 130 of the Customs Act against the order dated 04.02.2015 made in Miscellaneous Order Nos.40279, 40277 and 40281 of 2015 in Appeal Nos.C/41784, 41783 and 41785/2013-DB on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai.

For Appellant : Mr.Hari Radhakrishnan

For Respondents : Mr.A.P.Srinivas
Standing Counsel -R1

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The above Civil Miscellaneous Appeals have been filed under Section 130 of the Customs Act challenging the order dated 04.02.2015 made in Miscellaneous Order Nos.40279, 40277 and 40281 of 2015 in Appeal Nos.C/41784, 41783 and 41785/2013-DB on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai.

2. The brief facts of the case are as follows:
Alleging that the appellants have conspired with each other to import high valued glass chatons in the guise of imitation stones, using the Import Export Code of other persons by mis-declaring the value of the consignments, show cause notice was issued to the appellants to show cause as to why the declared goods should not be confiscated and penalty should not be imposed. After due process of law, the case was adjudicated and the Adjudicating Authority found that the investigation conducted by the DRI revealed that in pursuance to the conspiratorial arrangement, the glass chatons of higher value were imported by mis-declaring them as imitation stones at low value with an intention to evade customs duty. Consequently, the Adjudicating Authority passed the following order:

> "(a) I hereby reject the declared description of the goods imported under the bill of entry No.295493 dated 16.09.2010 and hold them as "Glass Chatons";
>
> (b) I hereby reject the value declared @ US$ 12 per Kg. (CIF) in respect of the said goods imported under Bill of Entry number 295493 dated 16.09.2010 in terms of Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 read with Section 14(1) of the Customs Act, 1962;

(c) I order re-determination of the value as US$ 97 CIF/kg in respect of the said goods imported under Bill of Entry No.295493 dated 16.09.2010 under Rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 read with section 14(1) of the Customs Act, 1962;

(d) I order re-assessment of the Bill of Entry No.295493 dated 16.09.2010 to duty at Rs. 19,64,806/- under Section 17(4) of the Customs Act, 1962;

(e) I order confiscation of the goods totally valued at Rs.73,18,070/- (Assessable Value) imported under the Bill of Entry No.295493 dated 16.09.2010 which were seized since being liable for confiscation under section 111(d) and section 111(m) of the Customs Act, 1962; However I allow the goods to be redeemed on payment of Redemption fine of Rs.20,00,000/- (Rupees twenty lakhs only)

(f) I impose penalty of Rs.2,00,000/- (Rupees two lakhs only) on Shri.jatin Bachani @ Jay Bachani under section 112 (a) read with section 114AA of the Customs Act, 1962;

(g) I impose penalty of Rs.2,00,000/- (Rupees two lakhs only0 on Shri. Rajesh Jhaver under Section 112(a) read with section 114AA of the Customs Act, 1962;

(h) I impose penalty of Rs.1,00,000/- (Rupees one lakh only) on Shri.Chirag Jayant Shah under section 112(a) read with section 114AA of the Customs Act, 1962;

(i) I impose penalty of Rs.1,00,000/- (Rupees one lakh only) on Shri.L.Venkatasubramanian under section 112(a) read with section 114AA of the Customs Act, 1962;

(j) I impose penalty of Rs.50,000/- (Rupees Fifty thousand only) on Shri.Sanjay Kumar under section 112(a) read with section 114AA of the Customs Act, 1962."

3. Aggrieved by the above-said order of the Adjudicating Authority, the appellants preferred appeals along with applications for stay before the Tribunal.

4. The Tribunal, after considering the submissions, dismissed the applications for stay holding as follows:

"3. Taking up the stay application of all the four cases, it is noticed that all the applications were instrumental for import of the mis-declared goods. The authority below has brought out the connivance with the scientific approach of causing subtrefuge to the Revenue.

4. In view of the above prima facie observation, it is proper to dismiss the stay applications and direct the applicant to make pre-deposit of entire amount of penalty levied on within six weeks and make compliance on 25.03.2015."

5. Aggrieved by the order of the Tribunal, the appellants have filed the present appeals.

6. Learned counsel appearing for the appellants submits that the appellants were not given opportunity to cross examine the Directorate of Revenue Intelligence Officers and the other noticees whose statements have been relied upon as the basis for the issue of show cause notices to the appellants. He further submits that the goods confiscated are still under the custody of the Department and the same have not redeemed. Hence, penalty should not be imposed as the interest of the Revenue is protected. He further submits that the appellants are facing severe financial hardship and hence, the pre-deposit of any amount would cause undue hardship on the appellants.

7. Learned Standing Counsel appearing for the Revenue supporting the order of the Tribunal submits that when the conspiracy have been established and irregular import is made with intention to evade duty, penalty should be imposed.

8. Heard learned counsel appearing for the appellants and the learned Standing Counsel appearing for the Department and perused the materials placed before this Court.

9. The two issues raised by the learned counsel for the appellants that no opportunity was granted to the appellants to cross examine the persons who had given statement and the goods are still under the custody of the Department, which is sufficient to protect the interests of the Revenue are all matters to be adjudicated before the Tribunal at the time of final hearing of the appeals filed before the Tribunal. At this stage, we do not know whether any such person have redeemed the goods. The plea that the goods have been absolutely confiscated is not a ground to cancel the penalty levied under Section 114AA of the Customs Act. The imposition of penalty is independent of the confiscation proceedings and the liability for penalty arises in view of the violation of the provisions of the Act.

10. Section 114AA of the Customs Act deals with penalty for providing false or incorrect statement. For better clarity, Section 114AA of the Customs Act reads as follows:

> "SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

11. A reading of the above-said provision reveals that any person, who is knowingly makes a false or incorrect claim is liable for penal action. Hence, taking note of the nature and manner of import of goods, which we find from the order of adjudication, we are not inclined to grant entire waiver of pre-deposit.

12. In the light of the above, we pass the following order:

i) The order of the Tribunal dated 04.02.2015 is modified to the extent that each one of the appellants have to deposit 50% of the amount ordered by the Tribunal within a period of four weeks from the date of receipt of a copy of this order and

ii) For the remaining 50% of the amount ordered by the Tribunal, each one of the appellants have to furnish property security to the satisfaction of the jurisdictional officer within a period of four weeks from the date of receipt of a copy of this order.

In the result, the above Civil Miscellaneous Appeals stand disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Custom, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annexe, No.26, Haddows Road,
Chennai - 600 006.

2. The Commissioner of Customs (Airport & Air Cargo)
Integrated Cargo Complex,
Meenambakkam, Chennai - 600 027.

+1 cc to M/s.Hari Radhakrishnan, Advocate sr.33445

C.M.A.Nos.1395, 1088 and 1378 of 2015
& Miscellaneous Petitions

aa06/08/2015