IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.04.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NOS. 727 TO 730 OF 2015
AND
M.P. NOS. 1 & 2 OF 2015 (4 NOS.)

V.Lakshmanan .. Appellant in CMA Nos. 727, 729 & 730 of 2015

M/s.Trans Asia Shipping Services (P) Ltd.
2nd Floor, Manickam Tower
146 D, Palayam Kottai Road
Tuticorin 628 008. .. Appellant in CMA No.728 of 2015

- Vs -

1. Commissioner of Customs
   Office of the Commissioner of Customs, Central Excise & Service Tax
   6/7, ATD Street, Race Course Road
   Coimbatore 641 018.

2. Customs, Excise & Service Tax Appellate Tribunal
   No.26, Shastri Bhavan Annexe Building
   Haddows Road
   Chennai 600 006. .. Respondents in all the appeals

Civil Miscellaneous Appeals filed under Section 130 of the Customs Act against the orders dated 14.1.2015 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Stay Application Nos. C/Stay/40743/2014, C/Stay/41183/2014, C/Stay/41184/2014 and C/Stay/41538/2014, 1)in Appeal No.C/40534/14, 2)in Appeal No.C/40936/14,3)in Appeal No.C/40937/14,4.in Appeal No.C/40605/14, respectively on the file of the second Respondent.

For Appellants : Ms.Anitha Thomas
For Respondents : Mr.A.P.Srinivas

COMMON JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Mr. A.P.Srinivas, learned standing counsel is directed to take notice for the first respondent.

2. The present appeals have been filed by the respective appellants aggrieved by the order of the Tribunal directing the respective appellants to pre-deposit the amounts ordered as a condition precedent for hearing appeal.

3. Though certain questions of law have been raised for consideration in these appeals, however, the substantial question that requires adjudication in the present appeals is whether the pre-deposit, as ordered by the Tribunal, requires to be modified or not.

4. The facts, in a nutshell, are as hereunder :-
Based on intelligence, the Directorate of Revenue Intelligence took up investigation of cases, where the names of firms, which are defunct or no longer in existence, were used for effecting exports of textile garments by inflating the value of the goods and, thereby, higher amount of duty drawback was availed; thereafter, the drawback cheques were encashed through newly opened bank accounts in a fraudulent manner and after availing/encashing the drawback amounts, the persons behind the show disappeared. In the course of investigation, persons were accosted and their statements were recorded. During investigation, it has come to light that M/s.Trans Asia Shipping Services and V.Lakshmanan, Branch Manager of M/s.Trans Asia Shipping Services, the appellants herein, were involved in the fictitious exports with intention to avail drawback, thereby defrauding the Revenue. Therefore, a show cause notice was issued on the appellants and the same was adjudicated. The adjudicating Commissioner, while ordering recovery of drawback as against certain individuals and companies, imposed penalty on the appellants in the following manner, vide separate adjudication orders :-

> "i) I impose a penalty of Rs.2,50,000/= (Rupees Two Lakhs Fifty Thousand only) on M/s.Trans Asia Shipping Services (P) Ltd., Tuticorin under Section 114 (iii) of the Customs Act;
> ii) I impose a penalty of Rs.2,50,000/= (Rupees Two Lakhs Fifty Thousand only) on Shri V.Lakshmanan of M/s.Trans Asia Shipping Services (P) Ltd., Tuticorin under Section 114 (iii) of the Customs Act;
> iii) I impose a penalty of Rs.70,000/= (Rupees Seventy Thousand only) on M/s.Trans Asia Shipping Services (P) Ltd., Tuticorin under Section 114 (i) of the Customs Act;

iv) I impose a penalty of Rs.70,000/= (Rupees Seventy Thousand only) on Shri V.Lakshmanan of M/s.Trans Asia Shipping Services (P) Ltd., Tuticorin under Section 114 (i) of the Customs Act;

v) I impose a penalty of Rs.55,000/= (Rupees Fifty-five Thousand only) on M/s.Trans Asia Shipping Services (P) Ltd., Tuticorin under Section 114 (i) of the Customs Act;

vi) I impose a penalty of Rs.55,000/= (Rupees Fifty-five Thousand only) on Shri V.Lakshmanan of M/s.Trans Asia Shipping Services (P) Ltd., Tuticorin under Section 114 (i) of the Customs Act."

5. Aggrieved by the penalty imposed by the adjudicating authority, the appellants filed appeals before the Tribunal along with an applications for waiver of pre-deposit, which came to be ordered by the Tribunal in the following manner :-

S.No.	Appeal No.	Appellant	Penalty	Pre-Deposit Directed
1	*	*	*	*
2	C/40533/2014	Trans Asian Shipping	70000/-	70000/-
3	C/40534/2014	Lakshmanan	70000/-	70000/-
4	*	*	*	*
5	C/40604/2014	Trans Asian Shipping Services	55000/-	55000/-
6	C/40605/2014	V.Lakshmanan	55000/-	55000/-
7	*	*	*	*
8	C/40936/2014	Trans Asian Shipping Services	250000/-	250000/-
9	C/40937/2014	V.Lakshmanan	250000/-	250000/-
10	*	*	*	*
11	*	*	*	*
12	*	*	*	*
13	*	*	*	*

6. For ordering the pre-deposit, as quoted above, the Tribunal, prima facie came to hold that the impugned adjudication order shows

that these appellants, along with others were subscribers to the fraud engineered against the Revenue, which have been brought to light during investigation, which facts, were considered in the adjudication order. According to the Tribunal, on the question of imposition of pre-deposit, the balance of convenience tilts in favour of the Revenue and, therefore, the Tribunal felt just and necessary to order and, accordingly, ordered pre-deposit as above.

7. At the time of hearing, it is stated by the learned counsel appearing for the appellants that insofar as the pre-deposit, as ordered by the Tribunal, in respect of S. Nos.3, 6, 8 and 9 alone, appeals have been filed and in respect of S. Nos.2 and 5, the pre-deposit amount, as ordered by the Tribunal, has been paid. However, particulars of payment in respect of payment of Rs.70,000/= and Rs.55,000/= in Appeal Nos.C/40533/2014 and C/40604/2014 have not been filed in Court. It is for the Tribunal to verify and insist on payment, if not already paid, before taking up the respective appeals for consideration.

8. Insofar as these four appeals are concerned, the prima facie plea made by the learned counsel for the appellant is that M/s.Trans Asia Shipping Services, one of the appellant, is the liner, which carried the goods to Dubai and the other appellant, viz., Lakshmanan, is the Branch Manager of M/s.Trans Asia Shipping Services. It is the submission of the learned counsel for the appellants that the appellants have no active role in the export of the goods, except that whatever container was placed in their hands, they have carried the goods to the destination. Further, it is also submitted by the learned counsel for the appellants that the appellants have in no way benefitted by the availment of duty drawback, as they were not recipients of the same and in such circumstances, the imposition of penalty itself is not sustainable, which fact has been lost sight of by the Tribunal while ordering pre-deposit. Therefore, imposition of penalty and subsequent ordering of pre-deposit is per se not sustainable and is liable to be interfered with by this Court.

9. Mr.A.P.Srinivas, learned standing counsel appearing for the first respondent submits that subject to the pre-deposit of Rs.70,000/= and Rs.55,000/= by M/s.Trans Asis Shipping Services, as ordered by the Tribunal, while considering the relief as sought for by the appellants, the Court may take into consideration the nature of the findings given in the adjudication order and the Court, if so thinks fit, may modify the pre-deposit, keeping in mind the interests of the Revenue.

10. Heard the learned counsel appearing for the appellants and the learned standing counsel appearing for the first respondent and perused the materials available on record.

11. The facts are not in dispute. It is the finding of the adjudicating authority that the role of the appellants seems to be abetting the export of goods to avail drawback facility, which the exporter is not entitled to. It is not the case of the respondents, as is evident from the records that the appellants reaped any monetary gains on account of their alleged involvement in the above transaction. One of the appellant, M/s.Trans Asia Shipping Services is the Liner, which carried the goods and the other appellant, V.Lakshmanan is the Branch Manager of M/s.Trans Asia Shipping Services are not in dispute. In the above backdrop, the prima facie plea of the appellants is that they having not reaped the benefits of the drawback availed by the exporter, the penalty fastened on them is not justified and the consequential imposition of pre-deposit is not sustainable and if the order is allowed to stand, they will be put to great hardship and prejudice. However, this Court, even at the outset, is of the considered view that the complicity of the issue could be agitated only in the main appeal and the issue on the quantum of penalty can be decided only on merits at the time of appeal.

12. On the question of pre-deposit, on a careful analysis of the matter and on a careful perusal of the orders of the authorities below and on going through the entire gamut of facts, it is clear that the allegation in the adjudication order is only in relation to availment of duty drawback, which is alleged on the exporter. There is no allegation against the appellants that they reaped any benefit from the wrongful availment of drawback. The levy as ordered against the appellants is only penalty for their alleged involvement in the transaction. Prima facie, this Court is of the considered view that the appellants having not been attributed with any direct monetary benefit in the alleged transaction, leniency could be shown in the matter of ordering pre-deposit. The imposition of pre-deposit is only to enable the appellants to pursue the appeals without resorting to delaying tactics. In case where pre-deposit is ordered by the Tribunal, the complicity of the appellants as well as the financial burden on the appellants should also weigh with the Tribunal in arriving at a just decision while ordering pre-deposit. On the factual matrix, as discussed above, the pre-deposit ordered by the Tribunal, in the considered opinion of this Court, is a bit on the higher side. This Court is of the considered view that if the order of the Tribunal is not modified, it would cause grave hardship and prejudice to the appellants herein. Therefore considering the complicity of the appellants in the transaction as also the financial burden pleaded before this Court, this Court is inclined to interfere with the order of the Tribunal by modifying the order.

13. Accordingly, for the foregoing reasons, this Court passes the following order:

"i) On the core issue raised, we are of the view that the Tribunal was not justified in ordering pre-deposit in the manner stated in its order dated 14.1.2015;
ii) Consequently, pending the appeals the order of the Tribunal dated 14.1.2015 is modified to the following effect :-

a) the appellant in CMA No.728/2015, viz., Trans Asia Shipping Services, shall make a pre-deposit of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) in lieu of Rs.2,50,000/= (Rupees Two Lakhs Fifty Thousand only) ;

b) the appellant in CMA Nos.727, 729 and 730 of 2015, viz., V.Lakshmanan shall make a pre-deposit of Rs.25,000/= (Rupees Twenty-Five Thousand only) in lieu of Rs.55,000/= (Rupees Fifty-Five Thousand only), Rs.30,000/= (Rupees Thirty Thousand only) in lieu of Rs.70,000/= and Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) in lieu of Rs.2,50,000/= (Rupees Two Lakhs Fifty Thousand only);

c) The pre-deposit, as modified above, shall be paid by the respective appellants on or before 18.05.2015.

d) Subject to complying with the direction as ordered above, the pre-deposit of balance amounts ordered by the Tribunal shall remain waived and its collection shall stand stayed during the pendency of the appeals before the Tribunal."

14. The civil miscellaneous appeals are disposed of in the above terms. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. Commissioner of Customs
   Office of the Commissioner of
   Customs, Central Excise & Service Tax
   6/7, ATD Street, Race Course Road
   Coimbatore 641 018.

2. Customs, Excise & Service Tax
   Appellate Tribunal
   No.26, Shastri Bhavan Annexe Building
   Haddows Road
   Chennai 600 006.

4 cc to Ms.Anitha Thomas ,Advocate, SR.No.19621, 19622, 19623 & 19625

1 cc to Mr.A.P.Srinivas ,Advocate, SR.No.19368

C.M.A. NOS.727 TO 730 OF 2015

nm(co)
pmk.15.4.2015