OD-8-11 & 17-21

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/40/2024
IA NO: GA/2/2024
Commissioner Of Customs (Port), Kolkata
VS
Shri Rakesh Magoo

CUSTA/41/2024
IA NO: GA/2/2024
Commissioner Of Customs (Port) Kolkata
VS
Shri Rakesh Magoo

CUSTA/42/2024
IA NO: GA/2/2024
Commissioner Of Customs (Port) Kolkata
VS
Shri John Miranda

CUSTA/43/2024
IA NO: GA/2/2024
Commissioner Of Customs (Port) Kolkata
VS
Shri John Miranda

CUSTA/52/2024
IA NO: GA/1/2024
RAKESH MAGOO
VS
COMMISSIONER OF CUSTOMS (PORT) CUSTOM HOUSE

CUSTA/53/2024
IA NO: GA/1/2024
RAKESH MAGOO
VS
COMMISSIONER OF CUSTOMS (PORT) CUSTOMS HOUSE, KOLKATA

CUSTA/57/2024
IA NO: GA/1/2024
JOHN MIRANDA
VS
COMMISSIONER OF CUSTOMS (PORT) CUSTOMS HOUSE, KOLKATA

CUSTA/58/2024
IA NO: GA/1/2024
JOHN MIRANDA
VS
COMMISIONER OF CUSTOMS(PORT) CUSTOMS HOUSE, KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th July, 2024

Appearance :
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
... for the appellant

Dr. Samir Chakraborty, Adv.
Mr. Abhijit Biswas, Adv.
Mr. Bhaskar Sengupta, Adv.
...for the respondents(in item nos.8-11)/
Appellants (in item nos.17-20)

The Court : All these appeals have been filed against a common order passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, dated 26th July, 2023, in Customs Appeal No. 75240 of 2014, No. 75241 of 2014, No. 75242 of 2014 and No. 75244 of 2014.

Both the revenue as well as the assessee are in appeal against the common order passed by the Tribunal. The revenue is aggrieved by that portion of the order passed by the learned Tribunal exonerating the assessees from the levy of customs duty and the assessees are aggrieved by that portion of the order affirming the order levying penalty. If the learned Tribunal had exonerated the assessees from the levy of duty, the consequences would be the penalty could not have been imposed. Therefore, to that extent the order passed by the learned Tribunal is not clear as to under what circumstances the learned Tribunal in paragraph 11 affirmed the penalty, that too, by holding that the respondent/assessee Rakesh Magoo and John Miranda were actively involved in import of the imported goods and undervalued the same. If this finding is to be sustained, then the remaining portion of the order passed by the learned Tribunal has to be set aside.

Thus, we find there is clear inconsistency in the order passed by the Tribunal. The Tribunal has elaborately referred to a statement recorded from John Miranda. In fact, the entire statement has been reflected in paragraphs 8.1 to 8.18. The statement of Shri Rakesh Magoo has been referred to in paragraph 9. The finding of the Tribunal is only in paragraph 10 wherein it has been held that in the light of the discussion made by the Tribunal, it is clear that Rakesh Magoo and John Miranda were using IEC Code of various IEC holders for import of car electronic goods by undervaluing the same and differential amount has been paid to the oversees suppliers through their office in India by illicit means. Having held so, the learned Tribunal in the last paragraph i.e. in paragraph 13 held that no duty is payable by Rakesh Mangoo and John Miranda. This is again once again an inconsistency. Above all it is not clear from where the statement has extracted in paragraph 8.1 to 8.18 and 9 have been culled out. On a cursory reading of the show-cause notice it is seen that in the statement recorded under Section 108 of the Act both Rakesh Magoo and John Miranda have candidly admitted that they were involved in the entire under evaluation process. Therefore, if learned Tribunal had to rely upon the statement of those two persons, it has to discuss the statement in its entirety and cannot pick and choose a few paragraphs more particularly there is nothing on record to show that there was a valid retraction of the statement by Rakesh Magoo and John Miranda.

Therefore, we are of the view that Tribunal should re-consider the matter and taking note of all factual matrix and then come to a clear conclusion. This exercise is required to be done by the learned Tribunal, since learned Tribunal is last fact finding authority in hierarchy of authorities. So far as the imposition of penalty on the clearing agency namely **Sai Dutta Clearing Agency Pvt. Ltd.**, the said order has been affirmed by this Court as the appeal filed by the said clearing agency in CUSTA/17/2024 was dismissed by judgement dated 26.04.2024.

For the above reasons, the appeals filed by the revenue as well as appeals filed by the assessee are allowed. The order passed by the learned Tribunal to set aside in so far as the respondents alone namely Rakesh Magoo and John Miranda and the matter is remanded back to the learned Tribunal for fresh consideration in accordance with law, after notice to the parties.

.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/sd/pkd/GH.