Prime Forwarders and ors. Vs. Commissioner of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-14-2005

Reported in : (2006)(105)ECC478

Judge : S T Chittaranjan, T Anjaneyulu

Appellant : Prime Forwarders and ors.

Respondent : Commissioner of Customs

Judgement :
2. The appellants have filed applications under Section 129E of the Customs Act, 1962 in their concerned appeals, for waiver of pre-deposit amount as confirmed in the Order-in-Original dated 31.03.2005 passed by the Commissioner of Customs, Customs House, Kandla, and to grant stay from its recovery.

3. An information was received by the Customs House that a consignment of Tin Bearing Sand with a top covering of tinplated brass was being imported from Malaysia by M/s. Vaibhav Laxmi Impex Pvt. Ltd., Delhi (Appeal No. C/976/05) by misdeclaring the same as 'Brass Scrap as per ISRI Label' and grossly undervaluing the same. Investigation wing of the Customs House initiated investigation in respect of the said consignment reached the Kandla Port in seven (7) containers vide Bill of Lading dated 11.04.2003 and it was found that the description of goods contained in the containers were shown as 'Brass scrap as per ISRI Label' and the consignee was shown as M/s. Vaibhav Laxmi Impex Pvt. Ltd., Delhi, in the Import General Manifest (I.G.M.) filed by the Shipping Line

Agent. It is also a fact that out of seven (7) containers, two (2) containers containing 92 drums having total quantity of 42.802 MTs shown in the Bill of Lading were purchased by M/s. Vishal Impex, Jamnagar, (Appellant in Appeal No. C/978/05) from M/s. Vaibhav Laxmi Impex Pvt. Ltd. on High Seas Sales basis as per Agreement dated 24.04.2003 for clearing which Bill of Entry for warehousing No. 11203 dated 12.06.2003 was filed by M/s. Vishal Impex through their Custom House Agent, M/s. Prime Forwarders, Gandhidham (Appellant in Appeal No. C/814/05). The gods were inspected by the Customs Officers in the presence of panchas and the representative of Shipping Line Agent and it was revealed that the goods were loaded in the barrels and the barrels were loaded with tin bearing sands on top covering tin plated brass. The samples drawn from the consignment were tested by the Chemical Examiner, who opined that the sample is 'Ferro Titanium' and it is other than Ferrous waste and scrap. Since the goods were misdeclared in the I.G.M. and Bill of Entry, the entire cargo (two containers) containing 42,123.5 Kgs. of Ferro Titanium and 700.5 Kgs.

of Brass Scrap, having a market value of Rs. 1,54,94,916/- (Rupees One Crore Fifty Four Lakhs Ninety Four Thousand Nine Hundred Sixteen only) were seized. Remaining goods contained in five (5) containers were also inspected on 16.09.2003 and it has been revealed that only top layer of drums/barrels stuffed in these containers was brass scrap and the rest of the metal powder was all Ferro Titanium. Chemical expert's report also supported the same. Thus, the entire cargo was placed under seizure for mis-declaration and gross under-valuation. Show Cause Notice was issued with a proposal to confiscate the goods contained in the seven (7) containers, to recover the customs duty involved in the goods and to penalize the appellants along with the Director/Proprietor.

4. On adjudication of the matter by the Commissioner, Customs House, Kandla, on the basis of the material available, ordered confiscation of Ferro Titanium under the provisions of Section 111(d), 111(f), 111(i) and 111(m), imposed penalty of Rs. 2,00,00,000/-(Rupees Two Crores only) on M/s. Vaibhav Laxmi Impex Pvt. Ltd., Delhi under Section 112(a) and (b) of the Customs Act, 1962, and equivalent penalty of Rs. 2,00,00,000/- (Rupees Two Crores only) on M/s. Vishal Impex, Jamnagar, under the provisions of Section 112(a) and (b) of the Customs Act,

1962. Further, imposed penalty of Rs. 1,00,00,000/- (Rupees One Crore only) on Shri Suresh Mandowara, Director of M/s. Vaibhav Laxmi Impex Pvt. Ltd., Delhi, under Section 112(a) and (b) of the Customs Act, 1962, penalty amounting to Rs. 1,00,00,000/- (Rupees One Crore only) on Shri Chetan Malani, New Delhi, under the provisions of Section 112(a) of the Customs Act, 1962 and further penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) on M/s. Prime Forwarders, Gandhidham, under the provisions of Section 112(a) of the Customs Act, 1962 was also imposed.

5. The importer (main appellant), M/s. Vaibhav Laxmi Impex Pvt. Ltd., Delhi, claims that they have not filed any Bill of Entry for clearance of goods and there was no question of making any mis-declaration. They came to know that the mischief was played by the overseas Malaysian Exporter in sending the un-contracted goods in the shape of the disputed goods and immediately they filed a complaint with the Malaysian High Commissioner and also informed the same to the Customs Department. Therefore, their submission is that they cannot be held guilty of violation of any provisions of the Customs Act. The other grounds urged by them are denial of natural justice and imposition of penalty without any basis.

6. The appellant, M/s. Vishal Impex, claims to have purchased two (2) containers from the original importer on the basis of High Seas Sales and filed Bill of Entry in respect of them through their CHA, viz. M/s.

Prime Forwarders, Gandhidham, on the basis of the documents furnished by Shri Chetan Malani. The other ground urged by them is similar to that of the other appellants and also pleads financial hardship.

7. M/s. Prime Forwarders submit that they have played their role diligently and there was no indulgence on their part in filing the documents. They claim that whatever documents they were given, basing on the same, they filed the Bill of Entry without having any knowledge over the disputed goods.

8. After going through the record, there appears prima facie case for waiver of pre-deposit amount in respect of other appellants, except M/s. Vaibhav Laxmi Impex Pvt. Ltd. This appellant is the original importer of the goods, who sold two

containers on High Sea Sales basis to M/s. Vishal Impex, Jamnagar. The adjudicating authority's observation is that the title of goods in dispute is not now with the importer and High Seas Purchaser as the goods are ordered for confiscation, as such, duty liability on the said goods will be discharged when the sale proceeds of the goods are effected by the Deportment. Therefore, both the appellants were not held liable for payment of excise duty, except payment of the penalty imposed.

9. The contention of the main appellant that they have relinquished the title to the goods before claiming the same, and the contention of the High Seas Purchaser about the cancellation of the Bill of Entry were well considered by the adjudicating authority before imposing penalty on them.

10. Having considered the material on record and further having regard to the factum of financial hardship, it is felt appropriate to direct M/s. Vaibhav Laxmi Impex Pvt. Ltd. to make a pre-deposit of Rs. 50,00,000/- (Rupees Fifty Lakhs only) and report compliance by 2.2.2006, subject to which further pre-deposit of the balance penalty amount of this appellant is waived and stay is granted from its recovery. In so far as other appellants are concerned, as they made out prima face case, they are granted waiver of pre-deposit amount and also stay from the recovery of the amounts. Applications are disposed of in the above terms.