

(2024) 04 CESTAT CK 0009

Customs, Excise And Service Tax Appellate, Kolkata

Case No: Customs Appeal No. 77556, 77667 Of 2018

Pallab Mitra And Others

APPELLANT

Vs

Commissioner Of C.G.S.T. And C.X

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Customs Act, 1962 ‐ Section 112(a)

Hon'ble Judges: Ashok Jindal, Member (J); Rajeev Tandon, Member (T)

Bench: Division Bench

Advocate: B.N. Pal, Ashwini Kr. Choudhary

Final Decision: Allowed

Judgement

Ashok Jindal, Member (J)

1. Both the appellants herein are in appeal against the impugned order imposing penalties on them under Section 112(a) of the Customs Act, 1962 alleging that the appellants have not checked the antecedents of either M/s. Ocean Overseas or Shri Ravinder Singh before undertaking the responsibility of a CHA for the said consignments.

2. The facts of the case are that one M/s. Ocean Overseas filed Bill-of-Entry for clearance of one consignment of 167 packages declared to be containing 304 pieces of "Hot Air Gun" and 8397 pieces of "Empty Box With Accessory Set (set of 1 pc.

Charger, 1 pc. Hands free, 1 pc. Cable, 1 pc. catalogue for mobile phone)" covered under Bill-of-Entry No. 523304 dated 26.09.2008. On examination, it was found that the goods were not as per the declaration in the import documents and therefore, proceedings were initiated against the importer as well as the appellants; the appellant viz. Shri Pallab Mitra is the employee of the appellant M/s. Banerjee Shipping Agency, who had undertaken the job of clearance of the said goods, being the CHA.

3. It was alleged against the appellants that they have not checked the antecedents of the importer or Shri Ravinder Singh before undertaking their responsibility of clearance of the said consignment as a CHA. In these set of facts, penalty was imposed on both the appellants by way of impugned order. Against the imposition of penalties on the appellants, the appellants are before us.

4. During the course of arguments, the Ld. Counsel appearing on behalf of the appellants brought to our knowledge that on the same charge, proceedings were initiated against the appellants under the Customs Brokers Licensing Regulations (CBLR) and their Licence of Customs Broker was suspended. The said order of

suspension of their CHA Licence was challenged before the Hon'ble High Court of Calcutta and consequently, suspension of CHA Licence was revoked vide judgement dated 09.01.2009; the appellant was allowed to do work on regular basis as Customs Broker. In the facts and circumstances, it is contended that the allegation that the appellants had not checked the antecedents of the importer and/or its employee is not sustainable; for the said allegation, proceedings are required to be initiated under the Customs Brokers Licensing Regulations and therefore, the impugned order imposing penalty on the appellants is required to be set aside.

5. On the other hand, the Ld. Authorized Representative appearing on behalf of the respondent supported the impugned order.

6. Heard the parties and considered their submissions.

7. We find that the only allegation for imposition of penalty on the appellants is that they had not checked the antecedents of the importer or its representative while undertaking the work of clearance of the said consignment as a CHA. On examination of the goods, it was found that the goods had been mis-declared. However, no allegation against the appellants has been made during the course of investigation to the effect that the appellants were having the details of the goods imported by the importer or having any connivance with the importer for mis-declaration of goods in question.

7.1 Moreover, for the allegation with regard to checking of the antecedents of the importer or its representative, proceedings are warranted under the Customs Brokers Licensing Regulations, which proceedings against the appellant have already been dropped.

8. In these circumstances, no penalty is imposable on the appellants as held by this Tribunal in the case of Chandan Chatterjee v. Commissioner of Customs (Port), Kolkata [Final Order No. 77585 of 2023 dated 22.11.2023 in Customs Appeal No. 76593 of 2014 - CESTAT, Kolkata].

9. In view of this, we drop the penalty imposed on the appellants.

10. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any.