

(2022) 02 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 50078 Of 2020

**M/s Asia Pacific Impex Pvt. Ltd Vs Principal Commissioner Customs
(Import)?**

Date of Decision : 18-02-2022

Acts Referred:

Customs Act, 1962 — Section 28, 28(4), 112(a)

Citation : (2022) 02 CESTAT CK 0021

Hon'ble Judges : Delip Gupta, J; P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. M/s Asia Pacific Impex Pvt. Ltd., the appellant has filed this appeal to assail the order dated 14.20.2019 passed by the Principal Commissioner of Customs ICD, TKD, New Delhi, the Principal Commissioner imposing penalty of Rs. 10,00,000/- upon the appellant under section 112(a) of the Customs Act, 1962, the Customs Act.

2. A show cause notice dated 16.01.2018 was issued by the Directorate of Revenue Intelligence. It states that information had been received that certain importers of Melamine were indulging in evasion of anti-dumping duty by over valuating the goods imported from China. It needs to be noted that anti-dumping duty in terms of the Notification dated 19.02.2010 was the difference between the landed value of the goods and USD 1681.49 per metric ton. Thus, by declaring the value of goods at a rate above USD 1550, the importers were avoiding anti-dumping duty. The show cause notice specifically called upon M/s Arinits Sales Pvt. Ltd.; Ashish Chopra, Director of M/s Arinits Sales; Ajay Kapur, Proprietor of M/s Chemical Connection; Amit Agarwal, Director of M/s Yug International Pvt. Ltd.; and Ankur Agarwal, Director of M/s Asia Pacific Impex Pvt. Ltd., to show cause, but a copy of this show cause notice was also sent to the appellant.

3. The Principal Commissioner however, even though the show cause notice did not require the appellant to show cause, imposed a penalty upon the appellant

under section 112(a) of the Customs Act.

4. Shri Ved Prakash Batra learned counsel appearing for the appellant submitted that not only the Directorate of Revenue Intelligence did not have the jurisdiction to issue the show cause notice under section 28 of the Customs Act in view of the decision of the Supreme Court in Canon India Private vs. Commissioner of Customs, 2021 (3) TMI 384- S.C., but even otherwise the impugned order is liable to be set aside on the ground that the order could not have been passed against the appellant without even issuing a show cause notice to the appellant. According to the learned counsel for the appellant this is in gross violation of the principles of natural justice. Learned counsel for the appellant also submitted that on merits the issue involved in this appeal is covered by the decision of the Tribunal in Shubham Chemicals and Solvents Limited and Others vs. Principal Commissioner of Customs (import), New Delhi, 2020 (12) TMI 711- CESTAT New Delhi decided on 30.05.2019.

5. Shri Sunil Kumar, learned authorised representative appearing for the department, submitted that the show cause notice was issued to Ankur Agarwal, Director of the appellant and a copy was also sent to the appellant and so there is no reason why the appellant should not have submitted a reply to the show cause notice.

6. The submissions advanced by the learned counsel for the appellant and the learned authorized representatives appearing for the Department have been considered.

7. It is a fact that the show cause notice was not issued to the appellant. It was issued only to five persons including Ankur Agarwal, who is the Director of the appellant. The appellant has stated that since it was not required to file reply to the show cause notice, no reply was filed.

8. Show cause notice is the basis on which any order can be passed against a person. This is the basic requirement of the principles of natural justice. As the show cause notice was not issued to the appellant, the appellant did not file any reply. The appellant cannot be faulted for not filing a reply since the show cause notice did not call upon the appellant to file a reply.

9. Thus, for this reason alone, the impugned order against the appellant deserves to be set aside. It would, therefore, not be necessary to examine whether the Directorate of Revenue Intelligence had the jurisdiction to issue the show cause notice under section 28(4) of the Customs Act.

10. The impugned order dated 14.10.2019, in so far as it imposes a penalty of Rs. 10,00,000/- on the appellant under section 112(a) of the Customs Act, deserves to be set aside and is set aside. The appeal is, accordingly allowed.

(Order Pronounced on 18.02.2022)