(2014) 10 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Stay Application Nos. 57794, 57795, 57943, 57944, 58092, 59622 Of 2013 In Appeal Nos. 57205, 57206, 57339, 57340, 57510, 58971 Of 2013

Shri Chander Gauba, M.D. M/s V&S International And Ors. APPELLANT

Vs

CC, New Delhi (Prev.) RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:
Customs Act, 1962 — Section 108, 129, 138B

Citation : (2014) 10 CESTAT CK 0002

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : Pradeep Jain, Tarun Chawla, Reena Rawat, Sanjay Jain

Final Decision : Allowed

Judgement

1. After dispensing with the condition of pre-deposit in all the cases, we proceed to decide the appeals itself in as much as we are of the view that the

impugned order has been passed in gross violation of principles of natural justice.

2. Briefly stated the facts of the case are that M/s J.S. Designer Ltd. filed shipping bills for export of the fabric meant for ladies garments by declaring

the value of the overall consignment to be around Rs.35 crores approximately. The exports were under DEPB scheme.

3. After examination of the goods, Revenue was of the belief that the value declared by the appellant was on the higher side. Accordingly, the

consignment was detained and investigations were initiated. During the course of investigations, statements of various persons, who had supp-lied the

grey fabric to the appellant, were recorded. Experts opinion were also obtained as also the information filed before the Export Promotion Counsel/

Delhi/ Chamber of Commerce was obtained. Based upon all the evidences so collected, proceedings were initiated against them alleging over

valuation of the export consignment and proposing to reduce the value, alongwith the proposal to impose penalties.

4. During the course of adjudication, the appellant made a prayer for cross-examination of the deponents whose statements were recorded and relied

upon. Such request of the appellant was rejected by the Commissioner and communicated to the appellant by the letter dated 19/11/12 written by the

Superintendent (Adjudication), communicating the Commissionerâ??s decision. The said letter was challenged by the appellant before the

Honâ??ble Delhi High Court, who disposed of the same vide their order dated 7th December, 2012 by accepting the appellantâ??s prayer to

withdraw the same with liberty to raise the objections before the original Adjudicating Authority or if need be before the Appellate Authority.

5. The appellant filed an appeal before the Tribunal against the said denial of cross-examination communicated vide letter dated 19/11/12. The

Tribunal vide its order dated 24/12/12 rejected the appeal on the ground that the said letter is not in appealable form, but is an administrative

communication, which cannot be challenged under Section 129 of the Customs Act.

6. In the meanwhile the consignment detained by the Customs was allowed to be exported, in terms of the Delhi High Courtâ??s directions and as

per the appellant, they have received the entire consideration of the same from their foreign buyer.

7. In view of the above developments, the appellant again made a request for cross-examination of the witnesses before the Adjudicating Authority.

The said request of the appellant stands denied by him, by observing as under :-

â??There is no need of cross-examination of persons whose statements were relied upon as the statements were recorded under Section 108 of

Customs Act and had not been retracted so far. No need was felt to call Assistant Director of Textile Committee and Cost Accountants as these

were experts of their field and had given their independent opinion when sought, without any vested interests. Noticee Pradeep Sharma, CHA wrote

in his reply dated 03/12/12 that what ever he has stated in his earlier statement was true and he has nothing further to addâ??.

8. Accordingly, after rejecting the request, the impugned order stands passed imposing penalties of Rs.35 crores on M/s J.S. Designer Ltd., Rs.10

crores on Shri Vikas Mohan Singhal, Director of the Exporting Firm and of various amounts on the other applicants who are Directorâ??s wife, one

of the applicant is suppliers of the materials etc. The appellantâ??s grievance is that the Commissioner has relied upon statements of various persons

recorded during investigation, without testing the veracity of the same by the tool of cross-examination. We find that the Commissioner has not

allowed cross-examination of the deponents, whose statement were relied upon, on the ground that the said statements were recorded under Section

108 of the Customs Act and have not been retracted. We are afraid that we find no merits in the said observation of the Adjudicating Authority.

Every statement, during the course of investigations in matters related to Customs, is recorded under Section 108 of the Customs Act only and if the

said ground is adopted as a reason for denial of cross-examination, there would be never ever be any cross-examination of any deponent during the

proceedings. This cannot be allowed to be happened. Learned DR, at this stage draws our attention to the previous order passed by the Tribunal on

11/2/14, wherein appellant was directed to file a summary to show how opportunity of cross-examination shall either vary or modify the adjudication

and if so, to what extent since no fundamental submissions are made by Shri Jain as to the need of the cross-examination and justification thereof.

Two weeks time was given to the Counsel to file summary on record. Shri Dixit submits that summary has been placed on record by the learned

Advocate, which has been sent to the Commissioner for his comments. He submits that they have not received the comments and the matter may be

taken after the receipt of the comments by the Commissioner.

9. We find no merits in the above contention of the learned DR. First of all, we note that request for cross-examination of the witnesses was made as

their statements were relied upon by the Revenue. It is well settled law that the deponents of the statements, which are being used against the

assessee are required to be produced as witnesses so as to test the veracity of the same, the assessee cannot be expected to pre-disclose the outcome

of the said cross-examination, as is being argued by the learned DR. Further we find in the last order of the Tribunal, there is no directions of the

Revenue to seek comments from the Commissioner. The only direction was to the Advocate to place on record the summary of the grounds for

cross-examination which stand placed on record by the learned Advocate.

10. At this stage, we find that the Tribunal in the case of Swiber Ofshore Construction Pvt. Ltd. vs. CC, Kandla reported in 2014 (301) E.L.T. 119

(Tri. - Ahmd.) in an almost identical case of over valuation, has held that the witnesses whose statements were recorded under Section 108 of the

Customs Act, 1962 and opinion of the experts relied upon in the show cause notice are required to be produced for cross-examination in terms of

Section 138B of the Customs Act, 1962. The Tribunal, for holding so, relied upon various decisions including the Honâ??ble Delhi High Court

decision in the case of Basudev Garg. Vs. Commissioner reported in 2013 (294) E.L.T. 353 (Del.)as also in the case of J.K. Cigarettes Ltd. vs.

Commissioner reported in 2009 (242) E.L.T. 189 (Del.).

11. The situation in the present case is identical. The Revenue by not allowing the cross-examination of the witnesses and the experts whose

statements and opinions are being relied upon by them, have committed the gross violation of principles of natural justice. On this limited ground and

without expressing any opinion on the merits of the case, we set aside the impugned order and remand all the appeals to the Adjudicating Authority for

fresh decision. Needless to say that the relevant witnesses would be produced for cross-examination. Stay petitions as also appeals get disposed of in

above manner.

(Dictated and pronounced in open court.)

