

2019-TIOL-1649-HC-MUM-CUS
IN THE HIGH COURT OF BOMBAY

Case Tracker

AMIABLE LOGISTICS INDIA PVT LTD Vs CC [CESTAT]

Custom Appeal No. 21 Of 2019

AMIABLE LOGISTICS INDIA PVT LTD

Vs

**COMMISSIONER OF CUSTOMS (EXPORT)
JNCH, NHAVA SHEVA**

Custom Appeal No. 23 Of 2019

LALIT MANGE

Vs

COMMISSIONER OF CUSTOMS (EXPORT)

M S Sanklecha & S C Gupte, JJ

Dated: July 22, 2019

Appellant Rep by: Mr Prakash Shah, a/w. Mr Jas Sanghvi and Mr Mohit Rawal, i/b. PDS
Legal

Respondent Rep by: Mr Pradeep S Jetly, a/w. Mr J B Mishra

Cus - The appellant Company is functioning as a CHA - The Commissioner imposed a penalty under Section 129A of Rs. 20 lakhs upon the Private Limited Company and Rs.20 lakhs upon its Director under Section 112 (a) of the Act - This on the ground that the Appellants were persons responsible for diversion of goods imported which were charged with an obligation to be used in manufacture of goods to be exported, by organising the 'high sea sales' of the imported goods and transporting goods to Kalamboli, Navi Mumbai, where the supporting manufacturer does not have any premises - The appeals of appellants were heard by Tribunal along with other appeals on 28 September 2017 - The appellants could not remain present, nor they were represented at the time of the hearing - There has been no consideration whatsoever of the issues raised by the appellants in their appeals - In fact, the impugned order only records the submissions made on behalf of the Respondent Commissioner - It does not mention even a single ground/grievance urged by appellants in their memos of appeals before it - Nevertheless, it dismissed the appellants' appeals - It is relevant to note that in a parallel proceedings under CHALR with regard to the appellant Company, the Tribunal had, by its order **2012-TIOL-1719-CESTAT-MUM**, cancelled the revocation of a Customs House Agents License on the same facts - The revocation of CHA Licence was on account of breach of obligation under CHALR - At the time of hearing, this was a relevant factor and even this was not pointed out by Revenue at the hearing before the Tribunal - Thus, the impugned order does not even indicate grievance of appellants before the Tribunal - In the absence of the grievance of the parties before it being considered the impugned order is a non speaking order - Both the substantial questions of law were answered in the negative i.e. against the Revenue and in favour of the appellants: HC

Appeals disposed of

JUDGEMENT

These two appeals under Section 130 of the Customs Act, 1962, challenge a common order dated 28 September 2017, passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The Appellants have raised the following identical questions of law in both the appeals for our consideration:

"(a) Whether, in facts and circumstances of the case, the Appellate Tribunal was right in sustaining the penalty imposed on the Appellants under section 112(a) of the Act?"

"(b) Whether, in facts and circumstances of the case, the Appellate Tribunal was right in deciding the appeals of the Appellants without affording reasonable opportunity of being heard to the Appellants."

3. Both the appeals were admitted on the above substantial questions of law.

4. At the request of the parties, both the appeals itself are taken up for final disposal, as the dispute basically is within a narrow compass.

5. The Appellant in CUAPP/21/19 is a Private Limited Company and the Appellant in CUAPP/23/19 is the Director of Limited Company. The Appellant Company is functioning as a Customs House Agent at Mumbai Port.

6. The Commissioner of Customs by an order dated 14 December 2007 imposed a penalty under Section 129A of Rs. 20 lakhs upon the Private Limited Company and Rs.20 lakhs upon its Director under Section 112 (a) of the Act. This on the ground that the Appellants were persons responsible for diversion of the goods imported which were charged with an obligation to be used in manufacture of goods to be exported, by organising the 'high sea sales' of the imported goods and transporting goods to Kalamboli, Navi Mumbai, where the supporting manufacturer does not have any premises.

7. Being aggrieved by the order dated 14 December 2007 of the Commissioner, the Appellants had filed the appeals to the Tribunal. In their appeals, the Appellants contended that the high sea sales, which had taken place had been accepted by the Department as the imported goods were allowed to be cleared in the name of the high seas buyers after examining the claim of parties on high sea sales on bills of entry filed by them. Further, the Appellants have also submitted that the goods were carried to Kalamboli only on the basis of the instructions of the importer and they had no role to play in the alleged diversion of the goods, but were merely acting as per instructions of the importer.

8. The appeals of the Appellants were heard by the Tribunal along with other appeals on 28 September 2017. The Appellants could not remain present, nor they were represented at the time of the hearing. The impugned order of the Tribunal proceeded to consider the appeals and dismissed the Appellants' appeals on merits. We note from the impugned order of the Tribunal that there has been no consideration whatsoever of the issues raised by the Appellants in their appeals. In fact, the impugned order only records the submissions made on behalf of the Respondent Commissioner. It does not mention even a single ground/grievance urged by the Appellants in their memos of appeals before it. Nevertheless, it dismissed the Appellants' appeals. It is relevant to note that in a parallel proceedings under the Customs House Agents Licensing Regulations with regard to the Appellant Company, the Tribunal had, by its order dated 9 October 2012 = **2012-TIOL-1719-CESTAT-MUM**, cancelled the revocation of a Customs House Agents License on the same facts. The revocation of the CHA Licence was on account of breach of the obligation under the Customs House Agents Licensing Regulations. At the time of the hearing, this was a relevant factor and even this was not pointed out by the Revenue at the hearing before the Tribunal. Thus we find that the impugned order does not even

indicate grievance of the Appellants before the Tribunal. In the absence of the grievance of the parties before it being considered the impugned order is a non speaking order.

9. In the above view, both the substantial questions of law were answered in the negative i.e. against the Revenue and in favour of the Appellants Assessees. However, in the present fact, we restore Appeal Nos.C/251/2008 and C/252/2008 of the Appellants to the Tribunal for fresh consideration and disposal in accordance with law.

10. Appeals disposed of in above terms.