IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI
SINGLE BENCH B1

Appeal Nos. C/40145 -40149/2019

Arising out of Order-in-Original No. 65651/2018 (DE NOVO), Dated: 15.10.2018
Passed by the Commissioner of Customs, Chennai-IV Commissionerate, Chennai

Date of Hearing: 20.03.2019
Date of Decision: 20.03.2019

M/s GAZEBO INDUSTRIES LTD
SHRI AVINASH MAHESHWARE
SHRI J R SATHYAMOORTHY
SHRI N SARAVANAN
SHRI MPS BHARARA, MD

Vs

COMMISSIONER OF CUSTOMS, SEA CHENNAI-IV

Appellant Rep by: Shri Krishnanand, Adv.
Respondent Rep by: Shri L Nandakumar, AC AR

CORAM: P Dinesha, Member (J)

Cus - Assessee filed five shipping bills for export of items declared as 100% cotton knitted T-Shirts to Moscow and Russia - The goods were seized under a mahazar and thereafter, a SCN came to be issued proposing confiscation and imposition of penalty - Assessee submits that they are aggrieved against penalty imposed on them - He further submits that the SCN never proposed imposition of any penalty against the first assessee, which even according to the SCN, was the Principal offender - Admittedly, the first

assessee is the Principal offender, neither is there any proposal in SCN for imposition of penalty as against the said company nor did the Adjudicating Authority passing the O-I-O or the de-novo Order, impose any penalty on the Principal - Therefore, the company not having been penalized would ipso facto mean that guilt in the first place is not proved beyond reasonable doubt even against the principal offender - In these circumstances, the co-noticees or co-offenders cannot be worse off than the principal offender and therefore, the penalties imposed against them is unsustainable - The case of Revenue is a sheer aimless shot in the air - There is no order against the first assessee/alleged main culprit, even in the second chance/round, which only indicates that the allegation could not be taken beyond the very first step of establishing the guilt or motive, to attract penalty against it; and when the role of the very main culprit itself could not be established, then it is ex-facie wrong to fasten the liability on co-accused - In any case, it is an admitted position of law that a co-accused cannot be worse off than the prime accused - Albeit wild allegations, the factual position clearly indicate that the goods in question were permitted to be exported, to a different buyer, at a lower price and there was no ambiguity or doubt with regard to export of goods impugned in present proceeding at the lower value: CESTAT

Appeals allowed

Case law cited:

GAZEBO INDUSTRIES LTD - 2017-TIOL-3700-CESTAT-MAD... Para 1

FINAL ORDER NOS. 40781-40785/2019

Per: P Dinesha:

This is the second round of litigation. The brief facts of the case are that M/s. Gazebo Industries Ltd., West Mumbai, filed five shipping bills, all dated 17.12.2005, for export of items declared as 100% cotton knitted T-Shirts to Moscow and Russia. On intelligence, the Dock Intelligence Unit (DIU) detained the consignments for detailed examination and alleged to have found mis-declaration in the description as well as quantity of the export items, allegedly for the purpose of claiming undue higher drawback. The goods were seized under a mahazar and thereafter, a Show Cause Notice dated 26.06.2006 came to be issued proposing confiscation and imposition of penalty on Shri M.P.S Bharara, Joint Managing Director of M/s. Gazebo Industries Ltd. (GIL in short) Sh. Avinash Maheswari, Export Manager of GIL, Shri J.R. Sathiamoorthy, Custom House Agent of GIL and Shri N. Saravanan, local representative of GIL. In adjudication, the original authority vide Order-in-Original No. 65651/2018 (DE NOVO) dated 15.10.2018 confirmed the penalty on all the above persons under 114 (iii) of the Customs Act, 1962, but without passing any order on the impugned goods, since the goods were permitted re-export to another buyer. However, reviewing the OIO and feeling aggrieved by the same the Revenue filed an appeal before CESTAT and the Tribunal, vide its *Final Order No. 41230/2017 =2017-TIOL-3700-CESTAT-MAD dated 07.06.2017*, remanded the matter to the adjudicating authority for the limited purpose of arriving at the quantum of redemption fine. In de-novo adjudication, the Commissioner of Customs confiscated the seized goods and imposed a fine of Rs. 8,00,000/- as against Rs. 10,00,000/- originally imposed and reduced only the penalty on M.P.S. Bharara, Joint Managing Director and upheld the penalty on other three persons. Hence, these appeals.

2.1 Heard Shri Krishnanand, Ld. Advocate and Shri Satish Sundar, Ld. Advocate for the assesse and Ld. DR, Shri L. Nandakumar, AC, for the Revenue. On a perusal of the impugned order, I find that the first appellant need not have any grievance since there is no demand of either penalty or fine against it. On being pointed out, Ld. Advocate concedes that there is no demand in respect of the first appellant. This being so, the first appellant is not entitled to any relief since it is not aggrieved nor is there any demand against it. Hence, no order is being passed against an imaginary demand which is not there on paper, in respect of Appeal No. C/40145/2019.

2.2 With regard to Appeal Nos. C/40146- 40149/2019, Ld. Advocate submits that these appellants Shri MPS Bharara, Sh. Avinash Maheswari, Shri J.R. Sathiamoorthy and Shri N. Saravanan are aggrieved against the penalty imposed on them by the Commissioner of Customs. He further submits that the SCN never proposed imposition of any penalty against the first appellant, which even according to the SCN, was the Principal offender.

2.3 It is trite law that an abettor cannot be penalized more than the Principal offender. In the present case, admittedly, the first appellant is the Principal offender, neither is there any proposal in the SCN for imposition of penalty as against the said company nor did the Adjudicating Authority passing the Order-in-Original or the de-novo Order, impose any penalty on the Principal. Therefore, the company not having been penalized would ipso facto mean that guilt in the first place is not proved beyond reasonable doubt even against the principal offender. In these circumstances, the co-noticees or the co-offenders cannot be worse off than the principal offender and therefore, the penalties imposed against them is unsustainable. The case of the Revenue is a sheer aimless shot in the air. There is no order against the first

appellant/alleged main culprit, even in the second chance/round, which only indicates that the allegation could not be taken beyond the very first step of establishing the guilt or motive, to attract penalty against it; and when the role of the very main culprit itself could not be established, then it is ex-facie wrong to fasten the liability on co-accused. In any case, it is an admitted position of law that a co-accused cannot be worse off than the prime accused. Albeit wild allegations, the factual position clearly indicate that the goods in question were permitted to be exported, to a different buyer, at a lower price and there was no ambiguity or doubt with regard to the export of the goods impugned in the present proceeding at the lower value.

3. For the above reasons, Appeals No. C/40146-40149/2019 are allowed with consequential full benefits, if any, as per law.

(Order dictated and pronounced in the Open Court)