

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.534/2015

Date of Decision :- 22.06.2017

CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J)
HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

Chandrashekhar Shankar Balkote
 Superintendent of Central Excise (Retd.)
 C-303, Bharati Vihar,
 Near Bharati Vidyapith,
 Opp.PICT College, Pune Satara Road,
 Pune – 411 046.
(By Advocate Ms.S.V. Gokhale)

... ***Applicant***

VERSUS

1. Union of India,
 Through the Deputy Secretary to the
 Govt. of India (Ad-v)
 Central Board of Excise & Customs,
 Room No.615, 6th Floor,
 'C' Wing, HUDCO Vishala Building,
 Bhikaji Kama Place, R.K. Puram,
 New Delhi – 110 066.

2. The Commissioner Central Excise,
 Pune-I, ICE House, 41-A
 Sasoon Road, Opp.-Wadia College,
 Pune – 411 001.

... ***Respondents***

(By Advocate Shri V.B. Joshi)

ORDER (ORAL)

Per: Dr. K.B. Suresh, Member (J)

Heard. The matter is in a very small compass. The Applicant was In-charge of certain Export records at Miraj ICD which are a matter pertaining to M/s Ruchika International. At this point of time, the learned counsel for the applicant wants to make a further submission that

the applicant was in additional charge and not in actual charge. What happened was that the matter relates to export of fabrics, free on Board order for the consignee note was issued for Rs.284/- per meter which on interception was found to have a value of only Rs.94/- per meter. Thereafter the matter was taken up to CESTAT when a penalty was imposed and the CESTAT order is now produced before us which is order No.1478/1484/15/CV. Apparently the allegation is that without drawing samples and submitting it to examination a group of seven officers had cleared the goods and created loss for the revenue. The case of the applicant as decided in the said order of the CESTAT also is that which he had reiterated in the OA that **the lapse on the part of the applicant** is not intentional and therefore, what are the significant elements of this issue?

i) **That there is a lapse seems to be admitted.**

ii) **The lapse is now posited as an unintentional mistake on the part of the applicant under rules.**

2. The way we understand civil probability is vastly different from criminal absolutism. It is, as the word goes on the probability that matters

in a civil court, a departmental inquiry can be only import to it a civil evidentiary determination and not criminal absolutism and *Mens rea* if at all, is not attracted to civil court. Therefore, when the lapse is admitted and qualified by the word unintentional, what is the significance under law?

3. Our studies indicate that it may not have any significance as drawing of a sample and examining it for valuation before allowing export is one of the pre-requisite of any bond officer. Under the statute the applicant is a eligible and insistently eligible to examine all details before passing a record. He is posted in that particular situation on the belief that he is competent to do so. Therefore, through negligence or lack of knowledge a lacunae or infraction occurs and it causes loss to the revenue and at a such a significant scale as is indicated by the difference in value at Rs.284/- per meter/94 per meter. Therefor, even though the CESTAT had held in para 6.1 of the order that "on perusal of the records, we find that the adjudicating authority, while discarding the value of the goods which have been exported, has relied upon mainly the overseas inquiry conducted, certificate of BTRA

and the action of the exporters regarding submitting false BRCs for obtaining DEPB licence, is erroneous for more than one reason". It also found firstly that the Charts C-1 & C-2 did not have any signature of the officers, as it is a copy of the overseas inquiry report conducted by the department and therefore the CESTAT held that the appellant therein M/s Ruchika International did not have the opportunity to contest that document, but what is relevant with regard to the officers is that if it does not contain the signature of the officers concerned what is its value. But then it has to be understood that it is the report of the overseas inquiry and not connected with the present officers. Naturally, therefore, their signature will not be there. But the issue here is different CESTAT order have no connection with the applicant except to the extent that he is also a party there.

4. The CESTAT in para 6.3 found that the samples which has been drawn by the departmental authority under consignments which were intercepted and sent to BTRA, the queries were regarding the technical description of the samples and whether they would fall under the category of textile and textile articles. This

distinction may be relevant so far as the duty to be imposed or on duty draw back as the case may be. But for the examination of these material before export is allowed, is the responsibility of the concerned officers and there cannot be any deviation from it whether the duty is one rupee or 10 rupee.

5. In para 6.4 of the order, the CESTAT found that no comparison of identical goods were brought on record to ascertain the contemporaneous prices of the goods sought to be exported. **This also may not have any relevance to the concerned officers as they had not drawn any samples at all, had they drawn any samples and held it to be equitably able to pass muster under Rs.94 barrier than it would have been a different case. But then the officers have not drawn a samples to further verify it at all, therefore, while para 6.4 of the CESTAT order will have a bearing on that exporter, it may not have any bearing on the officers concerned.** In para 6.5, the CESTAT had held that penalty imposed on the departmental officers may not be correct as under Section 114 of the Customs Act, 1962 these penalties are imposed on the ground that the

appellants had abetted the over valuation of the goods exported.

6. But then in the present case, it is not the over valuation of the good that is the crux of the issue of this inquiry but the infraction and the lacunae on the part of the applicant in not drawing and not labelling the articles correctly and thereby causing a loss to the Government. Thus, the crux of the issue in the departmental inquiry and the crux of the issue in the CESTAT hearing was significantly different. Therefore, we hold that the remand of appeal of M/s Ruchika International will not have any bearing on the applicant.

7. The Applicant has taken a view that just because the M/s Ruchika International appeal had been remanded back to the competent authority, it must have a bearing on the departmental inquiry against the concerned officer. That is no similar matter for the very same reason that these are on separate, different and distinct arenas of consideration. The value or the goods exported can say have no bearing in this departmental inquiry, what is of importance in this departmental inquiry is the lacunae on the

part of the applicant and the following infraction. Therefore, the only question is then, is the inquiry can be conducted on requisite and legal grounds and on what other grounds can it be questioned? The learned counsel for the applicant submits that he had been given appropriate opportunity. Therefore, only thing is to be considered whether the punishment imposed on the applicant was proper. A punishment of 30% deduction for 5 years from the date of his superannuation has been imposed after an examination all the entire matrix of the issue, we find that the punishment is on the lower side, may be because in all these transactors a substantial portion of the employees are also involved which might be the reason why such a minimal punishment had been imposed. We will leave it to the respondents to take up the matter further so that the sovereignty of the nation is not impaired in any manner. We also hold that the OA is without merit and therefore dismissed it without cost.

(Dr. Mrutyunjay Sarangi)
Member (A)
dm.

(Dr. K.B. Suresh)
Member (J)