Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Miscellaneous (ROM) Application No. 10236 of 2020
(On behalf of appellant)

Custom Appeal No. 12628 of 2019

(Arising out of OIO-KND-CUSTM-000-COM-11-2019-20 dated 29.10.2019 passed by Commissioner of Central Excise, Customs and Service Tax-KANDLA)

B N THAKKAR & CO **.........Appellant**
PLOT NO. 142, SECTOR 1/A, FIRST FLOOR, GIRISH COMPLEX,
GANDHIDHAM
KUTCH
GUJARAT

VERSUS

C.C.-Kandla **.........Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDALA
GUJARAT

APPEARANCE:
Shri Chiranjeev Tandon, Advocate for the Appellant
Shri. V. Lukose, Superintendent, Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Misc. Order No. M/10181 / 2020

DATE OF HEARING: 25.08.2020
DATE OF DECISION: 27.08. 2020

Raju

This ROM application has been filed by M/s B.N. Thakkar & Co for rectification of mistake in Tribunal's order no. A/11103/2020 dated 04.06.2020.

2. Learned Counsel for the applicant pointed out that the order of Tribunal dated 04.06.2020 was passed setting aside of all charges finally except the charge made under Regulation 10 (d) of CBLR, 2018. He pointed out that in respect of Regulation 10 (d) of CBLR, while the charge was set aside, but the matter was remanded. He pointed out that while remanding

this matter, the order dated 04.06.2020, relies on para 7.2 of the show cause notice wherein it was alleged that the appellant had received manufacturers invoice describing the goods as 'mixed chindi' and was awaiting instructions from Shri Manoj Kannar, and exporters in respect of the same. Learned Counsel pointed out that the statement given by them has no such assertion that they had received two trucks of 'mixed chindis' and were awaiting instruction of Shri Manoj Kannar and exporters. Learned Counsel pointed out that there was only one statement recorded and that was provided to them, however, from the charges made in para 7.2 it appeared that there was another statement. Therefore, they had in their appeal mentioned that the said statement was not provided to them. He pointed out that relying on the said assertion, Tribunal has set aside the impugned order in respect of charges relating to regulation 10 (d) of CBLR, 2018 and remanded the matter. Learned Counsel pointed out that there is no other statement recorded and, therefore, in terms of remand order, no statement can be provided to the appellant. The only statement recorded was given to the appellant and the observation made in para 7.2 is not based on any statement or other evidence.

2.1 Learned Counsel pointed out that in view of above, it is apparent that there has been a mistake apparent on record in so far as Tribunal has directed remand of the matter for decision after supplying a non existing statement. In view of above, he pointed out that since the order of Tribunal in para 10.2 clearly holds that except for the statement referred in para 7.2 of the Show cause notice no other evidence has been placed on record to substantiate charges under Regulation 10(d) of CBLR. Therefore, the appeal should have been allowed.

3. Learned Authorised Representative relies on the impugned order. He submitted written submission wherein he asserted that the present case does not fall within the scope of law permitting rectification of mistake. He cited various case laws in this respect.

4. We have gone through rival submissions. We find that the Tribunal had set aside the charges under Regulation 10 (d) of CBLR and remanded the matter in following terms:

> *"In view of above, the allegation made under Regulation 10 (d) of CBLR, 2018 are set aside and the issue is remanded to the Adjudicating Authority for fresh decision, after providing the copy of the said statement to the appellant."*

It has emerged that there is no statement which has not been supplied to the appellant and the charges made in para 7.2 of the Show Cause Notice is not based on any statement. It was presumed by appellants and this Court at the time of earlier decision that charge in para 7.2 of Show Cause Notice is based on statement. Since remand has been made with direction to to decide after supplying a copy of a non existing statement, it cannot be implemented as it is. We find that in para 10.1 and 10.2 of the order, following has been observed:

> *"10.1 As regards the allegation made under Regulation 10(d) of CBLR, 2018, we find that Adjudicating Authority has not countered the arguments given by the appellant. There is no evidence cited by the Adjudicating Authority to establish that the appellant had any pre-knowledge of the nature of cargo. The statement on which the Adjudicating Authority has relied on, has not been provided to the appellant. In view of the fact that statement has not been provided, the impugned order cannot be upheld as the charge has been confirmed on the basis of said statement.*
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> *In view of above, the allegation made under Regulation 10(d) of CBLR, 2018 are set-aside and the issue is remanded to the Adjudicating Authority for fresh decision, after providing the copy of the said statement to the appellant.*
>
> *10.2 We find that the charge of pre-knowledge has been confirmed only on the strength of statement of the appellant recorded, referred to in Para 7.2 of the notice. There is no material evidence placed on record to substantiate the charge. Therefore, the impugned order is set-aside and the issue is remanded for fresh adjudication."*

4.1 It is seen that the order states that the only evidence that might exist in the favour of Revenue could be in the non existing statement which appellant and Tribunal assumed to be existing. The order already observes in para 10.1 that there is no evidence to support the charge made under Regulation 10(d) of CBLR, 2018 except for this non existing statement. Therefore, there is clearly an apparent mistake in the order. Moreover, the order in the present form cannot be acted upon as there is no statement that can be provided to the applicant.

4.2 In view of above, the application for ROM is allowed. In para 10.1 and 10.2 are replaced with the following:

> "10.1 *As regards the allegation made under Regulation 10(d) of CBLR, 2018, we find that Adjudicating Authority has not countered the arguments given by the appellant. There is no evidence cited by the Adjudicating Authority to establish that the appellant had any pre-knowledge of the nature of cargo. In view of above, the impugned order cannot be upheld.*
>
> *10.2 In view of above, the allegation made under Regulation 10(d) of CBLR, 2018 are set-aside and the appeal is allowed."*

4.3 The para 11 is replaced by following"

> *"11. The Appeal is allowed."*

5. The ROM application is allowed in above terms.

(Pronounced in the open court on 27/08/2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Diksha