

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

Customs Appeal No. 52192 of 2019

(Arising out of Order-in-Appeal No. CC(A) CUS/D-II/ICD/PPG/256-257/2019-20 dated 30.05.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

The Commissioner of Customs,
ICD Patparganj & Other (ICDs),
Delhi-110096

.....Appellant

versus

M/s. HLPL Global Pvt. Ltd.
(CHA FIRM), 2151/3D, New Patel Nagar,
New Delhi-110008

.....Respondent

AND

Customs Appeal No. 52704 of 2019

(Arising out of Order-in-Appeal No. CC(A) CUS/D-II/ICD/PPG/256-257/2019-20 dated 30.05.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

The Commissioner of Customs,
ICD Patparganj & Other (ICDs),
Delhi-110096

.....Appellant

versus

M/s. HIM Logistics Pvt. Ltd.
(CHA FIRM), 2151/3D, New Patel Nagar,
New Delhi-110008

.....Respondent

APPEARANCE:

Shri Nagendra Yadav, Authorized Representative for the Department
Shri Devesh Tripathi and Shri Faraz Aneez, Advocates for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 22.08.2022
Date of Decision: 29.08.2022

FINAL ORDER No. 50750-50751/2022

JUSTICE DILIP GUPTA:

The Commissioner of Customs ICD¹ has filed this appeal for quashing the order dated 30.05.2019 passed by the Commissioner of

1. the Commissioner

Customs (Appeals)², by which the order dated 03.08.2018 passed by the Additional Commissioner of Customs adjudicating the show cause notice dated 19.09.2015 has been set aside to the extent it relates to imposition of penalty on M/s. Him Logistics Pvt. Ltd. (respondent in Customs Appeal No. 52192 of 2019) and M/s. HLPL Global Logistics Pvt. Ltd. (respondent in Customs Appeal No. 52704 of 2019).

2. It transpires from the records that the Directorate of Revenue Intelligence received an intelligence that some traders/exporters were exporting goods described as floor covering (braided) of man-made fiber and were availing export incentives under the Duty Drawback and Focus Products Scheme. During physical examination of the goods it was observed that the aforesaid goods were machine made and not hand-made or braided as declared in the export documents.

3. A show cause notice dated 19.09.2015 was issued to M/s. Saay Exim Pvt. Ltd. and 21 others noticees but the two respondents in this appeal were not issued the show cause notice. However, a corrigendum dated 02.02.2016 was issued to the aforesaid show cause notice wherein the names of the two respondents were included for service of the show cause notice.

4. During the adjudication, the two respondents appeared and stated that since show cause notices had not been issued to them, penalty cannot be imposed. The respondents categorically stated that only the corrigendum was served on them without the show cause notice and it is during the hearing that the respondents were served with the show cause. They also stated that the show cause notice does not contain allegations against the two respondents.

2. the Commissioner (Appeals)

5. The show cause notice was adjudicated upon by order dated 03.08.2018. Penalty of Rs. 15,00,000/- and Rs. 6,00,000/- was imposed upon M/s. HLPL Global Logistics Pvt. Ltd. and penalty of Rs. 40,00,000/- and Rs. 15,00,000/- was imposed upon M/s. Him Logistics Pvt. Ltd. under sections 114(iii) and 114AA of the Customs Act.

6. It is against this order dated 03.08.2018 that the two respondents filed appeals before the Commissioner (Appeals).

7. The Commissioner (Appeals) found as the fact that the corrigendum alone was served upon the two respondents and it was during the personal hearing that the show cause notice was served upon the two respondents, but it did not contain allegations against the respondents.

8. The Commissioner (Appeals), accordingly, held:

"In view of the above I find certain force in the averment made by the appellants that neither valid show cause notice under section 124 of the Customs Act, 1962 was issued to the appellants nor the copy of show cause notice supplied to the appellants contained allegations against the appellants."

9. It is for this reason that the Commissioner (Appeals) allowed both the appeals and set aside the order dated 03.08.2018 passed by the Additional Commissioner of Customs so far it related to imposition of penalty upon them.

10. Shri Nagendra Yadav, learned authorised representatives appearing for the department, does not dispute that the show cause notice was served upon the respondent only during the personal hearing by the Additional Commissioner and nor has been able to point out anything to contradict the finding recorded by the Commissioner (Appeals) that even otherwise the show cause notice

does not contain any allegation against the respondents. Learned authorised representative, however, stated that the corrigendum did include the names of the two respondents for service of the show cause notice.

11. Shri Devesh Tripathi, learned counsel for the two respondents supported the impugned order and stated that in the absence of any opportunity having being given to the two respondents to file a reply to the show cause notice, no penalty could have been imposed upon the two respondents. Learned counsel further submitted that the show cause notice also does not contain allegations against the two respondents.

12. There is considerable force in the submissions advanced by learned counsel for the respondents. Penalty could not have been imposed upon the two respondents if opportunity was not provided to the two respondents to file a reply to the show cause notice. This apart, the show cause notice also does not contain any allegation against the two respondents.

13. Such being the position, there is no infirmity in the order dated 30.05.2019 passed by the Commissioner (Appeals). Customs Appeal No. 52192 of 2019 and Customs Appeal No. 52704 of 2019 filed by the department are, therefore, dismissed.

(Order Pronounced on **29.08.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)