

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40164 of 2022

[Arising out of Order-in-Appeal Seaport C.Cus.II No.150/2022 dated 23.03.2022 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai 600 001]

The Principal Commissioner of Customs-III

Chennai-III Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

Appellant

Vs

The Custodian / Manager

M/s.Viking Warehousing CFS,
Container Freight Station,
No.5, GNT Road, Moolakadai,
Chennai 600 110.

Respondent

APPEARANCE:

Ms. Anandalakshmi Ganesh Ram, Superintendent (A.R)
For the Appellant

Dr. S. Krishnanandh, Advocate
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 10.11.2022

Date of Decision: 10.11.2022

FINAL ORDER No. 40358 / 2022

Brief facts of the case are that the respondent herein was ordered to pay an amount of Rs.22,77,047/- as per Order-in-Original No.78721/2020 dated 29.12.2020 on account of

pilferage of goods from their CFS without filing Bill of Entry. The respondent paid up the entire duty amount on 06.02.2021 & 10.02.2021 on the goods illegally removed from CFS. Penalty of Rs.50,000/- imposed vide another OIO No.79248/2021 dated 29.01.2021 on the respondent under the Handling of Cargo in Customs Areas Regulations, 2009 for violation of said Regulations was also paid. However, they preferred an appeal before the Commissioner (Appeals) against the order passed by the original authority against OIO No.78721/2020 dt. 29.12.2020 aggrieved by the duty demanded. The Commissioner (Appeals) vide order impugned herein observed in para-8 that as the SCN is issued by SIIB and in view of the judgment of Hon'ble Apex Court in the case of *Canon India Vs Commissioner of Customs* [2021 (376) ELT 3 (SC)], the matter requires to be remanded. The Department has therefore filed the present appeal aggrieved by the order of the Commissioner (Appeals) remanding the matter to the original authority.

2. Ld. A.R Ms. Anandalakshmi Ganesh Ram appeared and argued for the Department (Appellant). She reiterated the grounds of appeal. She submitted that the show cause notice dated 11.01.2019 is issued by the Joint Commissioner of Customs (SIIB) and the case has been adjudicated by the Commissioner of Customs, Chennai-III Commissionerate. While deciding the

case, the Commissioner (Appeals) has taken a technical ground by referring to the judgement of the Hon'ble Apex Court in the case of *Canon India Private Ltd.* (supra). The Commissioner (Appeals) has thus remanded the matter to the adjudicating authority to reexamine the issue in accordance with the said judgement and pass appropriate orders. She argued that SCN issued is legal and proper and therefore the remand order by the Commissioner (Appeals) is beyond the scope of jurisdiction and is without application of mind. She prayed that appeal may be allowed by setting aside the order passed by Commissioner (Appeals) remanding the matter to the adjudicating authority and thus restoring the order passed by original authority.

3. Ld. Counsel Dr.S. Krishnanandh appeared and argued for the respondent. He submitted that respondent had paid the duty confirmed as per OIO No. 78721/2020 dated 29.12.2020. Penalty was imposed by the OIO No. 79248/2021 dated 29.01.2021 under the Handling of Cargo in Customs Areas Regulations, 2009 which was also paid by the respondent. The respondent is not contesting the demand of duty or the penalty imposed by the above two Orders-in-Original. Therefore, nothing survives as dispute in the present matter. The direction for remand of the matter by the Commissioner (Appeals) is without any cause as the respondent has paid up the duty and penalty. He submitted

that the respondent does not wish to file any further litigation on the order passed by the adjudicating authority and has accepted the liability. He prayed for appropriate orders.

4. Heard both sides.

5. On perusal of the order passed by the adjudicating authority in para-63, the demand raised in the SCN reads as under :

“I. The duty amount of Rs.22,77,047/- should not be demanded in respect of Bill of Lading NO.NYKSNB6EO1026400 dated 03.11.2016, for the pilfered on the determined value of Rs.1,19,44,462/- in terms of Section 45 (3) of Customs Act, 1962.

II. Penalty under Section 112(b) of the Customs Act, 1962 should not be imposed on them for allowing removal of containers without proper customs clearance and thereby rendering the goods liable for confiscation.”

6. As per the OIO No.78721/2020 dated 29.12.2020 duty amount of Rs.22,77,047/- was confirmed. On the very same investigation, the respondent was issued SCN under the Handling of Cargo Regulations, 2009. The said SCN was adjudicated, and OIO No.79248/2021 dated 29.01.2021 was passed wherein a penalty of Rs.50,000/- was imposed on the respondent. It is submitted that the respondent has paid the duty as well as the above penalty and is not contesting these issues any further. In para-7 of the impugned order passed by the Commissioner (Appeals) it is noted that respondent has paid up the entire duty demanded as well as penalty imposed by the original authority. The said para-7 reads as under :

“The appellant has submitted that “in due deference to the said Order in Original, the appellants had paid up the entire amount of duty demanded as well as the penalty imposed vide the Order in Original No.79248/2021 dated 29.01.2021, passed by the Principal Commissioner of Customs, Chennai VIII Commissionerate and furnished proof of the same, vide communication dated 10.02.2021, which was duly acknowledged.”

7. In spite of payment of duty and penalty, the Commissioner (Appeals) has directed for remand for the matter on the basis of the judgment of the Hon’ble Apex Court in *Canon India Private Ltd.* (supra). When the entire duty and penalty has been paid up by the respondent, I do not find grounds to re-examine as to whether the SIIB was the proper officer to issue SCN.

8. For this reason, I find that the appeal filed by the Department is not without merits. The direction to remand the matter is totally unnecessary and uncalled for. Therefore, the impugned order directing the matter to be remanded to the original authority in the light of decision of the Apex Court in the case of *Canon India Private Ltd.* (supra) is set aside. Consequently, the order passed by the Original Authority vide OIO No.78721/2020 dated 29.12.2020 would survive.

Revenue Appeal is Allowed. No consequential reliefs.

(Dictated and pronounced in open court)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

