

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75085 of 2019

(Arising out of Order-in-Appeal No.83/CUS/CCP-GST/2018 Dated 28.09.2018 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.

M/s. Visa Resources India Limited

(Visa House, 8/10 Alipore Road,
Kolkata-700027)

Appellant (s)

VERSUS

Commr. of Customs (Preventive), Bhubaneswar

(Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

Respondent (s)

APPEARANCE :

Mr. Dharmesh Shah, CA for the Appellant

Mr. S. Chakraborty, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75116/2023

Date of Hearing : 16th March 2023
Date of Decision : 16th March 2023

PER R. MURALIDHAR

The Appellant M/s. Visa Resources India Limited has imported 16 consignments under various Bills of Entry during the period 2011-2012 to 2014-2015. Show Cause Notice was issued to them under Customs (Provisional Duty Assessment) Regulations, 2011 seeking as to why penalty should not be imposed on them for non finalization of provisionally assessed Bills of Entry.

2. The Appellant submitted that they have filed all the necessary documents in respect of 16 Bills of Entry out of which 12 have been finalized and 4 are yet to be finalized by the Department.

3. The Adjudicating Authority after going through the facts of the case, imposed a penalty of Rs.10,000/- under Regulation 5 of Customs (Provisional Duty Assessment) Regulations, 2011 by taking a lenient view.

4. The Revenue filed an appeal before the Commissioner (Appeals) seeking to enhance the penalty of Rs. 2,00,000/- on the ground that in

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respect of the 4 Bills of Entry yet to be finally assessed, the Adjudicating Authority should have imposed penalty @ of 50,000/- for each Bill of Entry. The Commissioner (Appeals) allowed the Appeal of the Revenue. Aggrieved by the impugned OIA, the Appellant is before us.

5. The Ld. Advocate appearing on behalf of the Appellant submits that in respect of all the 16 Bills of Entry, they have filed all the necessary documents with the Department for finalization of the same. In respect of the 12 Bills of Entry, the assessments were finalized. In respect of balance 4 Bills of Entry, the same was not finalized by the Department, nor any defect was pointed out by the Department for the documents submitted by them. Therefore, he pleads that the Adjudicating Authority has correctly taken a lenient view and imposed penalty of Rs. 10,000/-. He also relies on the case law of Jai Balaji Industries Ltd. Vs. Commr. of Customs (Preventive), Bhubaneswar-2021 (376) E. L. T. 370 (Tri.-Kolkata), wherein, on similar issue, this Tribunal has held that lenient view taken by the Adjudicating Authority is proper. The Ld. Advocate also submits that the Appellant is before the NCLT on account of financial stress.

6. The Ld. Authorized Representative reiterates the findings of the Commissioner (Appeals) and submits that Regulation 5 of Customs (Provisional Duty Assessment) Regulations, 2011 provides for a penalty of Rs.50,000/- in case of each of the non-assessment of Bill of Entry. Hence, the enhanced penalty of Rs.2,00,000/- is justified.

8. Heard both sides.

9. On factual matrix, it is seen that in case of 4 Bills of Entry, the assessment were not finalized without any fault on the part of the Appellant. The issue is also covered by the case law of Jai Balaji Industries Ltd. cited supra wherein, this Tribunal has held as under:-

9. I find that is a case of delay in furnishing of certain documents. There is no revenue implication. The department has not been able to establish any deliberate delay or any mala fide intention on the part of the appellant. As and when the appellant could gather the requisite documents they were presented before the assessing officers for finalizing the provisional assessments. In fact, out of the 35 Bills of Entry involved, 27 could be finalized

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even before passing of the adjudication order. Keeping all this in view, the adjudicating authority took a fair decision and imposed a nominal penalty of Rs.20,000/ which comes to Rs.2,500/- for each of the remaining 8 Bills of Entry yet to be finalized for want of all the documents. This amount has already been paid by the appellant. The order of the Commissioner (Appeals) does not establish any ground for enhancing the penalty to the maximum of Rs.50,000/- per Bill of Entry yet to be finalised.

10. In view of the foregoing, I allow the Appeal holding that the Adjudicating Authority was correct in taking a lenient view imposing penalty of Rs.10,000/-

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja