

Factory, Kanpur (OEF). Imports were made through ICD Tughlakabad, New Delhi, ICD Patparganj, Delhi Air Cargo, IGI Airport, New Delhi Nhava Sheva Port, Uran and ICD Kanpur. At the time of filing of Bill of entries, the importer claimed exemption from Customs duty under notification no. 39/96-Customs dated 23.07.1996 on the strength of customs duty exemption certificates (CDECs) purportedly issued by the OEF, Kanpur.

3. The customs department received inputs from Chief Vigilance Officers, Ministry of Defence, Ordnance Factory Board, Kolkata through the Chief Vigilance Officer, CBEC, New Delhi informing that M/s. Anurag Trading Co. had imported machinery and spares for supply to OEF, but did not pay customs duty in view of the customs duty exemption certificate produced by them with the signature of the General Manager OEF. It was further informed that the General Manager, OEF has not issued any such customs duty exemption certificates and that the firm had committed fraud. On the basis of the above, information, the SIIB attached to Commissioner of Customs carried out investigation. On completion of investigation a show cause notice dated 08.07.2011 was issued in respect of five Bill of entries in which goods were allegedly imported by M/s. Anurag Trading Co. without payment of duty on the basis of forged customs duty exemption certificate. Vide the above show cause notice customs duty amounting to Rs.21,05,024/- was proposed to be recovered. Further, penalties were proposed under section

112(a) and 114 A of the Customs Act. Shri Kailash Gupta, Director of M/s. Trinetra Impex Pvt. Ltd., the CHA was also proposed to be penalized.

4. After undertaking further investigation another show cause notice dated 06.03.2013 was also issued in respect of 39 Bill of Entries filed by M/s. Anurag Trading Co. during the period 14.08.1996 to 23.11.2006. It was alleged that goods covered by these 39 Bill of Entries were cleared without payment of duty on the basis of forged CDEC but the customs duty involved was recovered by M/s. Anurag Trading Co. from OEF. Accordingly, the amount of Rs.2,19,52,108/- was proposed to be recovered under section 28B of Customs Act 1962. Both M/s. Anurag Trading Co. as well as Shri Kailash Gupta, MD of CHA were proposed to be penalized. After due process of adjudication the impugned order came to be passed by the Commissioner. Aggrieved by the impugned order appeals have been filed both by M/s. Anurag Trading Co. as well as Shri Kailash Gupta, MD of M/s. Trinetra Impex Pvt. Ltd., CHA.

5. With the above background, we have heard Shri Prabhat Kumar, Advocate for the appellant and Shri Govind Dixit, DR for the respondent.

6. The case against M/s. Anurag Trading Co. is that they imported goods for supply to the Ordinance Equipment Factory, Kanpur, without payment of duty by claiming the exemption in terms of notification no. 39/96-Cus dated 23.07.1996. The benefit was found to be claimed by submitting forged customs

duty exemption certificates purportedly issued by the GM, OEF, Kanpur. During the course of investigation, the GM, OEF categorically confirmed that no such CDECs were issued by OEF in favour of M/s. Anurag Trading Co. It stands claimed by Shri Shyam Mehrotra proprietor of M/s. Anurag Trading Co. in the course of his statement that such CDECs were provided to him by various officers of OEF, Kanpur. However, he admitted clearance of goods without payment of duty on the basis of such CDECs. In the statement recorded by the customs officers of the various officers of OEF, they have categorically denied giving such exemption certificates to Shri Shyam Mehrotra.

7. The main grounds in the present appeal by M/s. Anurag Trading Co. are:

- i) Revenue has not provided copies of the alleged fraudulently obtained CDECs which were said to have been used for duty free imports. Copies of only three such CDECs have been made available during the course of the proceedings, which are not relevant for the BOEs involved in the present proceedings.
- ii) The cross examination of various officials of OEF, Kanpur, whose statement have been relied upon in the SCN were sought before the adjudicating authority. However, the same has been denied.
- iii) The Revenue has not produced any report of any expert relating to alleged forgery of the CDECs.

- iv) With reference to the demand for the amount of Rs.2.19 crores under section 28B of the Customs Act, it is argued that the appellant has not charged any amount from OEF which represented duty of customs on the goods which are wholly exempted. Since, the investigation clearly indicates that they have not charged any amount, there is no justification for such demand under section 28B also.
- v) The show cause notice dated 06.03.2013 covering the period on 14.08.1996 to 23.11.2006 is hit by limitation as it is badly delayed.

8. The M/s. Trinetra Impex Pvt. Ltd. in the appeal filed by them has submitted that they had filed the relevant Bills of Entry on the basis of imported documents along with original exemption certificate issued by OEF Kanpur. Hence, they cannot be held responsible for any fraud committed on the exchequer by the importer. Even in the proceedings, under CHALR, they have been imposed only penalty and their license was not revoked. Further, it is also argued that in the charge sheet filed by the CBI who investigated the fraud, has cited Shri Kailash Gupta, only as a witness and not as accused. In view of the above, he prayed for setting aside the penalty imposed on them.

9. The Ld. DR supported the order. He argued that this was the case of fraudulent claim of the customs notification no. 39/1996-Cus by submitting fabricated CDECs. It has been confirmed by the GM, OEF categorically that the ordinance factory has never issued any such CDECs. Consequently, the

demand of customs duty raised under show cause notice dated 08.07.2011, which covers the 5 bills of entries for imports is to be sustained along with penalties. He further argued, with reference to the show cause notice dated 06.03.2013, that M/s. Anurag Trading Co. had recovered customs duty amounts from OEF even though they had got the imported goods cleared without payment of duty by submitting the forged CDECs. Consequently, such customs duty recovered by M/s. Anurag Trading Co. is required to be paid to the Government in terms of section 28B ibid along with interest.

10. We have heard both the sides and perused the record.

11. First we discuss the customs duty demand amounting to Rs.21,05,024/- made from M/s. Anurag Trading Co. in terms of show cause notice dated 08.07.2011. This demand has been made in respect of goods imported vide five BOEs. From records, it is seen that goods covered by these BOE have been cleared by the appellant by availing the exemption from payment of customs duty in terms of notification no. 39/1996-Cus dated 23.07.1996 by production of customs duty exemption certificate purportedly issued by the GM, OEF, Kanpur. The case of the Revenue is that the CDECs submitted for duty free import were forged certificates which were never issued by the OEF, Kanpur. Such duty demand has been contested by the appellant with the argument that the copies of the allegedly forged CDECs said to have been used for such imports have never been supplied by Revenue during the course of the adjudication proceedings. It is

their further claim that the copies of three certificates furnished by Revenue did not pertain to the import of goods covered by the impugned BOEs covered in the show cause notices dated 08.07.2011.

12. From the record of the case, we find that Revenue has not recovered and furnished to the appellant copies of the CDECs said to have been used for claiming duty free import of the goods. However, it is further seen that the goods were imported by the appellant for supply to the Ordinance Factory, Kanpur. There is no dispute with reference to the receipt of such goods by OEF Kanpur. The GM, OEF has categorically confirmed that the OEF has never issued any CDECs in favour of M/s. Anurag Trading Co. to facilitate duty free import for supply to the OEF. The same fact has also been undoubtedly affirmed by various officials of OEF whose statements were recorded by Revenue during the course of the investigation. The appellant has never challenged the truth or veracity of any such statements. Further, it is seen that Shri Shyam Mehrotra, Proprietor of M/s. Anurag Trading Co. has admitted in his various statements before the investigating officers that the goods were imported without payment of duty on the basis of the CDECs.

13. Upon careful consideration of the entire facts of the case on record, and perusal of record, we find that the appellant M/s. Anurag Trading Co. have imported goods covered by the five BOEs without payment of duty fraudulently claiming the benefit of notification no. 39/1996 on the basis of CDECs which have not

been issued by the OEF Kanpur. The claim of the appellant that such CDECs were furnished to them by various officials of OEF have been disproved by the investigation carried out by Revenue. In fact, the investigation carried out by Revenue has brought out the fact that OEF Kanpur has not issued any CDECs authorizing duty free import. In view of the above discussion, we are of the view that the customs duty demands raised in show cause notice dated 08.07.2011 which have been upheld by the adjudicating authority needs to be sustained along with penalties imposed on M/s. Anurag Trading Co. along with interest under section 28 AB and section 28 AA of the customs act 1962.

14. In view of the above discussions, in respect of show cause notice dated 08.07.2011, the following order is passed:

- i) We uphold the demand of Customs duty amounting to Rs.21,05,024/- along with demand of interest under section 28AB / 28AA of the Customs Act 1962.
- ii) We also uphold the penalty equal to the customs duty as above in terms of the section 114A ibid on M/s. Anurag Trading Co.

15. Now we turn to the demand of amount of Rs.2,19,52,108/- in respect of 39 BOEs from M/s. Anurag Trading Co. under the provision of sections 28 B ibid along with interest raised vide SCN dated 06.03.2013. Section 28B of the Customs Act mandates that any amount collected as representing duty of customs on any goods which are wholly exempted or chargeable to nil rate of duty by any person, shall forthwith be paid to the

credit of the Central Government. The adjudicating authority has held that the demanded amounts have been recovered by M/s. Anurag Trading Co. from OEF Kanpur in the form of customs duty, even though the goods involved therein were imported without payment of customs duty on the basis of fraudulent CDECs. The challenge to this demand by the appellant is mainly on the ground that the demands raised under section 28B in respect of 39 BOE filed during the period August 1996 to January 2004 were issued vide the relevant show cause notice on 05.03.2013. It has been argued that even though no time limit has been prescribed in the section 28B of the Customs Act it is settled position of law that the time limit applicable for demand of customs duty under section 28 ibid is also applicable to the recovery of amount under section 28B. In this connection, following case laws have been cited:

- i) Gem Cables & Conductors Ltd. Vs. CC Hyderabad, 1994 (72) ELT 848 (Mad.)***
- ii) Tamilnadu Asbestos (pipes) Vs. CCE Trichy 2009 (238) ELT 473 (Tri-Chennai)***
- iii) Siddeshwar SSK Ltd. Vs. CCE Aurangabad 1997 (92) ELT 616 (Tri).***

16. We have gone through the case laws cited above. Even though the decisions have been rendered in the context of section 11D of the Central Excise Act, we note that section 11D is pari materia with section 28B of the Customs Act. By considering time limit of five years specified under section 28,

we find that the entire demand raised under section 28B in show cause notice dated 05.03.2013 becomes hit by time bar. Consequently, entire demand confirmed by the adjudicating authority with reference to show cause notice dated 06.03.2013 are hit by time bar and hence is to be set aside. Consequently, there will also be no justification for imposition of any penalties.

17. In view of the above discussion, we pass the following order:

The demand for customs duty under section 28B along with penal consequences are set aside with reference to the show cause notice dated 06.03.2013.

18. In appeal no. C/53509/2015 filed by the CHA M/s. Trinetra Impex Pvt. Ltd. they challenged the imposition of penalty of Rs. 5 lakhs under section 112 (a) with reference to the show cause notice dated 08.07.2011. Further, they have also challenged the penalties of Rs. 10 lakhs under section 112(b) and Rs. 5 lakhs under section 114 AA in respect of show cause notice dated 06.03.2013.

19. The levy on penalty in terms of show cause notice dated 08.07.2011 has been challenged by the CHA on the ground that they had filed the documents before the Customs authorities for clearance of goods on behalf of the importer M/s. Anurag Trading Co. only on the basis of documents given to them by the importer. In the statement given by Shri Kailash Gupta on 07.06.2011 before the investigating authorities he has submitted that the same certificates were supplied to the customs

authorities which were given to them by the importer and the certificates were defaced by the customs officers and the goods were cleared duty free. From the records of the case, we find that there is nothing on record to show that CHA, M/s. Trinetra Impex Pvt. Ltd. had any role to play in forging of the certificates or in mis-leading the customs authorities. Consequently, we are of the view that imposition of penalty on Shri Kailash Gupta, the Director of M/s. Trinetra Impex Pvt. Ltd. is without justification and is required to be set aside. As discussed in the above paragraphs, the demand of customs duty under section 28 B raised vide show cause notice dated 06.03.2013 has been set aside in toto. Accordingly, we see no justification to retain the penalties imposed under section 112(b) as well as 114(AA) on the Director of CHA M/s. Trinetra Impex Pvt. Ltd.

20. In view of the above discussion, we pass the following order:

In respect of M/s. Trinetra Impex Pvt. Ltd., CHA, the penalty imposed in terms of show cause notice dated 08.07.2011 are set aside.

21. Appeals are partially allowed.

[Order Pronounced in the open court on 10.08.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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