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

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 11032 of 2019

(Arising out OIA-KDL-CUSTM-000-APP-028-18-19 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KANDLA)

M/s. Sgi Corporation **........Appellant**
1720 Ground Floor Laxmi Narayan Street Paharganj
110055, New Delhi

VERSUS

C.C.-Kandla **........Respondent**
Custom House, Near Balaji Temple,
Kandala, Gujarat

APPEARANCE:
Shri. S.J. Vyas, Advocate for the Appellant
Shri. Vinod Lukose, Authorised representative for the respondent

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

Final Order No. A/ 12471 /2019

DATE OF HEARING: 11.12.2019
DATE OF DECISION: 20.12.2019

RAMESH NAIR

The brief facts of the case are that the appellant have imported "whey protein and other food products" in their unit located in Kandla Economic Zone, Gandhidham.

2. However, the Bill of Entry was filed by importer/owner of the goods M/s. SGI Corporation, the present appellant jointly with M/s. Flamingo Logistics Warehousing Unit of Kandla Special Economic Zone, Gandhidham. The Directorate of Revenue Intelligence (DRI) Ahmedabad Zonal Unit, Ahmedabad investigated the import consignment and contended that the value of the identical goods imported is more than the value declared by the appellant on the basis of their purchase invoice issued by the Over Seas supplier. The appellant accepted the enhancement of value on the basis of contemporaneous import price and they have waived the Show Cause Notice vide Letter dated 15.03.2018. The Adjudicating Authority adjudicated the matter whereby, the value declared by the appellant was rejected on the basis of contemporaneous import and ordered redetermination of the value of identical goods as per price of identical goods imported retrieved from NIDB

Data. It was also ordered the confiscation of the goods under section 111(m) of the Customs Act, 1962 for the act of not declaring the correct value of the goods in the Bills of Entry with an option of redemption of goods on payment of redemption fine of Rs. 18 Lakhs under section 125 of the Customs Act, 1962. A penalty of Rs. 1,75,000/- was also imposed under section 112 of Customs Act, 1962.

3. Being aggrieved by Order-In-Original the appellant have filed the appeal before the Commissioner (Appeals). The Learned Commissioner (Appeals) modified the order of the Adjudicating Authority however reduce the redemption fine from Rs. 18 Lakhs to Rs. 12 Lakhs. Therefore, the present appeal is filed by the appellant.

4. Shri S.J.Vyas, Learned Counsel appearing on behalf of the appellant submits that goods were wrongly confiscated as the Adjudication Order is beyond jurisdiction of the officer who passed said order. He submits that as regard SEZ Unit the competent authority is the jurisdictional officer whereas the order was passed by the Additional Commissioner (Adj.) Customs House, Kandla who has no jurisdiction over SEZ. Therefore orders of both the lower authorities are liable to be quashed on this ground alone. He further submits that the confiscation of the goods particularly which is imported by SEZ Unit cannot be done when a warehouse Bill of Entry is filed. In this regard he placed reliance on Instruction No. 6 issued under No. F .5/1/2006-SEZ wherein he takes us Para 4(iv) and submits that the Bill of Entry shall be on the basis of value declared by the SEZ Units. He submits that as per the said clause even if any doubt about the declared value the assessment of the goods will be done at the time of clearance of goods from SEZ to the domestic market. Therefore, in the present case the value declared as per invoice by the appellant in the Warehousing Bill of Entry cannot be questioned and for this reason goods are not liable for confiscation.

4.1 He further submits that even assuming, not admitting, the value declared by the appellant is questionable, only on the basis of NIDB Data it cannot be said that the appellant have misdeclared the value in absence of any evidence of under Valuation. The valuation was declared as per the purchase invoice therefore, there is no misdeclaration and consequently goods are not liable for confiscation. In support of the submission he placed reliance on the judgment of SHASHI DHAWAL HYDRAULICS PVT LTD Vs. COMMISSIONER OF CUSTOMS (IMPORT) MUMBAI 2018 (11) TMI 500-CESTAT MUMBAI. He also relied on the Ministry of Commerce & Industry

Notification dated 5th August, 2016 and Notification dated 5th August, 2016 (F.No.D.6/40/2012-SEZ) (F.No.C.1/1/2009-SEZ).

5. On the other hand, Shri Vinod Lukose, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that the partner of the appellant firm has accepted the enhancement of the value of imported goods and also waived the Show Cause Notice therefore, it is established that the appellant have misdeclared the value in the Bill of Entry. Accordingly, the order passed by the lower authority confiscating the goods is correct and legal. He placed reliance on this tribunal Order No.A/11519/2019 dated 8/8/2019 of West Zonal Bench Ahmedabad in the case of Commissioner of Customs, Mundra Vs. Artex Textile Pvt. Limited.

6. We have carefully considered the submission made by both the sides and perused the records. We find that though the appellant have waived the Show Cause Notice, however, the appellant was not put to notice the intention of the revenue for confiscation of the goods. We also find that due to this reason the appellant could not make any defence as regard confiscation of the goods which is consequential to alleged misdeclaration of the value of imported goods. In these circumstances the original order passed by the Adjudicating Authority is *ex-parte* order without having on record any representation in defence of the appellant. Therefore, we are of the view that since the appellant have raised various grounds and the Adjudicating Authority had no occasion to consider the submission now made before Commissioner (Appeals) as well as before this tribunal, the matter needs to be remanded to the Adjudicating Authority. Accordingly we set aside the impugned order except the reduction of redemption fine.

7. All the issues are kept open, the appeal is allowed by way of remand to the Adjudicating Authority for passing a fresh order.

(Pronounced in the open court on20.12.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul