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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 12912 of 2018

(Arising out of OIA-MUN-CUSTM-000-APP-241-18-19 dated 12/10/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

M/s. Rubamin Ltd **........Appellant**
23, Shree Laxmi Industrial Estate, Village-Dunia,
Halol, Panchmahals,
Gujarat

VERSUS

C.C., Mundra **.......Respondent**
Office Of The Principle Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:
Shri. Saurabh Dixit, Advocate for the Appellant
Shri. Dharmendra Kanjani, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10548 /2020

DATE OF HEARING: 14.02.2020
DATE OF DECISION: 14.02.2020

RAMESH NAIR

The appellant have imported Zinc Dross Scrub. On physical verification, the goods were found in excess quantity, that is against the declared quantity 19.33 Metric tones, physically it was found as 22.32 Metric tones. The Adjudicating Authority has confiscated the excess found goods and imposed redemption fine of Rs. 1 Lakhs and penalty of Rs. 15,000. The Commissioner (Appeals) upheld the Order of the original authority, therefore the present appeal.

2. Shri Saurabh Dixit, Learned Advocate appearing on behalf of the appellant submits that the appellant have declared the quantity as mentioned in the import documents such as invoice, Weigh Bill, Packing Bill, etc. and they were not aware of the excess quantity shipped by the Foreign Supplier therefore, there is no mis-declaration with a mala fide intention on the part of the appellant. He submits that accepting these excess found stock, paid the duty. He placed reliance on the various following judgments where he submits that in such type of discrepancy, the goods were not confiscated.

a. Oriental Containers Ltd. 2003 (157) ELT 503 (Bom)
b. Kirti Sales Corpn.- 2008 (232) ELT 151
c. Payal Polyplast P. Ltd. 2015 (317) ELT 477 (Tri-Ahmd)
d. Trishla Steel Engg. Co. 2014 (313) ELT 443 (Tri-Mum)
e. Shree Ganesh International v. CCE- 2004 (174) ELT 171
f. Bosch Chassis E Systems India Ltd 2015 (325) ELT 372(Tri-Del)
g. SHRI ACHINTYA SARKAR, SHRI DIPANKAR SEN 2018 (7) TMI 549-CESTAT Kolkata.

3. Shri D Kanjani, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that there is no dispute on the facts of the case that the substantially excess goods were found as against the quantity declared in the Bill of Entry, therefore the Adjudicating Authority as well as Commissioner (Appeals) has rightly held the confiscation of excess found goods. He placed reliance on the following judgments:-

- 2017 (348) ELT 135 (Tri-Kol)- Chen Gao Sheng Vs. CC (Prev.), Kolkata
- 2015 (325) ELT 740 (Mad)- CC, (Exports), Chennai Vs. Royal Impex
- 2015 (325) ELT 372 (Tri-Delhi)-Bosch Chassis Esystems India Ltd Vs. CC, New Delhi (ICD TKD)
- 2018 (362) ELT 887 (Tri-Mum)- Sahara One Media & Entertainment Ltd Vs. Cc (II), Air Special Cargo, Mumbai

4. Heard both the sides and perused the records. I find that there is no dispute on the facts on the present case that the imports of the appellant were found in excess, as per the quantity mentioned in import documents. I find that there is nothing on record to establish that the appellant has mala fide to import excess quantity. However, there is no dispute that the excess quantity were imported therefore, the same is liable for confiscation but found without any mala fide intention. The duty attributed to the excess quantity goods is Rs. 1,24,350. I find that as against the duty liability of excess found goods, the redemption fine and penalty was very exaggerated which needs to be reduced.

5. Considering over all facts of the case the redemption fine of Rs. 1 Lakh is reduced to Rs. 10,000 and penalty is reduced to Rs. 3,000.The appeal is partly allowed in the above terms.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul