

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10917 of 2021-SM

(Arising out of OIO-MUN-CUSTM-000-COM-01-21-22 dated 07/06/2021 passed by Commissioner of CUSTOMS-MUNDRA)

ASHISH FOILS PVT LTD

.....Appellant

B-45 Group Industrial Area Wazipur
Delhi

VERSUS

C.C.-MUNDRA

.....Respondent

Office Of The Principal Commissionerate Of Customs, Port User Buld. Custom House Mundra,
Mundra
Kutch, Gujarat-370421

WITH

- **Customs Appeal No. 10918 of 2021 (TRISHUL EXOTIC PVT LTD)**
- **Customs Appeal No. 10919 of 2021 (METLINE HOUSEWARE)**
- **Customs Appeal No. 10977 of 2021 (JAGDAMBA CUTLERY LIMITED)**
- **Customs Appeal No. 10145 of 2022 (STAIN LAY INDIA PVT LTD)**

(Arising out of OIO-MUN-CUSTM-000-COM-04-21-22 dated 07/06/2021 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIO-MUN-CUSTM-000-COM-05-21-22 dated 16/06/2021 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIO-MUN-CUSTM-000-COM-02-20-21 dated 07/06/2021 passed by Commissioner of CUSTOMS-MUNDRA)

(Arising out of OIO-MUN-CUSTM-000-COM-13-21-22 dated 11/01/2022 passed by Commissioner of CUSTOMS-MUNDRA)

APPEARANCE:

Shri Gervasis Thomas, Advocate for the Appellant

Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
Final Order No. A/10726-10730 /2023

DATE OF HEARING: 09.02.2023

DATE OF DECISION: 28.03.2023

RAMESH NAIR

These appeals are directed against Order of Commissioner of Customs, Customs House, AP & SEZ, Mundra whereby, the appellants were imposed with a penalty of Rs.4 lacs each under Section 117 of the Customs

Act, 1962 from the alleged offence that while presenting the bill of entry, the appellant have not mentioned about the levy of Anti Dumping duty on the imported goods.

02. Shri Gervasis Thomas, learned counsel appearing on behalf of the appellants submits that it is only due to inadvertently the appellant could not make mention about Anti Dumping duty. There is no mala fide on the part of the appellant for not declaring the anti dumping duty in the bills of entry. He submits that in these cases, there was no duty payable as the import were made against advance authorization therefore, there no actual duty payment was required, full debit in advance authorization was required. It is his submission that in the advance authorization, the credit balance was much more than the anti dumping duty meant to be debited therefore, they was no intention to not mentioning the anti dumping duty in the bills of entry. He further submits that though the appellant were issued show cause notices demanding anti dumping duty and IGST however, the adjudicating authority dropped the demand of anti-dumping duty and IGST thereon and interest on the grounds that duty cannot be demanded after issuance of export obligation dispatch certificate (EODC) which is on the ground of debiting less amount in the bond therefore, in this fact the penalty of Rs.4 lacs each under Section 117 of the Customs Act, 1962 is not warranted.

2.1 He further submits that the maximum penalty imposable upto 01.08.2019 was Rs.1 lac only, the penalty was enhanced to Rs.4 lacs by Section 77 of Finance Act (No.2), 2019. It is his submission that punitive loss cannot be retrospectively incriminated hence, it could not have been imposed upon by imports made prior to that date. He placed reliance on the Hon'ble Supreme Court judgment in the case of KUSUM LAMBA- 2019 (366) ELT 43 (SC). He also placed reliance on the following judgments:-

- SUPRA FOUNDRY SERVICES (P) LTD.- 2001 (132) ELT 543 (kar.)
- COMMISSIONER OF CENTRAL EXCISE Vs. TELCO- 2004 (165) ELT 280 (Jhar)
- STETCO. CHEM.(I) LTD.- 2007 (211)ELT (Tri-Mum)
- NIRMAL OVERSEAS LTD.- 2002 (149) ELT 265 (Tri.-Del.)

2.2 He further submits that according to para 2.2 of the Self Assessment Manual of CBIC, penal provision would not be invoked in cases of bona fide error and self assessment. In this regard he placed reliance on the following judgments:-

- HAZEL MERCANTILE LTD.- 2013 (297) ELT 70 (Tri.-Ahd.)
- SYNDICATE SHIPPING SERVICES PVT. LTD.- 2003 (154) ELT 756 (Tri.)

2.3 He submits that in similar situation, the adjudicating authority of the same Custom house at Mundra in the case of Stain Lay India Pvt. Ltd. for a succeeding period, dropped demand of anti dumping duty, IGST thereon and penalty proposed under Section 117 of the Customs Act, 1962 vide OIO No. MCH/ADC/RKC/43/2022-23 dated 13.06.2022. Similar orders were issued in the case of M/s. Kumar Engineering Works vide OIO No. MCH/ADC/PMR/76/2022-23 dated 23.08.2022, MCH/ADC/PMR/77/2022-23 dated 23.08.2022. He further submits that the Hon'ble CESTAT in the case of M/s. LSML Pvt. Ltd. reported in 2022 (1) CENTAX 180 (Tri.-Mad.) held that no penalty is imposable if there is no conscious suppression or misrepresentation in the payment of anti dumping duty. He also submits that Section 17(2) of the Customs Act and para 5 of the self assessment manual as well cast a responsibility to the assessing authority to verify the self assessment made by the importer therefore, the failure is more with the department for which no mala fide can be attributed to the importer who acted according to his understanding of the law. He placed reliance on the judgment of the Hon'ble High Court of Bombay in the case of M/S. DIMENSION DATA INDIA PVT. LTD. reported in 2021 (376) ELT 192 (Bom.). This said judgment has been upheld by the Hon'ble Supreme Court reported at 2022 (379) ELT (SC). He also placed reliance on this tribunal's decision in the case of VIDHI DYESTUFF MANUFACTURING LTD. reported in 2015 (327) ELT 500 (Tri.-Mum.)

03. Shri Rajesh Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. I have carefully considered the submissions made by both the sides and perused the records. I find that the penalty under Section 117 of the Customs Act, 1962 was imposed for the reason that appellant have not declared the anti dumping duty in the bills of entry. I find that firstly, the import was made under advance authorization in terms of Notification No. 18/2015-Cus dated 01.04.2015 according to which the goods were eligible to be cleared under exemption without payment of duty, be it basic duty, CVD or ADD. It is also a fact on record that the appellant had sufficient credit balance in their advance authorization license. The anti dumping duty which was not mentioned in the bill of entry was at the most required to be debited in the advance authorization. The appellant was also issued the export

obligation by DGFT. Considering these facts, I do not see any mala fide intention in the appellant's action, there is no charge against the appellant with intent to evade payment of anti dumping duty. Para 2.2 of the Self Assessment Manual of CBIC reads as under:-

"Penal provisions would not be invoked in cases of bonafide errors in Self Assessment where mens rea and willful intention to evade duty or non-compliance of a condition cannot be proved."

As per the above para, it is clear that when there is a bona fide error in self assessment of bill of entry where mensrea and willful intention to evade duty on non-compliance of the condition cannot be proved, the penal provision could not be invoked.

05. Considering the overall facts as discussed above, there is no iota of doubt that appellant has no mensrea or any wilful intention to evade payment of anti dumping duty therefore, in view of the self assessment manual of CBIC, penal action was not warranted against the appellants. The judgments cited by the appellant support their case. It is also worth mentioning that on the similar nature of cases, the lower authorities in various cases have not imposed any penalty under Section 117. Therefore, considering discussions made herein above, I do not find these cases as fit for imposition of penalty under Section 117 of the Customs Act, 1962. Accordingly, the impugned orders are modified to the above extent, penalties under Section 117 are set aside. Appeals are allowed with consequential relief.

(Pronounced in the open court on 28.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul