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

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 11477 of 2017-DB

(Arising out of OIO-MUN-CUSTM-000-APP-028-16-17 Dated-02.05.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

ESKAY INTERNATIONAL ....**Appellant**

I-158 / ASHOK VIHAR, PHASE I ,
DELHI-DELHI

VERSUS

C.C.,-MUNDRA ....**Respondent**

OFFICE OF THE PRINCIPAL COMMISSIONERATE OF CUSTOMS,
PORT USER BULD., CUSTOM HOUSE MUNDRA, MUNDRA
KUTCH-GUJARAT370421

APPEARANCE:

Shri Anil Gidwani, Advocate appeared for the Appellant
Shri Bina D. Jani, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)

Final Order No. A/ 10946 /2023

DATE OF HEARING:21.04.2023
DATE OF DECISION:21.04.2023

RAJU

This appeal has been filed by Eskay International against confiscation of goods and imposition of penalty.

2. Learned counsel pointed out that they had imported PPGI Coil for the purpose of re-export. They had placed the said goods in the bonded warehouse after import. He pointed out that the Notification No. 38/2015 dated 05.02.2016 issued by DGFT, a minimum import price was prescribed for the item imported by the appellant. He pointed out that the original adjudicating authority held that the appellant could not have possibly imported the goods at the price lower than the minimum import price prescribed by the DGFT in the aforementioned Notification. Consequently, invoking provisions of Clause-m of Section 111 of the Customs Act, the goods were held liable for confiscation. Consequently, the goods were confiscated and redemption fine was imposed. Penalty was also imposed under Section 112(a). He pointed out that when they

filed appeal before Commissioner (Appeals), the Commissioner (Appeals) has modified the order and held that goods are not liable for confiscation under Clause (m) of Section 111 of the Customs Act, 1962, however the Commissioner (Appeals) has continued to hold that the goods are liable for confiscation under the clause (d) of Section 111 of the Customs Act, 1962. He pointed out that the Commissioner has no authority to change the clause under which the confiscation was ordered as Revenue had accepted the order in original and had not filed any appeal against the said order-in-original.

3. Learned Authorized Representative relies on the impugned order.

4. We have gone through rival submissions. We find that the original adjudicating authority had confiscated the goods invoking clause (m) of Section 111 of Customs Act, 1962. The Commissioner (Appeals) on his own has held that Clause (m) of Section 111 cannot be invoked in these circumstances. The Commissioner (Appeals) has however gone ahead and upheld the confiscation under Clause (d) of Section 111 of the Customs Act. We find that the original order of confiscation was issued invoking Clause (m) of Section 111 of the Customs Act, the Commissioner (Appeals) has held that clause (m) of Section 111 cannot be invoked. After holding that Clause (m) of Section 111 cannot be invoked in this case the Commissioner (Appeals) could not have upheld the order in original. In these circumstances, we do not find any merit in the order. The same is set aside. Appeal is allowed.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha