CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOMS Appeal No. 10113 of 2016-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-161-15-16 dated 07.09.2015 passed by Commissioner of CUSTOMS-MUNDRA]

Sanjay Kumar And Co Exim Ltd **...Appellant**

Sr. No. 301/1, Mithi Rohar,
National Highway-8,
Gandhidham, Gujarat

VERSUS

C.C.-Mundra **...Respondent**

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

APPEARANCE:

None appeared for the Appellant
Shri Sanjay Kumar, Superintendent (Authorized Representative) appeared for the Respondent

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

FINAL ORDER NO. A / 11687 /2023

DATE OF HEARING: 10.08.2023
DATE OF DECISION:10.08.2023

RAJU

The matter has been listed on 20.04.2023, 12.05.2023, 12.06.2023 & 12.07.2023, but nobody has appeared. No one has appeared today also so the matter is being decided.

2. The appeal has been filed against enhancement and redemption fine and penalty.

3. We find from the Commissioner (Appeals) has observed as follows while enhancing fine and penalty:

> *"5. I have carefully gone through the appeal memorandum and cross objection filed by the respondent. The limited issue to be decided in the present appeal the adjudicating authority was justified in imposing low Redemption Fine under section 125 of the Customs Act, 1962 and low Penalty under section 112(a) of the Customs Act, 1962.*

> *6. I find that the undisputed facts of the case is that the imported goods in question were misdeclared, which made them liable for confiscation and imposition of Redemption Fine and penalty. I find that the reason put forth by the respondent at the time of the adjudication as well in their cross objection is not sustainable. I find force in the Departmental arguments that although discretion has been vested in proper officer to determine fine to be imposed in lieu of confiscation/imposition of penalty under section 112(a)(ii) of Customs Act, 1962. it has to be determined keeping in view the offence and involvement of offender. I find that no extra arguments has been put forth by the respondent claimant, in their cross objection/during the course of Personal Hearing. The Lower Authority has held in his findings that this is a clear case of smuggling attracting penal provision under section 125 and section 112 of Customs Act, 1962. When a case of smuggling was made out, there was no justifiable ground for the Lower Authority to impose a nominal fine and penalty. Order of the Lower Authority is required to be modified to the extent of fine and penalty. I order accordingly,"*

3.1. We do not find any fault in the reasoning given by Commissioner (Appeals).

4. The appeal filed is therefore dismissed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK