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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 11020 of 2021 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-160-161-21-22 dated 21/09/2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

RESMHA ENTERPRISES **........Appellant**
Shop No.3, Om Co-Operative Society,
Near Vakola Bridge, Santacruz
Mumbai, Maharashtra

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. 11021 of 2021 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-160-161-21-22 dated 21/09/2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

KIRAN HUNDRAJ MUKI **........Appellant**
502, Gulmohur Bidg,
Plot No. 234, 28th Road, Bandra West
Mumbai, Maharashtra

VERSUS

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

APPEARANCE:
Shri Neerav Mainkar, Advocate for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR)for the Respondent

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

Final Order No.10487-10488/2024

DATE OF HEARING: 25.10.2023
DATE OF DECISION: 26.02.2024

RAMESH NAIR

The Appellants M/s Reshma Enterprises & Kiran Hundraj Muki have filed the present appeals aggrieved by the impugned order No. MUN/CUSTM/000/APP/160 – 161-21-22 dated 21.09.2021 passed by the Learned Commissioner (Appeals) in so far he has upheld the confiscation of goods and redemption fine on main appellant and on co-appellant, a personal penalty under Section 112 of the Customs Act, 1962 for the admitted undervaluation of imported goods.

1.1 Brief Facts of the case are that the Appellant are engaged in the import of food supplements from a US based firm M/s. Ultimate Nutrition. Investigation by the DRI revealed that bogus invoices were generated of his supplier showing lesser value of goods and same were submitted for filing Bills of Entry. Following the investigation, the Appellant were issued two show cause notices dated 04.10.2018 and 14.11.2019. Against the show cause notice dated 14.11.2019 wherein the differential duty demand on the charge of under valuation was raised. The appellant taken up the matter with the settlement commission and the same was settled by the Settlement Commission. However, the show cause notice dated 04.10.2018, which is subject matter of the present appeals has been adjudicated vide Order-in-Original No. MCH/ADC/AK/117/2019-20 dated 09.03.2020, wherein the following order was passed:-

(i) I reject the total declared 'assessable value of Rs. 61,24,754/- (Rupees Sixty One Lakh Twenty Four Thousand Seven Hundred Fifty Four only) in respect of the goods imported vide Bill of Entry No. 5961450 dated 12.04.2018 and order to re-determine the same as Rs. 82,54,627/- (Rupees Eighty Two Lakh Fifty Four Thousand Six Hundred Twenty Seven only) [as per Table A in Para 16.1 of the Show Cause Notice],under Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (determination of value of the imported goods) Rules.2007.

(ii) I hold the goods imported vide Bill of Entry No. 5961450 dated 12.04.2018, seized and valued at Rs. 82,54,627 (Rupees Eighty Two Lakh Fifty Four Thousand Six Hundred Twenty Seven only), as detailed in Table-A of the SCN, liable for confiscation under Section 111 (m) of Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine of Rs. 12,00,000.00 (Rupees Twelve lakh only) under Section 125 of the Customs Act, 1962.

(iii) I reject the total assessed value of Rs. 1,29,49,350/- (Rupees One Crore Twenty Nine Lakh Forty Nine Thousand Three Hundred Fifty only) in respect of goods imported vide Bill of Entry No. 5861314 dated 12.04.2018 and order to re-determine the same as Rs. 1,30,15,250/- (Rupees One Crore Thirty Lakh Fifteen

Thousand Two Hundred Fifty only) (as per Table 8 in Para 16.2 of the Show Cause Notice), under Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (determination of value of the imported goods) Rules, 2007.

(iv) I hold the goods imported vide Bill of Entry No. 5961314 dated 12.04.2018, seized and valued at Rs. 1,30,15,250/-, as detailed in Table-B of the SCN, liable for confiscation under Section 111 (m) of Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine of Rs. 20/00,000.00 (Rupees Twenty Lakh only) under Section 125 of the Customs Act, 1962.

(v) I reject the total declared assessable value of Rs. 39,98,429/- (Rupees Thirty Nine Lakh Ninety Eight Thousand Four Hundred Twenty Nine only) in respect of goods seized in godown premises of the importer and imported vide different Bills of Entry (as detailed in Table C in Para 16.3 of the SCN) and order to re-determine the same as Rs. 53,90,911-/-(Rupees Fifty Three Lakh Ninety Thousand Nine Hundred Eleven only), under Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (determination of value of the imported goods) Rules, 2007.

(vi) I hold the goods valued at Rs. 53,90,911/- seized in godown premises of the Importer and Imported vide different Bills of Entry (as detailed in Table C in Para 16.3 of the SCN) liable for confiscation under Section 111 (m) of Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine of Rs. 7,50,000.00 (Rupees Seven lakh Fifty Thousand only) under Section 125 of the Customs Act, 1962.

(vii) I do not impose any penalty upon the importer M/s Reshma Enterprises, Shop No. 3. Om Cooperative Society, Radhanagar, Near Vakola Bridge, Santa Cruz, Mumbai, Maharashtra, under Section 114A of the Customs Act, 1962.

(viii) impose penalty of Rs. 20,00,000.00/-(Rupees Twenty lakh only) upon Shri Kiran Hundraj Mukhi, 502, 5/o Shri Hundraj N Mukhi, Gulmohar Building, Plot No. 234, 28 Road, Bandra West Mumbai, Maharashtra under Section 112 of the Customs Act, 1962.

19. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and *rules/regulations framed thereunder or any other law for the time being in force in the Republic of India."*

Against the aforesaid order the appellants filed appeals before the Commissioner (Appeals) which were rejected. Therefore the present appeals filed by the appellants.

2. Shri Neerav Mainkar, Learned Advocate appearing on behalf of the Appellant submits that on receipt of the Show Cause Notice dated 14.11.2019, an application was made to the Settlement Commission for the disputes raised in the show cause notice dated 14.11.2019. The SCN dated 4.10.2018 pertained to confiscation of goods and no demand for customs duty was raised therein. The Settlement Commission vide its Final Order No. 01/FINAL ORDER/CUS/AG/2021 dated 01.01.2021 settled the case providing the following substantial relief to the Appellant:-

> 7.1 Customs Duty – Bench settles the duty liability at Rs. 1,96,89,450/-. Since the Applicant has paid the said amount, no further liability subsists on this account.
>
> 7.2 Interest: Bench settles the interest liability at Rs. 40,15,479/-. Since, the Applicant has paid the said amount, no further liability subsists on this Account.
>
> 7.3 Penalty:- Penalty of Rs.15,00,000/- is imposed on the Applicant M/s. Reshma Enterprises which should be paid within 30 days of receipt of this order.
>
> 7.4 Prosecution:- The Bench grants immunity from prosecution to the Applicant M/s Reshma Enterprises under Customs Act, 1962 so far as proceedings under the instant Show Cause Notice against them are concerned.
>
> 8. The above immunities to the Applicant are granted under Section127 H (1) of the Act. Their attention is also invited to the provisions of sub – section (2) and (3) of Section 127 H, ibid. This order shall be void and immunities withdrawn if the Bench, at anytime finds that the applicant had concealed any particular material from the Commission or had given false evidence or had obtained this order by fraud or misrepresentation of facts.

2.1 He submits that since, in respect of very same goods, case has been settled by Settlement Commission, in the present cases the confiscation of goods, fine and personal penalty will not survive. In view of the above, he submits that the impugned order be set aside.

3. Shri H.P. Shrimali, Learned Superintendent (AR) appearing on behalf of the Department reiterates findings of the Impugned order.

4. We have carefully considered the submissions of both the sides and perused the records. We find that there is no dispute regarding the fact that the Appellant opted for settlement and approached the Settlement Commission for dispute arising out of show cause notice No. DRI/HQ – CI/50D/Int-2/2018/CI/8935 dated 14.11.2019 who vide its Final Order No. 01/FINAL ORDER/CUS/AG/2021 dated 01.01.2021 settled the case on above mentioned terms of the Settlement Commission's order. We also note that immunity was granted to the Appellant under Section 127 H (1) from fine, penalty and prosecution. We further note that the learned Commissioner (Appeals) vide order no MUN/CUSTM/000/APP/160 – 161-21-22 dated 21.09.2021 has upheld the confiscation, redemption fine and personal penalty on the Appellants in terms of Section 112. The view taken by the Learned Commissioner is that the adjudicating authority vide Order in Original held that the goods were liable for confiscation as it was an admitted fact by the appellant that they had undervalued the goods by way of fraud under Section 111(m) of the Customs Act, 1962 and thereby upheld the Order-in-Original. It is the Appellants case that no fine, penalty on them should be imposed.

4.1 We observe in the present case that the immunity granted to the Appellant is under show cause notice No. DRI/HQ – CI/50D/Int-2/2018/CI/8935 dated 14.11.2019 does not *ipso facto* cover the show cause notice No. DRI/HQ–CI/50D/Int-2/2018/CI-7806-7809 dated 04.10.2018. However taking into consideration the obligations discharged by the Appellant under the Settlement Commission's order, we are of the view that it would be only fair that a lenient view be adopted with regards to the quantum of fine and penalty imposed.

05. Accordingly, in Appeal No. E/11020/2021 , the redemption fines of Rs. 12,00,000/-, Rs. 20,00,000/- and Rs. 7,50,000/- are reduced to Rs. 6,00,000/-, Rs. 10,00,000/- and Rs. 4,00,000/- respectively and in Appeal No. C/11021/2021 penalty of Rs. 20,00,000/- is reduced to Rs. 5,00,000/- The impugned order is modified to the above extent. Appeals are partly allowed in above terms.

(Pronounced in the open court on 26.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha