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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11858 of 2019 - DB

(Arising out of OIA-AHD-CUSTM-000-APP-008-19-20 dated 02/04/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Paramount Clearing And Shipping Services ....Appellant
403, Aaron Residency,
Nr. Gandhigram Rly. Station, Ashram Road
Ahmedabad, Gujarat

VERSUS

Commissioner of Customs-Ahmedabad ......Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri K J Kinariwala, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR)for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.11509/2024

DATE OF HEARING: 11.03.2024
DATE OF DECISION: 05.07.2024

RAMESH NAIR

The brief facts of the case are that M/s. Karnavati Car Air Conditioners Pvt Ltd, Plot No. 427/4, Steel Township, Behind HOF, Sarkhej-Bavla Highway, Changodar, Ahmedabad (importer) engaged in the import of parts of air conditioners, falling under CTH 87089900 of the Customs Tariff Act, 1975. The importer filed Bill of Entry No. 6422234 dated 19.8.2016, though the appellant, for radiators used in the light motor vehicle falling under CTH 87089100 of the said Tariff Act. Since the bill of entry was routed through RMS, examination/assessment was not required. During the course of verification of the said Bill of Entry , it was noticed that declaration of MRP price on the goods imported was mandatory under the provisions of Section 4A of the Central Excise

Act,1944. But it was not declared. The said bill of entry no. 6422234 dated 19.08.2016 was recalled from EDI system and the importer was called upon to declare the MRP price of the goods in terms of Section 3 (2) of the Customs Act, 1962, read with Section 4A of the Central Excise Act, 1944. The said Bill of Entry was accordingly re-assessed to Additional Duty equal to excise duty (CVD) on the basis of MRP. On apprehending that the importer might have indulged in non- declaration of MRP on similar and identical imported goods in the past on the wrong advice of the appellant, the importer was requested to furnish the copies of the documents. From the Bills of Entry, it was noticed that following Bills of Entry were facilitated through RMS, wherein they had failed to declare the MRP on the parts of motor vehicles covered by Serial No.108 of notification No. 49/2008-CE (NT) and also failed to pay the additional duty equal to excise duty (CVD) less abatement.

Serial No.	Bill of Entry No.	BE Date	CTH	Description
1.	6133862	26.07.2016	84159000	Cooling Coil
2.	6306887	09.08.2016	87089100	Radiator
3.	6309092	10.08.2016	87089100	Radiator
	6309092	10.08.2016	87089900	Evaporator
4.	6336824	11.08.2016	87089100	Radiator
5.	6351876	13.08.2016	87089900	Condensor/Compressor

1.2 The importer, in respect of these five Bills of Entry had neither affixed the MRP nor declared MRP in the bills of Entry. The additional duty equal to excise duty (CVD) payable on these bills of entry was not paid and required to be recovered from the importer amounts to Rs. 6,76,083/-.

A show cause notice was issued to the importer to recover Customs duty amounting to Rs. 6,76,083/- under Section 28 of the Customs Act, 1962 along with interest at the applicable rate under Section 28AA of te Customs Act, 1962, to confiscate the goods imported under the five bills of entry under Section 111(m) of the Customs Act, 1962, to impose penalty on them under Section 114AA and 112 (a) of the Customs Act, 1962. The show cause notice was also issued to the appellant to impose penalty under Section 117 of the Customs Act, 1962 and penalty under Regulation 22 ibid read with Section 114AA of the Customs Act, 1962.

1.3 The Adjudicating Authority vide impugned order confirmed the demand for Customs duty amounting to Rs. 6,76,083/- under Section 28 of the Customs Act, 1962 along with interest at the applicable rate on the duty demanded above under Section 28AA of the Customs Act, 1962 held that the goods imported under the five bills of entry are liable for confiscation under Section 111 (m) of the Customs Act, 1962, imposed penalty of Rs. 50,000/- under Section 114AA of the Customs Act, 1962, Rs. 50,000/- under Section 112(a) of the Customs Act,1962 on the importer, Imposed penalty of Rs. 25,000/- on the appellant under Section 114AA of the Customs Act, 1962, refrained from imposing penalty under Section 117 on the appellant.

1.4 Being aggrieved by the Order-In-Original the importer M/s. Karnavati Car Air Conditioners Pvt Ltd as well as the present appellant had filed the appeals before the Commissioner (Appeals) who has rejected the appeal. Therefore, the present appeal filed by the appellant.

2. Shri K.J Kinariwala, Learned Consultant appearing on behalf of the Appellant at the outset submits that in case of the present appellant penalty of Rs. 25,000/- was imposed under Section 114 AA of the

Customs Act, 1962 consequence to the confirmation of demand of custom duty amounting to Rs. 6,76,083/- against M/s. Karnavati Car Air Conditioners Pvt Ltd. In the matter of Karnavati Car Air Conditioners the matter reached to this Tribunal in Custom Appeal No. 12614 of 2019 and the Hon'ble Tribunal vide Final Order no. A/10120/2024 dated 09.01.2024 set aside the demand on limitation. In other words there is no mala fide for short payment of custom duty as per MRP of imported goods. Therefore, no mala fide can be attributed to the present appellant also. Accordingly, on the same line the penalty in the present case also liable to be set aside.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that in the present case penalty of Rs. 25,000/- was imposed upon the appellant under Section 114 AA of the Customs Act, 1962 which is consequential to confirmation of demand of Rs. 6,76,083/- against M/s. Karnavati Car Air Conditioners Pvt Ltd. This Tribunal vide Final Order No. A/10120/2024 dated 09.01.2024 set aside the demand on the ground of time bar. The said order is reproduced below:-

"4. We are considered rival submission. We find that the issue pertains to import of following goods.

Serial No.	*Bill of Entry No.*	*BE date*	*CTH declared*	*Description*
1.	*6133862*	*26.07.2016*	*84159000*	*Cooling Coil*
2.	*6306887*	*09.08.2016*	*87089100*	*Radiator*
3.	*6309092*	*10.08.2016*	*87089100*	*Radiator*

	6309092	*10.08.2016*	*87089900*	*Evaporator*
4.	*6336824*	*11.08.2016*	*87089100*	*Radiator*
5.	*6351876*	*13.08.2016*	*87089900*	*Condensor/Compressor*

3.1 The appellant had imported these goods and had not declared the MRP on the said goods. Subsequently, the order in original notes in para 48 that MRP was later declared by the appellant and on that basis a demand show cause notice was issued seeking to demand the countervailing duty on the basis of MRP.

3.2 Notification 9 of 2010 CE (NT) dated 27.02.2010 which amends notification no. 49/2008 Central Excise NT dated 24.12.2008 inserts following in the table.

(1)	*(2)*	*(3)*	*(4)*
"108	*Any Chapter*	*Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716*	*30"*

After introduction this entry the parts components and assemblies of vehicles specified in this entry became chargeable to Central Excise Duty on the basis of Section 4A of the Central Excise Act, 1944. Consequently, for the purpose of charging CVD also, the MRP based assessment became applicable. The goods in respect of which the show cause notice was issued were cleared in the situation where the importer had not declared MRP though there was no mis-declaration in description of goods or classification. This show cause notice was issued after obtaining MRP from the importer. The Learned Counsel for the appellant pointed out that the goods are accessories and not parts. He relied on the decision of Tribunal in the case of Banco Products India Pvt. Ltd. This argument was that accessories will not be covered under Sr. No. 108 of notification no. 49/2008 CE (NT) and therefore, MRP based assessment cannot be applied on passed imports made by the appellant. On perusal of the nature of goods show that radiator, evaporator, condenser or compressor or all essential ingredients refrigeration system and can by no means the called accessories. The decision of Banco Products India Ltd. is different sides of facts. In the said case the goods in dispute were not essential ingredients of the final product.

3.3 The next issue raised by the appellant is that, it was not a case of any suppression as the fact regarding classification under section 87 was known to revenue. There was no mis-declaration of description. He argued that in these circumstances, penalty should not be imposed. We find that penalty of Rs.50,000/- has been imposed under section 114 AA of the

> *Customs Act, 1962. The penalty of Rs. 50,000/- has been also imposed under section 112(a) of the Customs Act, 1962.*
>
> *4. We find that extended period of limitation has been involved to raise this demand. The show cause notice has been issued on 13.04.2018 whereas, the bill of entries are dated 26.07.2016 to 13.08.2016. It is seen that all the data required for the notice except the MRP was available in the bill of entry filed by the appellant. In these circumstances, we do not find any reason to hold that anything was suppressed by the appellant for the purpose of evasion. The description of the goods the heading in which classification has been claimed and the rate of duty for the purpose of CVD and the value for the purpose of CVD are all available on the bill of entries. In these circumstances, we do not find that revenue has been able to establish the case for revocation of extended period of limitation.*
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> *5. In view of above, we hold that the extended period of limitation could not have been involved in the instance case. This appeal is therefore allowed on the ground of limitation."*

4.1 In view of the above order, the demand of custom duty against M/s. Karnavati Car Air Conditioners Pvt Ltd has been set aside on the ground of time bar. In the present case the penalty is consequential to confirmation of demand against M/s. Karnavati Car Air Conditioners Pvt Ltd which has been set aside. Therefore, the penalty of Rs.25,000/- imposed on the appellant under Section 114 AA of Customs Act, 1962 will also not sustain.

5. Accordingly, the penalty is set aside. Appeal is allowed.

(Pronounced in the open court on 05.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha