CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Appeal No.70042 of 2021

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-494-20-21 dated 19/08/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Comprehensive Merchants LLP, ...Appellant

(2A/6, 2nd Floor, Ramesh Nagar, Delhi-110015)

VERSUS

Commissioner of Customs (Pre.), Noida ....Respondent

(Concor Complex, Container Depot, Noida-201311)

APPEARANCE:

Shri R.S. Yadav, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.70239/2024

DATE OF HEARING : 13 May, 2024
DATE OF DECISION : 13 May, 2024

P.K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-CUSTM-000-APP-494-20-21 dated 19/08/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida.

2. The facts of the case in brief are that the Bill of Entry No.6708616 dated 07.06.2018 was filed for clearance of imported goods with total declared assessable value amounting to Rs.15,15,869/- for all the imported goods. The importer vide letter dated 08.06.2018 requested for "First Check" of the goods, in order to verify the correctness of the declaration in respect of the said goods. The goods were examined on 18.06.2018 by the Officers in the presence of the DC shed and the importer's

authorized person. During the examination, it was found that the Appellant had mis-declared the classification, quantity and value of the imported goods in the said bill of entry. The Original Authority has rejected the declaration/declared value and re-determined the assessable value to Rs.19,74,428/- and held the goods liable for confiscation under Section 111 (m) of the Act and imposed a penalty of Rs.3,00,000/- under Section 112 (a) and also redemption fine of Rs.3,00,000/- on the Appellant. Being Aggrieved, the Appellant filed appeal before the learned Commissioner (Appeals), who have rejected the appeal before him. Hence, the present appeal before this Tribunal.

3. Learned Advocate appearing on behalf of the Appellant has submitted that the Appellant accepted the examination report dated 18.06.2018 and paid the customs duty so assessed. Further, it is his submission that department adjudicated the case alleging mis-declaration and imposed redemption fine of Rs.3,00,000/- and penalty of Rs.3,00,000/-, even though the examination was made by department on the basis of "First Check" requested and opted by the Appellant which is a procedure of self assessment under Section 17 of the Customs Act. He further submitted that the "First Check" was requested on 08.06.2018, before the data entry stage, which is evident from the Bill of Entry tracking at ICES Gate, Customs portal, where the "First Check" has been mentioned and subsequent examination order has been made which was undertaken on 18.06.2018. The Learned Advocate also submitted that the "First Check" was availed by the importer when there is some doubt and confusion or lack of clarity regarding the description or the quantity of the goods. In this case the importer vide letter dated 08.06.2018, has clearly mentioned that the container has been imported for the first time by the consignee. Therefore, the importer sought for "First Check" self assessment procedure and examination has been done on their request. Accordingly, the charge of mis-declaration is unwarranted and there was no intention to mis-declare or suppression of the goods. Further, he prays for setting aside the confiscation and resultant redemption

fine as well as penalty. In support of his submissions he relies upon various decisions.

4. Learned Authorised Representative appearing for the Respondent justifies the impugned order and prayes that the appeal filed by the Appellant be dismissed as the same is devoid of merits.

5. Heard both sides and perused the appeal records.

6. I find that the law provides for certain assessment in certain manner. It should have been in that manner and more so in facts of the present case, when all the facts etc. were available on record and the importer was cooperating with the Revenue by opting for “First Check” basis, the assessment should have been completed under Section 17 (4) or under Section 17 (5) of the Act. In this view of the matter, passing of the Order-in-Original was incorrect exercise of power under the scheme of the Act.

7. In view of the above discussions and under the facts and circumstances no case of mis-declaration or contumacious conduct on the part of the importer is made out. Accordingly, the redemption fine and penalty imposed under Section 112 (a) are set aside.

8. The Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Dictated and pronounced in open court)

Sd/-

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

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