# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## REGIONAL BENCH : ALLAHABAD
## COURT No. I

**APPEAL No. C/70740/2017-CU[DB]**

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-783-17-18 dated 18/08/2017 passed by Commissioner of Central Tax (Appeals), Noida)

**Commissioner of Customs, Noida Customs Commissionerate** **Appellant**

Vs.

**M/s Ess Aar Automotive Pvt. Ltd.** **Respondent**

Appearance:

Shri Mohd Altaf (Asstt. Commr.) AR for Appellant
Ms. Stuti Saggi (Advocate) for Respondent

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 02/07/2018
Date of Decision : 02/07/2018

FINAL ORDER NO **71326 / 2018**

**Per: Anil G. Shakkarwar**

Present appeal filed by Revenue is directed against Order-in-Appeal No. NOI-CUSTM-000-APP-783-17-18 dated 18.08.2017 passed by Commissioner (Appeals), Central Tax, Noida.

2. Brief facts of the case are that the respondent had filed eight shipping bills dated 30.08.2013 at CMA-CGM Port, Dadri for export of Agricultural and Horticultural machinery

to M/s City State Bank, 1508, Omaha NE USA by declaring combined FOB value of Rs.16,58,93,723/- under the claim of drawback. On being objected by Revenue about the value declared the respondent requested to amend the said shipping bills from drawback shipping bills to free shipping bill all dated 13.09.2013 and also reduced the combined FOB value from the above stated FOB value to Rs.8,70,79,045/- under the provisions of Section 149 of Customs Act, 1962. The respondents were allowed to amend the said shipping bill in aforesaid manner. Subsequently the goods were allowed by Revenue to be exported. Later on through Order-in-Original No.03/CUSTOMS/ICD-Dadri/2014 dated 22.05.2014, the Original Authority confiscated the goods valued at Rs.8.71 crores under the provisions of Section 113 of Customs Act, 1962, imposed redemption fine of Rs.1.74 crores and imposed a penalty of Rs.80 lakhs on the respondent. Aggrieved by the said order respondent preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal. Learned Commissioner (Appeals) in his order impugned has recorded that *"the goods were originally entered for export under shipping bills all dated 30.08.2013. Later on after foregoing the export incentive the same were released provisionally and allowed for export under fresh shipping bill all dated 13.09.2013 with no export incentive. The exporter has contended their case to be covered under Section 149 of the*

*Act, which allows amendment of documents after it has been presented in the Customs House. It also provides that no amendment of shipping bills shall be so authorized to be amended after the goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were exported."* He has further recorded that the original order records that the amendment of the shipping bill was allowed under the provisions of said Section 149. The learned Commissioner (Appeals) has held as follows:-*"by allowing amendment, obviously under Section 149, the authority had no rationale to deny having allowed said amendment under Section 149." So after allowing the such amendment the Department had no ground to confiscate the goods and impose fine and penalty. It is also a fact that no loss has occurred to the Department and the appellant (respondent to present appeal) have already received the total foreign inward remittance for their export consignment"*. In view of the said findings the learned Commissioner (Appeals) has set aside the said Order-in-Original dated 22.05.2014. Aggrieved by the said order Revenue is before this Tribunal. The grounds of appeals are as follows:-

(i) The exporter had filed 8 shipping bills for export of Agriculture and Horticulture machinery and Sh. Rajeev Anand, Director in his statement dated 07.09.2013 had admitted that he had made a mistake in the valuation of certain products which already admitted in his statement dated 05.09.2013.

(ii) In the impugned OIA, the Commissioner (Appeals) observed that Sh. Rajeev Anand, Director of the exporter appeared before the Customs authority prior to date of export and proposed to convert the Shipping bills into duty free shipping bills. Whereas, it is a fact on record that such actions of the exporter were not voluntary but took place only when the over valuation was detected by the Customs Officers. The conversion of shipping bills into duty free shipping bills and provisional release of the export goods was also done on the basis of the exporter's request.

(iii) The Confiscation of goods attempted to be improperly exported has been provided in Section 113 (i) of the Customs Act, 1962 which says that *"That following export goods shall be liable to confiscation:- (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77".* Since the exporter initially declared overvalued prices of Rs. 16.59 crores which on interception of the consignment by the SIIB, ICD, Dadri, wasreduced to Rs. 8.71 crores, this shows the mala fide intention on the part of the exporter and a clear cut case of mis-declaration of value and covered under Section 113 (i) ibid.

(iv) The exporter initially declared prices of export goods as Rs. 16.59 crores which on interception of the consignment by the SIIB, ICD, Dadri, was reduced to Rs. 8.71 crores. These prices were also on higher side which is evident from perusal of Chartered Engineer's report dated 18.12.2013. It shows the mala fide intention on the part of the exporter to avail the benefit of drawback at higher rate.

(v) The report of Chartered Engineer dated 18.12.2013 was made available to the exporter but the exporter did not raise any dis-satisfaction on his report. It shows that the exporter has made the attempt to export the goods by over-invoicing and it has been corrected only after detection made by the Customs Officers.

(vi) In view of the foregoing para, the OIO No. 03/CUSTOMS/ICD-Dadri/2014 dated 22.05.2014 proposing confiscation of exported goods with option to redeem goods on payment of R.F, imposing Penalty on M/s Ess Aar Automotives Pvt. Ltd. and Sh. Rajeev Anand, Director of the said company is legal and proper may be upheld and the OIA No. NOI-CUSTM-000-APP-783-17-18- dated 18.08.2017 may be set aside.

3. Heard the learned AR who has presented the above stated grounds of appeal. Further he has admitted that the amendment to the shipping bills was allowed before export

and that the order through which such amendment was allowed under the provisions of Section 149 of Customs Act, 1962 was allowed by Original Authority and that the Department has not filed any appeal against the same.

4. Heard the learned counsel for the respondent. The learned counsel for the respondent submitted that the first Appellate Authority has held that after allowing such amendment it was not challenged by Revenue before Commissioner (Appeals) and the said order has become final and that the Commissioner (Appeals) has held that in view of the said order under said Section 149 the said Order-in-Original dated 22.05.2014 is not sustainable and also that why such finding by learned Commissioner (Appeals) is not sustainable has not been stated by Revenue in their appeal.

5. Having considered the rival contention and on perusal of record we find that the learned Commissioner (Appeals) has given categorical finding that the goods were allowed to be exported after allowing the amendment to the documents presented and the respondent has already received the total foreign inward remittance and, therefore, there was no case of confiscation of said goods and imposition of fine and penalty. We also note that the charge of overvaluation is presumptive in nature and such charge could have been proved only if goods could be exported with declared value and export proceeds could not have been realized to the extent of such

value. We further note that the report of the Chartered Engineer also did not prove to be correct in view of the fact that the export proceeds equal to amended FOB value were realized. We also do not find any ground in the grounds of appeal by Revenue as to why findings by the learned Commissioner (Appeals) are not sustainable. Further we also find that Revenue did not appeal against the order passed by Original Authority under Section 149 of Customs Act, 1962, allowing the amendment to the shipping bills. Therefore, we do not find any merit in the appeal filed by Revenue. The appeal filed by Revenue is rejected.

(Pronounced in Court)

**Sd/-**
**(Archana Wadhwa)**
**Member (Judicial)**

**Sd/-**
**(Anil G. Shakkarwar)**
**Member (Technical)**

*Ankit*