IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

C/70833/2016-CU[DB]

(Arising out of Order-in-Original No.04/COMMISSIONER/NOIDA/CUS/16 dated 16.05.2016 passed by Commissioner of Customs, Noida.)

M/s. Eminence Technologies

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri J.M.Sharma (Authorized Representative) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 11.09.2018

FINAL ORDER NO.72160/2018

Per ANIL G. SHAKKARWAR :

Present appeal is arising out of Order-in-Original No.04/COMMISSIONER/NOIDA/CUS/16 dated 16.05.2016 passed by Commissioner of Customs, Noida.

2. Brief facts of the case are that appellant had filed two Bills of Entry on 25.02.2016 declaring the goods as parts of mobile phones. On investigation and on issue of show cause notice, the matter was adjudicated through the impugned order. The original authority has held that there was mis-declaration to the extent that the description stated in the Bill of Entry was parts of mobile phones whereas the import was found to be of complete

mobile phones. Therefore, he has enhanced the assessable value and further ordered for re-export of the entire consignment. While ordering the re-export, he also confiscated the goods valued at Rs.1.09 Crore and gave an option to redeem the same on payment of redemption fine of Rs.8.00 Lakhs. Further there was a penalty of Rs.2.00 Lakhs imposed on the appellant under Section 112(a) of Customs Act, 1962. Aggrieved by the said order the appellant is before this Tribunal.

3. Heard the ld.Counsel for the appellant. The ld.Counsel submitted that as ordered by the original authority, the goods were re-exported. His only challenge is to confiscation and imposition of redemption fine and also imposition of personal penalty. Ld.Counsel has argued that inasmuch as the goods are re-exported he does not have option to redeem the same on payment of redemption fine and since the goods are re-exported and not available to him for clearance for home consumption, the personal penalty also is not imposable. He has further argued that for payment of demurrage he has been put to financial loss.

4. Heard the ld.A.R. for Revenue, who has supported the impugned order.

5. Having considered the submissions from both sides and on perusal of record we find that the order by the original authority that goods should be redeemed and be re-exported is contradictory because if the goods are re-exported then the appellant will not have ownership of the goods and for such goods on which he does not have ownership he is made to pay redemption fine and if he does not pay redemption fine, the goods are Government’s property in terms of Section 126 of Customs Act, 1962. In that situation, the order to re-export cannot be enforced by the appellant. We, therefore, are of the opinion that the original authority had option of either ordering re-export of the goods without confiscation of the same or he had

option of confiscating the goods and giving an option to redeem the same on payment of redemption fine. Since the goods are re-exported we set aside the confiscation of the goods and therefore automatically the imposition of redemption fine does not become sustainable. We therefore set aside the imposition of redemption fine. Further we reduce the penalty imposed under Section 112(a) of Customs Act, 1962 to Rs.50,000/-(Rupees Fifty Thousand only). In above terms, appeal is partially allowed.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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