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

APPEAL No.C/70032, 70033/2019-CU[SM]

(Arising out of Order-in-Original No.25/Commr./NOIDA-CUS/2018 dated 18/10/2018 passed by Commissioner, Customs, Noida)

Covestro (India) Pvt. Ltd.
(In Appeal No.C/70032/2019-CU[SM])

D. C. Kasliwal & Associates Pvt. Ltd. **Appellant**
(In Appeal No.C/70033/2019-CU[SM])

Vs.

Commissioner, Customs, ICD Dadri, Noida **Respondent**

Appearance:

Shri Prashant Patankar (Consultant) for Appellant
Shri Shiv Pratap Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing/ Decision : 15/03/2019

FINAL ORDER NO. **70741-70742 / 2019**

Per: Archana Wadhwa

After hearing both the sides, I find that M/s Covestro (India) Pvt. Ltd. filed a shipping bill for export of Polycarbonates under the claim of drawback, by declaring the same as 'Manufactured In India'.

2. On examination it was found that the goods were not of Indian Original but the same were of Thailand Origin. An explanation was sought from the appellant

wherein they explained that since they themselves are manufacturer of said Polycarbonate as also importer of the same from Thailand a mix up occurred at their end. Instead of exporting the goods manufactured by them, the imported goods entered for export. They admitted the said mistake on their part and withdrew the claim of drawback.

3. In the above background proceedings were initiated against them alleging miss-declaration of the goods and proposing confiscation of the same along with imposition of penalty. Further, notice also proposed penalty on M/s D. C. Kasliwal And Associates Pvt. Ltd., who were the appellant's CHA.

4. The said show cause notice resulted into passing of the present impugned order confiscating the goods with an option to the appellant to redeem the same on redemption fine of Rs. 6,50,000/- along with imposition of penalty of Rs.30,00,000/-. Further, penalty of Rs.80,000/- was imposed on the CHA.

5. Learned advocate appearing for the appellant is not disputing the fact that there was a mistake on their part inasmuch as the goods imported from Thailand which

were entered for export were mis-declared as made in India. He clarifies that the said mistake occurred on account of genuine reasons. However, he submits that in any case the quantum of redemption fine imposed upon the exporter is much higher inasmuch as the drawback claim was only of Rs.44,968/-. As regards the penalty imposed upon the CHA learned advocate's contention is that CHA has filed the documents according to the information given by the appellant and there is no evidence reflecting his knowledge to aid and abet the exporter and penalty cannot be imposed upon him in terms of the provisions of Section 117 of the Customs Act.

6. After hearing the learned A.R. appearing for the Revenue, I find that admittedly there has been mis-declaration, thus rendering the goods liable to confiscation. However, keeping in view the clarifications given by the appellant that such a mistake has occurred on account of un-intended mistake on their part and inasmuch as the drawback claim was only to the extent of Rs.44,968/-, I reduce the redemption fine to Rs.1 Lakh and penalty to Rs.50,000/- on the appellant M/s Covestro India Pvt. Ltd.

7. As regards the penalty imposed upon the CHA, I find that in the absent of any evidence showing that he was a party to the mis-declared export, penalty should not have been imposed upon them. Accordingly, penalty imposed upon him is set aside and his appeal is allowed in toto.

8. Both the appeals are allowed in above terms.

(Pronounced & Dictated in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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