CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Customs Appeal No.204 of 2012

(Arising out of Order-in-Original No.01/RKB/CCE/NCH/2012 dated 17/02/2012 passed by Commissioner of Central Excise (Adjudication), New Delhi)

M/s Kaka Carpets .....Appellant

(Gyanpur Road, Hariyaon, Bhadohi-221401,

Distt. Sant Ravidas Nagar, U.P.)

VERSUS

Commissioner of Central Excise

(Adjudication), New Delhi .....Respondent

(Room No. 214, 2nd Floor, New Custom House,

Near IGI Airport, New Delhi-110037)

WITH

Customs Appeal No.205 of 2012

(Arising out of Order-in-Original No.01/RKB/CCE/NCH/2012 dated 17/02/2012 passed by Commissioner of Central Excise (Adjudication), New Delhi)

M/s Yadavendra Kumar Roy .....Appellant

(Gyanpur Road, Hariyaon, Bhadohi-221401,

Distt. Sant Ravidas Nagar, U.P.)

VERSUS

Commissioner of Central Excise

(Adjudication), New Delhi .....Respondent

(Room No. 214, 2nd Floor, New Custom House,

Near IGI Airport, New Delhi-110037)

AND

Customs Appeal No.206 of 2012

(Arising out of Order-in-Original No.01/RKB/CCE/NCH/2012 dated 17/02/2012 passed by Commissioner of Central Excise (Adjudication), New Delhi)

M/s Rita Roy **.....Appellant**

(Gyanpur Road, Hariyaon, Bhadohi-221401,

Distt. Sant Ravidas Nagar, U.P.)

VERSUS

Commissioner of Central Excise

(Adjudication), New Delhi **.....Respondent**

(Room No. 214, 2nd Floor, New Custom House,

Near IGI Airport, New Delhi-110037)

APPEARANCE:

Shri Nikhil Agarwal, Advocate for Appellant
Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.70115-70117/2020

DATE OF HEARING: 27 November, 2019
DATE OF DECISION: 27 November, 2019

ARCHANA WADHWA

All the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner of Central Excise (Adjudication) New Delhi vide which he has confiscated the exported carpets with an option to the appellant to release the same on payment of redemption fine of Rs.20 lakhs. In addition penalty of Rs.15 lakhs stands imposed upon M/s Kaka Carpets under Section 114 (iii) of the Customs Act, 1962 and penalty of Rs.5 lakhs each stands imposed on the other two appellants Shri Yadavendra Kumar Roy and Ms Rita Roy partner of M/s Kaka Carpets. The Commissioner has also rejected the declared value of exported goods and has accordingly reduced the drawback claim of the appellants to Rs.2,39,650/-

2. After hearing both the sides duly represented by Shri Nikhil Agarwal, learned advocate appearing on behalf of the appellants

and Shri Anupam Kumar Tiwari learned A.R. appearing on behalf of the Revenue, we find that M/s Kaka Carpets, a partnership firm, is engaged in the manufacture and export of carpet. They filed three shipping bills dated 10 June, 2008 for export of 'Indian hand tufted woolen carpets' along with invoices and relevant packing list, in the office of the Assistant Commissioner of Customs, Inland Container Department, Bhadohi. At the time of filing shipping bill by the CHA certain discrepancies were noted by him and the appellant was accordingly informed. It appeared that due to defect in the inventory software, wrong documents were generated in respect of the carpets and as such wrong shipping bills were issued. The appellant took the corrective measure immediately and submitted the revised invoice and shipping bills along with packing list on the same very date. The said revised documents were not accepted by the Customs Authority on 12 June, 2008. Thereafter the appellant again addressed a letter dated 13 June, 2008 to the Customs Authority and submitted the revised/correct documents with a request to consider the said documents as relevant one. On 19 June, 2008, 100% examination of the goods were conducted on the basis of revised shipping bills and found to be correct. However, the Authority entertained a view that initially the appellant had made a miss-declaration about the description of quantity, quality and value of the goods, they have contravened the law.

Thereafter on 28 June, 2008 the appellants made a request for provisional release of the exported goods which were subsequently assessed provisionally on 30 July , 2008 and were allowed clearance for export on execution of a bond of Rs.1.5 crores and furnishing of Bank guarantee of Rs.13,00,000/-. Let export order was passed on 03 July, 2008 and consignment was exported on 03 August, 2008. Thereafter the appellants were issued a show cause notice dated 18 August, 2009 proposing as to why the exported goods seized vide panchnama dated 28 June, 2008 at the declared FOB value of Rs.1,43,69,013/- should not be confiscated under Section 113 (i) & (ii) of the Customs Act on account of mis-declaration of the same as regards quantity, description, classification, value and drawback rate. The notice also proposed imposition of penalty upon the exporter as also on partners. The value declared by the assessee was also proposed to be rejected and reduced and consequential draw back claim was proposed to be determined at Rs.2,39,650/- with a proposal to rejecte the balance claim of Rs.19,44,329/-.

3. The appellant during the course of Adjudication pleaded that the entire basis of show cause notice is misplaced inasmuch as on realizing their mistake of submission of wrong documents they have themselves submitted the correct revised documents. As per the revised documents the actual export value stands declared by them along with the other particulars which fully tally with the examination done by the Revenue. PMV is in excess of 9.99% to 10% of the FOB values declared by them and as per the Board's circular, the FOB value cannot be rejected. In support they relied upon various decisions and also submitted that they have received the full value of the same as per the bank release certificate. Accordingly prayer was made to drop the proceedings.

4. The Adjudicating Authority did not agree with the above contention of the appellant and passed the impugned orders as detailed above. The said order is challenged before the Tribunal.

5. The crux of the findings of the Commissioner's order is that the appellant had not explained as to how the software malfunctioned and they should have been careful while preparing export documents. This fact leads to the inevitable conclusion that the first set of the documents filed by the appellant was inadvertently generated wrong set which is generated on account of computer and software malfunctioning. It is also on record that appellant on being pointed out by the CHA immediately placed the correct document before Customs Authority on the same very date. In such set of circumstances, no *mala fide* can be attributed to the assessee so as to confiscate the export consignment or to impose penalty upon them. It cannot be out of place to mention here that the second

set filed by the appellants correctly covered all the aspects of the export consignment including the quantity, quality description and value etc. As such, we are of the view that the confiscation of the goods was not called for.

6. As regards the value of the goods, it is seen that the Commissioner has gone by the market inquiries which fact by itself cannot be held to be sufficient to reject the value of the exported goods. It is worth noticing that the appellant has placed on record BRC's indicating and evidencing the total realization of the exported goods. The said fact has not been disputed by the Adjudicating Authority. In this scenario, the value of the goods cannot be doubted and the declared value has to be accepted. The drawback claim would be calculated at the declared value and the appellant would be entitled to the same.

7. In view of the forgoing, we set aside the impugned order and allow all the three appeals with consequential relief to the appellants.

(Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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