REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 14/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70995/2017-SM[BR] dated 08/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/70840/2016	**Mohit Industries** Khasra No.-83/9/2,gali No-2,mundka Industrial Area DELHI
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, (UP)

Copy To
3Advocate(s) / Consultant(s):

G. K. Sarkar, Adv
I-1649(L.G.F), C.R.PARK,
NEW DELHI, 110019

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING/DECISION : 06/09/2017.

Customs Appeal No. 70840 of 2016 (SM)

[Arising out of the Order-in-Appeal No. NOI/CUSTM/000/APP/ 0056/16-17 dated 26/05/2016 passed by The Commissioner (Appeals), Meerut – II, Central Excise & Customs, Noida.]

M/s Mohit Industries — Appellant

Versus

CCE & ST, Noida — Respondent

Appearance

Shri G.K. Sarkar, Advocate – for the Appellant.

Shri Pawan Kumar Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No.70935/2017 Dated : 06/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein redemption fine and penalty has been imposed thereon.

2. The brief facts of the case are that the appellants engaged in trading of Silicon Electrical sheets, CRGO, CRNO, Hot Rolled steel sheets of various strength. The appellant, being an importer, filed bill of entry for import of lamination cores (parts of

Ashok Jindal

transformer under RITC No. 85049010). On examination of the consignment on first check, it was prima facie found that goods appeared to be CRGO sheets and to ascertain the exact nature of composition of the goods, the matter was referred to expert opinion of Chartered Engineer. The Chartered Engineer submitted his report stating that the said steel strips can be utilised for making transformers cores after carrying appropriate sizing and reconditioning on them. On the basis of the report of the Chartered Engineer, it was alleged that appellant has mis-declared the goods and to mis-clasified the goods and also under valued the goods. In that circumstances, a show cause notice was issued to the appellant to demand duty and to impose redemption fine and penalty on the appellant. The matter was adjudicated. During the course of proceedings, the appellant sought re-export of the said goods as it is viable for them to pay the higher duty. The goods were allowed to be re-exported on payment of redemption fine and penalty. Aggrieved from the said order, the appellant is before me.

3. The learned Counsel for the appellant appeared before me and submits that in this case, the appellant had filed bill of entry as per their purchase order of and declaration made by the supplier on the basis of the invoice, bill of lading, packing slips etc. It is a case of classification of goods. The Adjudicating Authority is required to proper classify the goods and merely on the basis of mis-classification, it cannot be alleged that appellant has mis-declared the goods. He further submitted that a report of

Chartered Engineer was scrutinised by the Assistant Commissioner and who observed that the strips in question are capable of being used as transformer core. In that circumstances, the charge of mis-declaration is not sustainable. He further submitted that as the goods are allowed to be re-export, in that circumstances redemption fine and penalty are not imposable on the appellant on the ground of mis-declaration in the light of the decision of this Tribunal in the case of **Jenith Rubber & Plastic Works vs. CC (Export), Mumbai** reported in **2010 (262) E.L.T. 272 (Tri. – Mumbai)**. He also submitted that in this case goods were held liable for confiscation under Section 111 (m) of the Act. The said provision are not applicable to the facts of this case. Therefore, the goods are not liable for confiscation, consequently, the penalty sought to be imposed under Section 112 (a) (i) of the Act is not imposable as the same is not applicable to the facts of this case.

4. On the other hand, learned AR reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submission made by both the sides, I find that it is the case of mis-declaration of classification and consequently, it was held that goods has been under valued. As per report of the Chartered Engineer, a report was prepared by the Assistant Commissioner (Import) side, who stated as under :-

"The report of Chartered Engineer conclusively prove that the instant strips are capable of being used as transformer cores. The percentage of silicon content has also been procured @ 2.3% by mass. Since silicon is one of the major ingredient of such cores which provides magnetic property to such cores. Thus, it can be seen that the goods are as per declared in the bill of entry".

7. The said observation of the Assistant Commissioner (Import) has not been contradicted. In that circumstances, I hold that the charge of mis-declaration and mis-clasification is not sustainable against the appellant.

8. Moreover, goods has been held liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. The provisions of Section 111 (m) are reported as under :-

> "[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 [in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of Section 54"

10. I find that, as discussed above, there is no mis-declaration, therefore, provision of Section 111 (m) are not invokable to the facts of the case. In that circumstances, no redemption fine is imposable on the appellant. Further, I find that the Hon'ble Supreme Court in the case of **Siemens Ltd. vs. Collector** reported in **1999 (113) E.L.T. 776 (S.C.)** has

observed that in the case of re-export, redemption fine is not leviable. Admittedly, in this case goods were allowed to be re-exported by the appellant, in that situation, relying on the decision of **Seimens Ltd.** (supra), the redemption fine is not imposable on the appellant. Therefore, redemption fine imposed on the appellant is set aside.

11. With regard to the penalty, provision of the Section 112 (a) has been invoked which provides that if any goods which is prohibited goods, in that case penalty is imposable. Admittedly, the goods in question are not prohibited goods, therefore, provision of Section 112 (a) (i) of the Act are not applicable to the facts in this case.

12. Further, I find that in the case of **Zenith Rubber & Plastic Works** (supra), this Tribunal held that the penalty is ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. In this case, I find conduct of the appellant, as such, that appellant has taken due precaution for importation of the goods there is no deliberate violation on the part of the appellant of the provisions of Customs Act, 1962, therefore, the penalty is not imposable. In this case also, I find that goods has been declared by the appellant as per the invoice, purchase order etc. and no deliberate act of the appellant prove that the appellant has mis-declared the goods. In that circumstances, also, the penalty is not imposable.

13. In these terms, penalty imposed on the appellant is set aside.

14. In view of the above observations, I hold that redemption fine and penalty are not imposable on the appellant. Therefore, the impugned order is set aside.

15. Appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in the open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

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