

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 3

CUSTOMS APPEAL NO. 20015 OF 2020

[Arising out of Orders-in-Appeal No. 135-136/2019 dated 15.10.2019
passed by the Commissioner of Customs (Appeals), Bangalore]

**M/s. NTT Data Information Processing
Services Private Limited**

Plot No. 123, EPIP Phase II
Whitefield Industrial Area
Bangalore – 560 066

Appellant(s)

VERSUS

**Commissioner of Customs
Bangalore**

Airport and Air Cargo Complex
Air India Sats Air Freight Station
Devanahalli, Bangalore – 560 300

Respondent(s)

APPEARANCE:

Mr. Jatin Christopher, Chartered Accountant for the Appellant
Mr. Maneesh Akhouri, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20709 / 2025

DATE OF HEARING: 27.05.2025
DATE OF DECISION: 27.05.2025

PER : DR. D.M. MISRA

This is an appeal filed against the Orders-in-Appeal No. 135-136/2019 dated 15.10.2019 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant is a STP unit engaged in export of Information Technology and Information Technology enabled Services. The appellant had imported one quantity of "Firepower 4110 NGFW APPL 1U 2X NETMOD Bays K9" from their overseas company on free of cost

basis for self use. The appellant filed courier Bill of Entry CBE-V No. 027155 dated 25.06.2017 declaring the value of the product as USD 100. To ascertain the correct value, the goods were detained and further investigation initiated by the Department. Later, the appellant submitted letter dated 04.07.2017, received from their overseas entity, indicating the correct value of the goods as USD 64,496.42. It is informed that the said goods were one of the seven items shipped to the appellant by the supplier and there occurred an error due to miscommunication between their shipment Department and the Transaction Department resulting into non-declaration of the correct value. Consequently, the assessable value was enhanced to USD 64,496.42 which is equivalent to Rs. 42,01,942/-. The appellant had not objected to the said enhancement of value and requested for computation of applicable duty on the said value and clearance of the shipment. Also they waived issuance of show-cause notice and personal hearing in the matter. The matter was adjudicated confirming the assessable value at USD 64,496.42 equivalent to Rs. 42,01,942/-; goods were directed to be confiscated under Section 111(m) of the Customs Act, 1962 with an option to redeem the same on payment of fine of Rs. 10,00,000/-, imposed penalty of Rs. 1,40,000/- and Rs. 2,50,000/- under Sections 112(ii) and Section 114AA of the Customs Act, 1962, respectively. Aggrieved by the imposition of fine and penalty, the appellant preferred an appeal before the learned Commissioner (Appeals), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned Chartered Accountant for the appellant has submitted that the server has been imported from their overseas company for self use. He has submitted that while mentioning the value of the goods, the overseas office has mentioned as USD 100 applicable to local transfer price and due to inter-office error applied for the export clearance. He submits that later the appellant procured from the overseas entity about the correct value of the said server and declared accordingly to the

Customs. He has submitted that since they are a STP unit, there is no intention whatsoever to undervalue the goods which has been imported by them for their self use. He submits that the imposition of penalty as well as direction for confiscation and the quantum of fine is too harsh, hence, the order may be set aside. Alternatively, he has submitted that the imposition of fine and penalty being too harsh, in the circumstances of the case, when there is no intentional violation of the law nor mis-declaration of the facts and a *bona fide* error in disclosing the correct value of the imported goods, the fine and penalty be reduced. In support he has referred to the judgment of this Tribunal in the case of ***Sri Sai Graphics Vs. CC, Bangalore - (2023) 12 Centax 207 (Tri.-Bang.)***

4. Learned AR for the Revenue has submitted that the appellant failed to disclose the correct assesable value at the time of import of the goods. The said fact came to the knowledge of the Department only after investigation was initiated and the goods were detained. Further he has submitted that merely because the appellant is a STP unit does not mean that the procedure laid down under Customs Act be not followed and import could be done by not disclosing the correct value. Therefore, imposition of penalty as well as fine on the appellant are justified.

5. Heard both sides and perused the records.

6. There is no dispute that the appellant has initially declared the value of the product "Firepower 4110 NGFW APPL 1U 2X NETMOD Bays K9" as per the commercial invoice issued by their overseas entity as USD 100, whereas on subsequent enquiry by the Customs Department, the true value has been disclosed as USD 64,496.42 which is equivalent to Rs. 42,01,942/-. The appellant in explaining the non-disclosure of the correct value of the imported goods for the purpose of assessment submitted that due to inter-office correspondence mistake, the invoice was raised disclosing the value of the product as USD 100 which was meant

for local transfers. He submits that they have no intention whatsoever to evade payment of duty, therefore, quantum of fine and penalty is too harsh. It is informed that the appellant is a STP unit and also disclosed the true value immediately after being enquired by the Department and have waived the issuance of show-cause notice as well as personal hearing admitting their mistake. The said facts have not been rebutted or controverted by the Revenue nor any evidence has been placed on record in this regard by the Revenue to contradict the same. Under these circumstances, imposition of penalty both under Sections 112(ii) and 114AA, in my opinion is not justified. Therefore, penalty under Section 114AA needs to be set aside. Also, I find that imposition of Rs. 10,00,000/- as fine also excessive and in the facts and circumstances of the case, the same is reduced to Rs. 5,00,000/- to meet the ends of justice. In the result, the impugned order is modified and penalty under Section 112(ii) is confirmed and penalty under Section 114AA is set aside. Redemption fine is reduced to Rs. 5,00,000/-. Appeal is disposed of accordingly.

(Dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

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