CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/477/2009-DB

[Arising out of Order-in-Original No. 70/2009 dated 20/04/2009 passed by the Commissioner of Customs, Cochin]

Rajadhani Hotels Pvt. Ltd.
Rajadhani Buildings, East Fort,
Trivandrum -695 023

Appellant(s)

VERSUS

Commissioner of Customs
Cochin
Custom House, Willingdon Island
Cochin – 682 009
Kerala

Respondent(s)

Appearance:

Mr. Manoj Pillai, Advocate — For the Appellant
Mr. Rama Holla, Supdt. (AR) — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20743 / 2019

Date of Hearing: 20/09/2019
Date of Decision: 20/09/2019

Per: P. ANJANI KUMAR

The appellants have imported certain furniture and other equipment required for their Hotel from China and have filed different Bills of Entry. In one of the consignment pertaining to Bill of Entry No. 216029 dated 24.01.2008 it was found that in addition to the goods declared their other goods i.e. 1100 Nos. of CFL Lamps in the consignment as there was excess quantity of goods and the consignment was seized and a show-cause notice was issued demanding differential duty on these consignment as well as the consignment imported earlier by Bill of Entries No. 200537 dated 05.06.2007 and 209477 dated 10.10.2007. The appellants have paid duty before the issue of show-cause notice. The show-cause notice was adjudicated vide Order No. 70/2009 dated 20.04.2009 by which Commissioner has confiscated the goods imported vide Bill of Entry No. 216029 and confirmed the duty of Rs. 10,63,631/- (Rupees Ten Lakhs Sixty Three Thousand Six Hundred and Thirty One only); Rs. 3,69,905/- (Rupees Three Lakhs Sixty Nine Thousand Nine Hundred and Five only) and in respect of all the Bills of Entry in question. He also imposed redemption fine of Rs. 50,000/- (Rupees Fifty Thousand only) and a penalty of Rs. 14,33,536/- (Rupees Fourteen Lakhs Thirty Three Thousand Five Hundred and Thirty Six only) on the appellants.

2. Learned counsel for the appellant submits that the value adopted by Customs is as per proforma invoice however the material value was arrived after negotiations by all these and to M/s. Heraplus Trading Co. Ltd. who has helped they have taken in this particular import. He submits that they have not paid any amount over and above the price indicated in the invoices and it is only during the Customs examination they came to know that the imported quantity was in excess of whatsoever indented by them and that there was certain CFL bulbs, they have immediately accepted to pay the differential duty and have paid the same before the issue of show-cause notice. Learned counsel submits that as the duty has been paid before the issue of show-cause notice, hefty penalty of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) is not warranted. He also pleads that as there is no *mens rea* and the mis-declaration occurred for reasons beyond his control.

3. Per contra, learned AR for the Department submits that there was a mis-declaration and the appellants have accepted the same in a statement recorded under Section 108 of the Customs Act, 1962. Mr. Biju Ramesh, Director of the appellant in his statement dated 26.02.2008 has accepted the mistake and has paid the duty as agreed by them. As there was mis-declaration, the goods were liable to confiscation and as the duty was short-levied for reason of suppression of fact etc., penalty under Section 114A of Customs Act, 1962 is squarely imposable on the appellant.

4. Heard both sides and have perused the records of the case. Going by the facts of the case, it is apparent that there is mis-declaration in the import consignment however as explained, they were not aware of the fact that extra items and additional items have been included in the import of consignment. The learned counsel for the appellant has also submitted that the price was a negotiated price and they had no *mens rea* and they should not be penalized for the mistake of their suppliers. We find that there is mis-declaration in the impugned import however the Department has not come with any evidence to prove *mens rea.* Though the goods are liable for confiscation under 111(m) of the Customs Act, 1962, we find that no case is made for imposition of penalty under 114A. Therefore, we find that for the reason of mis-declaration, penalty under Section 112 would suffice. The learned counsel relies upon the case of Angadpal Industries Pvt. Ltd. – 2007 (211) E.L.T. 301 (Tri.-Mum.) wherein it was held that as the duty was paid before the issue of show-cause notice, it was proper to reduce the penalty. Following the ratio of the case and looking into the facts and circumstances of the impugned case, we find that the case is fit for levy of penalty under Section 112A of Customs Act, 1962 and not certainly under Section 114A. For the reasons explained above, we reduce the penalty to Rs. 2,00,000/- (Rupees Two Lakhs only). The appeal is disposed of in the above terms.

(Order was pronounced and dictated
in Open Court on **20/09/2019**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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