CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20482 of 2020

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-41/2019-20 dated 30/01/2020 passed by the Commissioner of Customs, Cochin]

Shri Amman Dhall Mill
B-7/269/1, 2 Bye Pass Road,
Unjampatty, Theni - 625 531
Tamil Nadu

Appellant(s)

VERSUS

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

Respondent(s)

Appearance:

Shri P.A. Augustian, Advocate for the Appellant

Shri P. Rama Holla, Superintendent (AR) for the Respondent

CORAM:
HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

Final Order No. 20098 / 2022

Date of Hearing: 08/03/2022
Date of Decision: 22/03/2022

Per: P. DINESHA

Brief facts leading to the present appeal, which are relevant for my consideration, are that the appellant is a miller, filed a Bill of Entry No. 6412265 dated 09/01/2020 for the import of 188.65 MT of 'Canada Whole Green Peas' from

Canada. The said goods were declared under Tariff Heading 0713 3120 and exemption in terms of Notification No. 002/2017, Sl. No. 45 dated 28/06/2017 was also claimed. The Revenue was of the view that in terms of the Mandatory Compliance Requirements/Appraising Instructions, the import of peas was restricted and the same was subjected to minimum import price (MIP) of Rs. 200/- CIF per Kg, which is also subjected to an annual quota of 1.5 Lakh MT, that too, through Kolkata sea port only. Hence, a query was raised requiring the production of authorization for import from DGFT, since, there was also difference as regards declared value, than the MIP. The importer/appellant submitted before the authorities *inter alia* that their Bill of Lading dated 15/11/2019 was prior to the amendment of import policy. The authority thereafter, based on the request of the importer, forwarded the Bill of Entry for assessment on first check basis.

2. The adjudicating authority after considering the replies by importer and its customs broker, vide impugned Order-in-Original dated 30/01/2020 has observed *inter alia* that even though the Bill of Lading was dated prior to the Notification, but, however, the Bill of Entry was filed after the issuance of Notification S O 1479 (E) dated 29/03/2019. The authority has also observed that since the importer did not produce any authorization as mandated under the FTP, hence there was clear violation of the Foreign Trade Policy and consequently, the goods covered under the impugned Bill of Entry was liable for confiscation under Section 111(d) of the Customs Act, 1962 read with Section 3(3) of FTP. While concluding however, the adjudicating authority has held that

the subject goods were in transit when the Import Policy came to be amended by DGFT vide Notification dated 18/12/2019 and prior to that date the applicable import policy notified by DGFT vide Trade Notice No. 6/2019-2020 dated 16/04/2019 was in force. Hence, as per the authority, the policy prevailing prior to 18/12/2019 was only restricting the annual fiscal year quota of 1.5 Lakhs/MT and therefore, the only restriction was the quantity restriction. Hence, the authority has further held that, while the goods were in transit the DGFT's Notification dated 18/12/2019 was not applicable and consequently, the minimum import price was also not applicable to the import in question. In the impugned order, the adjudicating authority has also referred to relevant provisions of FTP insofar as the same related to transitional arrangements, apart from para 2.17 of the Handbook of Procedure, 2015-20 & para 9.11 of HBP, to conclude that it is the Bill of Entry which is the key document for deciding the date of import and as on the date of Bill of Lading, the amended Notification w.e.f. 18/12/2019 was not applicable for which reason, it has been held that even the port restriction was also not applicable. In view of the above, the adjudicating authority has ordered for confiscation of the goods covered under the impugned Bill of Entry for contravention of Section 111(d) *ibid.* read with Trade Notice No. 6/2019-2020 dated 16/4/2019 of DGFT, but however, has granted an option to the importer to redeem the goods on payment of fine of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) under Section 125 *ibid.* He has also imposed a penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) under Section 112 *ibid.* The present appeal has been filed by the appellant challenging the fine and penalty.

3. Heard Shri P.A Augustian, the learned Advocate for the appellant and Shri P. Rama Holla, the learned Superintendent (AR) for the Revenue, I have considered rival contentions. I have also carefully gone through the orders and decisions relied upon during the course of argument.

I note that the Revenue has accepted the order of adjudicating authority insofar as it relates to the granting of redemption option without ordering for absolute confiscation and hence, the scope of this appeal is restricted to the fine and penalty alone.

4. Learned Advocate would submit that under similar circumstances, there have been orders of various benches wherein the fine and penalty have been reduced and he would also refer to Orders-in-Original in the case of ***Shri Lakshmi Dhall Mill*** wherein even the adjudicating authority himself has levied minimum penalty.

5. Per contra, Learned Shri P. Rama Holla would rely on the decision of Hon'ble High Court of Kerala in the appellant's own case for a different period, reported in ***2021 (376) E.L.T. 174 (Ker.)*** wherein, the Hon'ble High Court has set aside the order of this Bench wherein the redemption option was directed to be given.

5.1. The Commissioner of Customs/Adjudicating Authority has in the impugned order, clearly held that as per the table appended to Para 9.11 of HBP, the date of shipment/dispatch in the case of import by sea should be reckoned as the date affixed on the Bill of Lading, which is 15/11/2019; that the same is anterior to the change of policy brought about on 18/12/2019; that consequently the minimum import price fixed under the changed policy was not liable to be imposed on the importer and that for the same reason port restriction would also be not applicable to the importer. The only shortcoming in the impugned import, as found by the adjudicating authority, is that the quantitative restriction imposed vide Trade Notice No. 6/2019 *ibid*. would apply for which reason alone the goods in question were held to be liable for confiscation. It was thus held that the above amounted to violation of Section 111(d) *ibid.* and that the importer was liable for penalty under Section 112.

5.2. The findings in the impugned order as regards non-violation of minimum import price as well as port restriction has attained finality, as there being no specific challenge by the Revenue. The very fact that the adjudicating authority himself has ordered confiscation but, however, has also granted an option for redemption of goods on payment of fine has also not questioned by the Revenue. Section 125 *ibid.* prescribes for providing an option to pay in lieu of confiscation, in case of any goods the importation or exportation of which was prohibited under this Act or under any other law for the time being in force, subject to the conditions laid down thereunder. Such option could be offered to the owner of the goods or, where such owner is not known, to the person from whose possession such goods were seized and hence, I am of the view that the appellant could be treated as other person from whose possession the impugned goods have been seized. The only short-coming here is the quantitative restriction and hence, the redemption fine and penalty should be commensurate with the quantity that exceeded the limit of import. Viewed thus, the redemption fine ordered to be paid is very much on the higher side. Considering the above, I am of the view that the redemption fine could be modified to the extent of Rs. 2.5 lakhs instead of Rs. 7.5 lakhs under Section 125 *ibid.*

For the very same reasons, I am of the view that penalty imposed under Section 112 is on the higher side and hence, the same is directed to be reduced to Rs. 1 lakh.

6. In the result, impugned order to the above extent is set aside, and appeal is partly allowed. The redemption fine is reduced from Rs. 7.5 lakhs to Rs. 2.5 lakhs and penalty under Section 112 is reduced to Rs. 1 lakh. Appeal is disposed of on the above terms.

(Order pronounced in the Open Court on **22/03/2022**)

(P. DINESHA)
JUDICIAL MEMBER

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