CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 61245 of 2018

[Arising out of Order-in-Appeal No. LUD-CUS-001-APP-1058-18 dated 03.05.2018 passed by the Commissioner (Appeals), Customs, Ludhian]

M/s G M Impex **......Appellant**
SCO1, 1st Floor, Aventure Mall
Mall Road, Amritsar Punjab 143001

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
GRFL G.T. Road, Sahnewal
Ludhiana, Punjab 141120

APPEARANCE:

Shri Naveen Bindal, Advocate for the Appellant

Shri Anurag Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO. 61645/2025

DATE OF HEARING: 04.11.2025
DATE OF DECISION: 04.11.2025

S.S.GARG:

The present appeal is directed against the impugned order dated 03.05.2018 passed by the Commissioner (Appeals) CGST Ludhiana, whereby the Appeal of the appellant was rejected and upheld the Order-in-Original dated 28.02.2017.

2. Briefly the facts of the present case are that the appellant is imported Steel products namely, 'Mil Steel Pre Painted PPGI Coils" and filed bill of entry bearing No. 7702841 dated 05.12.2016 for import of 49.800 MT of the impugned goods falling under Chapter Heading 72107000 of the Custom Tariff Act, 1975 by declaring CIF value 600$ per MT. The goods were imported from China under commercial invoice dated 20.10.2016 and under Bill of lading dated 31.10.2016; when the appellant filed bill of entry, a query was raised under EDI on 07.12.2016 and the appellant filed reply to the said query but the respondent did not accept the submissions of the appellant and held the goods liable to confiscation under Section 111(d) of the Act and imposed redemption fine and penalty of Rs. 8,00,000/- and Rs. 1,00,000/- respectively. Aggrieved by the said order, the appellant filed the appeal before the learned Commissioner (Appeals) who rejected the same. Hence, the present appeal.

3. Heard both sides and perused the material on record.

4. Learned counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law and binding judicial precedents. He further submits that goods have been confiscated under Section 111(d) of the Act which is not applicable for the present case because as per the Section 111(d), the goods are liable to confiscation if the said goods

are imported or attempted to be imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

4.2 He further submits that in the present case when the appellant imported the impugned goods and made the self assessment under Section 17(1) of the Act; at the time of filing of bill of entry and the appellant had declared correct description of the goods, chapter heading, quantity and value of the goods and there was not a single particular which was found incorrect. Learned counsel further submits that as per Notification No. 38/2015-2020 dated 05.02.2016 issued by Directorate General of Foreign Trade, minimum import price of the goods shall be $752 PMT. He further submits that the appellant was under a belief that in spite of the notification, the appellant was liable to pay duty on transaction value and accordingly, assessed the goods accordingly under Section 17(1) of the Act. He further submits that the said notification issued by DGFT was challenged by various importers before various High Courts and all the petitions were clubbed before the Hon'ble Delhi High Court to which the appellant was also a party. He further submits that the appellant had no malafide intent to evade duty and all the facts were well within the knowledge of the department at the time of filing of bill of entry and at the time of self-assessment of goods. He further submits that as per Section 17(2) of the Act, the proper officer may verify the entry made under Section 17(1) and as per

Section 17(3), the proper officer may require the importer to produce document or information whereby the duty leviable on the imported goods or as the case may be, can be ascertained. Further as per Section 17(4) of the Act, the proper officer may re-assess the duty leviable on such goods if self-assessment was not done correctly by the importer. He also submits that the Department had the power to examine/verify the assessment made by the importer and can re-assess the goods. He further submits that there exists no reason to seize the goods, confiscate the goods and to impose redemption fine and penalty. He further submits that in the present case is the case of re-assessment where seizure, confiscation and consequent fine and penalty was not warranted.

4.3 The learned counsel further submits that the issue involved in the present appeal is identical as was involved in the case of M/s Hindustan Distributors (in Appeal No. C/61792/2018), which has been decided by this Tribunal vide Final Order No. 60286-60291/2024 dated 30.05.2024, wherein the Tribunal after considering all the facts and circumstances and the legal positions, has allowed the appeal of the appellant and set aside the redemption fine and penalties. He has also relied upon the following decisions:

- ***Oriental Containers Ltd. Vs. Union of India reported in 2012 (286) ELT 500 (Bom.)***

- ***Commissioner of Cus. Impex Pvt. Ltd. (Export), Mumbai Vs. Surbhit Impex Pvt. Ltd. reported in 2012 (286) ELT 500 (Bom.)***
- ***A.R. Trading Company Vs. Commr. Of C. Ex. (Appeals-II) Bangalore reported in 2020 (372) ELT 388 (Tri.-Bang.)***
- ***Aggarwal Industrial Corporation Ltd. Vs. Commr. Of Cus. Manglore reported in 2020 (373) ELT 280 (tri. Bang.)***
- ***Goyal Metal Industries Pvt. Ltd. Vs. Commr. Of Cus, Chennai reported in 2018 (359) ELT 236 (Tri. Chennai)***
- ***Jhon Deere India Pvt. Ltd. vs. Comm. Of Cus. (Preventive), Amritsar reported in 2018 (363) ELT 509 (Tri. Chennai).***

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

6. After considering the submissions of both the parties and perused the material on record, we find that it is a case where the appellant had a bonafide belief that he is liable to pay the custom duty on the basis of the transaction value and he has no malafide intention to evade. He filed the bill of entry but a query was raised under EDI system and he filed the reply to the said query but the Original authority demanded the duty as per the Notification No. 38/2015-2020 dated 05.02.2016 issued by Directorate General of Foreign Trade which stands paid by the appellant. We also find that the said notification

was under challenged before the various High Courts and even the appellant had also challenged the said notification and was under a bonafide belief that is liable to pay the duty as per the invoice. We also find that it is case of re-assessment of the bill of entry filed by the appellant and there exists no reason to seize the goods, confiscate the goods and to impose redemption fine and penalty.

7. This Bench of the Tribunal in the case of M/s Hindustan Distributors cited (Supra) has examined this issue in detail and after considering the various decisions cited by the importer, the Bench has held as under:

> *6. I have carefully considered the submissions made by both the parties and perused material on record; and also gone through the decisions relied upon by both the parties. I find that the short question involved in these appeals is whether the imposition of redemption fine and penalty under Section 112(a) of the Customs Act, 1962 is legally sustainable in view of the fact that the appellant has already paid the Minimum Import Price (MIP) for the impugned goods as fixed vide Notification No. 38/2015-2020 dated 05.02.2016 issued by the DGFT, by which impugned goods cannot be imported with the value less than the Minimum Import Price (MIP). It is a fact that initially the appellant and other importers challenged the legality and validity of the*

notification dated. 05.02.2016 issued by the DGFT and but once the legality and validity of the said notification was upheld by the Hon'ble High Court, the appellant paid the duty as per the said notification at Minimum Import Price (MIP) and did not question the same and only filed these appeals against the imposition of redemption fine and penalty.

7. It is pertinent to note that in the impugned order dated 08.10.2018 passed by the learned Commissioner (Appeals), sufficient reasons have not been given for imposing the redemption fine and penalty. Further, I find that in the impugned order dated 27.07.2013 relating to the same impugned goods, the learned Commissioner (Appeals) has categorically held that there was no attempt by the appellant to mis-declare the description or transaction value; and consequently the learned Commissioner (Appeals) set aside the confiscation under Section 111(d) of the Customs Act, 1962 and also set aside the imposition of redemption fine, but still retained the penalty imposed under Section 112(a) of the Act.

8. Further, I find that once the confiscation is set aside, then the question of imposition of penalty under Section 112(a) of the Act does not arise. Here, it is *pertinent to refer to Section 112(a) of the Customs Act, 1962, which is reproduced herein below:*

> ***"Section 112 – Penalty for importer importation of goods, etc.*** *– Any person, -*
>
> ***(a)*** *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
>
> ***(b)*** ******* "*

On perusal of the above said provision, I find that penalty under Section 112(a) of the Act can be imposed for such an act which would render the goods liable to confiscation under Section 111; and in the present case, the learned Commissioner (Appeals) has set aside the confiscation, hence the imposition of penalty is bad in law.

9. Further, I find that in the present case, there was no malafide intention to evade duty on the part of the appellant and hence, the imposition of penalty is not sustainable in view of the various decisions relied upon by the learned Counsel for the appellant cited supra; particularly the decision of this Tribunal in the case of ***John Deere India Pvt Ltd*** *(supra), wherein it has been held that when the issue relates to interpretation then the goods are not liable to confiscation and no* *redemption fine is imposable on the said goods and consequently no penalty is imposable on the appellant. Further, the Tribunal in the case of* ***Pathange And Company*** *(supra), has held in para 8 and 9 as under:*

> ***"8.*** *We find that this issue is no longer res-integra and the three Member Bench in the case of* ***Asian Copiers [2015 (2) TMI 1221-CESTAT New Delhi)]*** *has, by a majority decision, decided that import of Multi Functional Digital Copiers prior to 05.06.2012 was not restricted. While deciding this matter, they have also considered the judgment of the Tribunal Chennai in the case of* ***Unitech Enterprises [2012(279)ELT 236 (Tri.-Chennai)],*** *relied upon by the Ld. DR. Respectfully following the ratio of this decision, we hold that the import of the impugned goods is not restricted and their confiscation under section 111(d) is not sustainable and needs to be set aside. We have also considered the argument of Ld. Counsel that confiscation was also on account of under valuation of the goods which has been conceded by the importer. A plain reading of the Order-in-Original shows that confiscation was held under section 111(d) of the Customs Act, 1962 which pertains to import in violation of the restrictions and prohibitions and not under section 111(m) which deals with confiscation for under valuation, etc. We, therefore, find that the confiscation under section 111(d) of the Customs Act 1962 needs to be set aside. Consequently, the redemption fine imposed under section 125 on the appellant also needs to be set aside. The penalty imposed under section 112(a) of the Customs Act, 1962 is consequent to*

> *the goods being held liable for confiscation under section 111. As we find that the goods are not liable for confiscation under section 111(d), the penalty imposed under section 112(a) also needs to be set aside and we do so.*
>
> ***9.*** *The appeal is allowed and the impugned order to the extent of confiscation of goods, imposition of redemption fine and imposition of penalty is set aside, with consequential relief.*”

10. Further, I also find that the case-laws relied upon by the learned AR for the Revenue are not applicable in the facts and circumstances of the instant case.

11. In view of the above discussion, considering the totality of the facts and circumstances of the case, I am of the considered opinion that the both the impugned orders are not sustainable in law and therefore, I set aside both the impugned orders by allowing the appeals of the appellant with consequential relief, if any, as per law.

8. In view of our discussions above and by following above cited decision, we are of the considering opinion that the impugned order imposing redemption fine and penalty is not sustainable in law and therefore we set aside the same by allowing the appeal of the appellant.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash