CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. C/52079/2014 -[SM]

(Arising out of Order-in-Appeal No. ASR-CUSTOMS-PVR-APP-19-13-14 dated 31.01.2014 passed by the Commissioner (Appeals), Chandigarh)

Oster Knitt Pvt Ltd ......**Appellant**
(Dugri Road, P.O. Miller Ganj,
Ludhiana, Punjab)

VERSUS

Commissioner of Customs, Amritsar ......**Respondent**
(Preventive Customs House, C.R. Building, The Mall,
Amritsar, Punjab)

APPEARANCE:

Mr. Saurabh Kapoor, Advocate for the Appellant

Mr. M.S. Dhindsa, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60466 of 2019

DATE OF HEARING: 01.05.2019
DATE OF DECISION: 01.05.2019

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order seeking leniency from this Tribunal for reduction in redemption fine and penalty.

2. The facts of the case are that the appellant obtained the EPCG licence to import machines duty free and accordingly, by bill of entry for importation of five machines having declared value of Rs.41,76,097.50, the total duty on the said goods were payable as Rs.10,79,625.30 out of which the appellant paid a duty of Rs.1,29,042/- in cash and rest of the duty of Rs.9,50,583.30 was foregone under EPCG. When the goods were examined, it was found

that the same were old and used whereas as per EPCG they were required to import new machines.

3. In view of the above, the appellant paid the duty of Rs.9,50,583.30 and got release the goods. As the goods were not found as declared, therefore, they were liable for confiscation and redemption fine of Rs.10 lakhs was imposed for release of the goods. A penalty of Rs.1 lakh was also imposed under Section 112(a) of the Customs Act, 1962. The said order was challenged by the appellant before the Ld. Commissioner (Appeals), who dismissed their appeal. Hence, the appellant is before me.

4. The Ld. Counsel for the appellant submits that the appellant was not known whether the goods were old and used. In fact, they have made the payment for new machines and they came to know only at the time of examination of the goods. Therefore, the appellant is under bonafide belief took the benefit of EPCG scheme, but when it was found that the goods are old and used, the appellant has foregone the benefit of EPCG scheme and paid the duty. In that circumstance, the appellant is a bonafide importer of the impugned goods; therefore, redemption fine and penalty are to be reduced.

5. On the other hand, the Ld. A.R. opposes the contention of the Ld. Counsel and submits that in this case, if the goods were not examined, the appellant has could enjoyed the benefit of EPCG scheme for purchase the old and used machines. Therefore, the redemption fine imposed on the appellant is only tune to the margin of profit. In that circumstance, the appellant is not required to any leniency for imposition of redemption fine and penalty.

6. Heard the parties and considered the submissions.

7. It is a fact on record that the goods were found mis-declared at the time of examination thereof; therefore, the authority below has rightly confiscated the goods and had liable for confiscation. Now only issue remains with the quantum of redemption fine and penalty imposed on the appellant. I find that the margin of profit has been imposed as redemption fine on the appellant. On the other side, the

appellant has to pay the duty for the impugned goods being bonafide purchaser. In that circumstance, the redemption fine is reduced to Rs.5 lakhs and the appellant is not required to any leniency for imposition of penalty. Therefore, penalty imposed of Rs.1 lakh is confirmed.

8. The appeal is disposed off, in the above terms.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

RA_Saifi