CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60462 of 2021

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD-PPG/248/2021-22 dated 10.06.2021 passed by the Commissioner (Appeals), New Delhi)

C.C. Icd Patparganj **......Appellant**
(New customs House, Near IGI Airport, New Delhi 110037)

VERSUS

R R K Import Export **......Respondent**
(40 Krushna Nagar Near Laxmi Hotel Varachha Road Surat, Gujarat 395006)

<u>APPEARANCE:</u>

Mr. M.S. Dhindsa & Mr. Munish Kumar, Authorised Representatives for the Appellant
None for the Respondent

<u>CORAM:</u> **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60039 of 2022

DATE OF HEARING: 01.02.2022
DATE OF DECISION: 01.02.2022

PER ASHOK JINDAL:

The Revenue is in appeal against the impugned order wherein the Ld. Commissioner (Appeal) has reduced the redemption fine from Rs. 17,00,000/- to Rs. 1,00,000/- and penalty of Rs. 1 lakh has been set aside.

2. The facts of the case are that the respondent filed one Bill of Entry for import of goods declaring the same as 'glass beads unfinished' and classified the said goods under Tariff Heading No. 70181020. The weight was declared as 26,533.5 Kg and unit price

was declared as $1.0 per Kg. The said goods were examined and on examination of the goods, it was found that the goods appeared to be solid glass ball without hole and glass chatons instead of glass beads unfinished, therefore, a show cause notice was issued to the appellant for misdeclaration w.r.t. description and value of the goods. The matter was adjudicated and redetermined the assessable value of the impugned goods as Rs. 82,23,829/- instead of declared value of Rs. 19,95,319/- it was also held that goods are liable for confiscation and same were allowed to be redeemed on payment of redemption fine of Rs. 17,00,000/- and a penalty of Rs. 1,00,000/- was also imposed on the appellant under Section 117 of the Customs Act, 1962. The said order was challenged by the appellant before the Ld. Commissioner (Appeal) who uphold the charge of misdeclaration of description and value but held that there is no misdeclaration of quantity and further uphold the enhanced value 82,23,829/- but reduced the redemption fine to Rs. 1,00,000/- and penalty was dropped holding that there is no recording of the findings for imposing penalty under Section 117 of the act by the adjudicating authority. Against the said order, the Revenue the is before me.

3. The Ld. AR appearing on behalf of the Revenue submits that the description and value of the impugned goods has been misdeclared by the appellant and 1/3rd of the quantity was found as declared but remaining 2/3rd of the quantity was found misdeclared description of the goods, therefore, there is a variation in quantity but the Ld. Commissioner (Appeal) as fell in error holding that there is no discrepancy in the quantity of the goods. He further submitted that the declared value is Rs. 19,95,319/- whereas the enhance value is Rs. 82,23,829/- therefore, the Ld. Commissioner (Appeal) has

arbitrarily reduced the redemption fine imposed on the appellant and he has arbitrarily dropped the penalty against the appellant. To support his contentions, he relied on the decision of the ***Hon'ble Apex Court in the case of Commissioner of Cus. (Preventive), Jamnagar Vs. Essar Oil Ltd.*** reported ***2015 (325) E.L.T. 5 (S.C.)*** to say that in that case also the redemption fine was reduced to Rs. 1,00,000/- but the Hon'ble Apex Court held that it should be reduced to 50% of Rs. 1.2cr. imposed by the lower authority only, therefore, he prayed that impugned order be modified.

4. None appeared on behalf of the respondent.

5. Considering the fact that the appeal itself can be disposed of at this stage, therefore, the appeal is taken for final disposal.

6. Heard the Ld. AR. and gone through the records placed before me.

7. On going through the records placed before me, I find that the quantity declared by the respondent in weight and there is no variation on the weight of the consignment and there is no allegation in the show cause notice for misdeclaration of quantity. In that circumstances, the charge of misdeclaration of quantity is rightly dropped by the Ld. Commissioner (Appeal). It is a fact on record that the declared price has been accepted by the respondent on which they have paid the differential duty of Rs. 18,00,000/- (approx.) therefore, considering the duty paid by the appellant and margin of profit, the Ld. Commissioner (Appeal) has rightly reduced the redemption fine from Rs. 17,00,000/- to 1,00,000/-. The decision relied upon by the Ld. AR with regard to reduction of redemption fine in the case of ***Essar Oil Ltd.*** (Supra), there was misdeclaration of

quantity, description etc. has been considered by the Hon'ble Apex Court for quantum of redemption fine, the fact of each case are relevant to quantity the amount of redemption fine. In these circumstances, I hold that the redemption fine imposed by the Ld. Commissioner (Appeal) is sufficient in the interest of justice. Further, in the impugned order, the Ld. Commissioner (Appeal) recorded the finding that there is no finding given by the adjudicating authority for imposing the penalty under Section 117 of the Act. In that circumstances, the Ld. Commissioner(Appeal) has rightly dropped the penalty against the respondent.

8. In view of the above discussion, I do not find any infirmity in the impugned order, the same is upheld.

9. In result, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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