IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/283/2011

(Arising out of Order-in-Appeal C. Cus. No. 459/2011 dated 21.07.2011 passed by the Commissioner of Customs(Appeals), Chennai).

M/s. Success Enterprises : Appellant

Vs.

CC (Port-Import), Chennai : Respondent

Appearance

Shri A.K. Jayaraj, Advocate
for the Appellant

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **03.04.2018**

FINAL ORDER No. **___________/2018**

Per Bench

The facts of the case are that the appellant had filed Bill of Entry dated 21.03.2009 for import of goods declared as 440 Nos. of Mobile Phones with declared assessable value of Rs.12,40,609/-. However, on examination, the consignment revealed the presence of excess quantity of 140 Nos. of Mobile

Phones which were valued at Rs. 3,87,310/-. On adjudication, the entire consignment was confiscated by the adjudicating authority under Section 111(m) of the Customs Act, 1962, an option for redemption under Section 125 ibid was given subject to payment of fine of Rs. 5,00,000/-, a penalty of Rs. 2,00,000/- was also imposed on the appellant under Section 112 (a) ibid. On appeal, the Commissioner (Appeals) vide impugned order No.459/2011 dated 21.07.2011 reduced the redemption fine to Rs. 2,00,000/- and personal penalty to Rs. 20,000/-. Aggrieved, appellant is before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri A.K. Jayaraj submits that as per Section 111 (m), only those goods which do not correspond any value or any material or other particulars that the entry made under the Act are liable for confiscation; that therefore, only the offending goods, namely 140 nos. Mobile phones valued at Rs.3,87,310/- can be confiscated, that in the instant case, even the redemption fine of Rs. 2,00,000/- imposed under Section 125 of the Act is not commensurate with the value of the confiscated goods and is not justified. Further, the appellants have all along submitted that they were not aware of the excess goods consigned by the foreign supplier.

3. On the other hand, Ld. AR, Shri A. Cletus, ADC, supports the impugned order. He submits that the Commissioner (Appeals) has considered the prayers of the appellant very

judiciously and has already reduced the redemption fine and penalty imposed by the adjudicating authority.

4. Heard both sides and have gone through the facts.

5. From the records it is seen that the appellants have all along been requesting for reduction in redemption fine and penalty since the differential duty liability comes to only Rs.19,000/-. The option of payment of fine in lieu of confiscation of the imported goods is provided in Section 125 of the Customs Act, 1962. When the duty liability of the imported goods valued at Rs. 3,87,310/- is only around Rs. 19,000/-, the quantum of redemption fine of Rs. 2,00,000/- imposed is surely not commensurate with the differential duty liability. Further, while deciding the quantum of redemption fine, the facts and circumstances including the margin of profit, market price of the goods confiscated etc., have to be taken into account. There is no such exercise forth-coming in the impugned order. This being so, we are of the considered opinion that the interests of justice would be adequately served by reducing the redemption fine under Section 125 ibid from Rs.2,00,000/- to Rs. 50,000/-. So ordered. However, with respect to the personal penalty imposed under Section 112 (a) ibid, we hold that the said amount is already quite reasonable and does not call for any further reduction.

6. Accordingly, the appeal is allowed to the extent of reducing the redemption fine under Section 125 ibid to Rs. 50,000/- without making any further interference in the impugned order.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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