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

Appeal No. C/79/2012

(Arising out of Order-in-Appeal C.Cus. No. 264/2012 dated 19.4.2012 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. R.A. Exports Appellant

Vs.

Commissioner of Customs (Export), Chennai Respondent

Appearance

Shri Anees Ahamed, Auth. Representative for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **16.04.2018**

Final Order No. **41130 / 2018**

Per Bench

Brief facts are that the appellants are engaged in export of goat finished leather. They filed shipping bill dated 3.7.2009 for export of 24 cartons of goods of "goat finished upper leather". The goods were examined and samples were drawn from two packages out of 24 packages to ascertain whether the goods were finished leather or not. Central Leather Research Institute, Chennai gave report that the samples do not satisfy the norms as there was absence of protective coating. The appellant submitted that on few finished leather, there were thin protective coating and it was so left due to mistake. All other processes as provided in Public Notice No. 3 ETC/PN/92-97 dated 27.5.1992 were duly carried out. They sought for 100% examination of the goods and in such examination it was found that six packages were in unfinished condition as it did not have protective coating. The appellant was to export the consignment in one lot and therefore withdrew the goods from the export and requested the adjudicating authority to pass necessary order to permit them to withdraw the goods. The adjudicating authority thereby passed Order-in-Original holding that six packages out of 24 packages did not satisfy the norms of finished leather and held that export of unfinished leather attracted 60% advalorem duty. The adjudicating authority also ordered for confiscation of these goods and imposed redemption fine of Rs.85,000/- besides penalty of Rs.8,500/-. The department filed appeal against the reduced penalty and in appeal, Commissioner (Appeals) enhanced the penalty to Rs.3,74,786/-. Aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellant, Shri Anees Ahamed, Manager – Export appeared and argued the matter. He stated that the goods were not liable for confiscation and no redemption fine and penalty ought to have been imposed. The goods confirmed to the conditions / criteria stated in the Public Notice and the

variation of not having of protective coating was only minor. There was no deliberate attempt or intent to export unfinished leather which is very clear from the fact that the deficiency was only in few items. This was only a mistake of the job worker who had undertaken the job work process. It was submitted that this was the first mistake it happened and that too at the end of the job worker for which the appellant cannot be penalized. The appellants had in good faith requested for return of the entire offending goods for reprocessing and export thereafter. They had to export the goods in one lot and therefore the goods were taken back by the appellant for reprocessing which only establishes that they had no intention to evade any duty.

3. The ld. AR Shri A. Cletus reiterated the findings in the impugned order. He adverted to Section 114 and submitted that the penalty has been rightly enhanced by the Commissioner (Appeals), as there was mis-declaration of goods. The appellant was trying to export unfinished leather in the guise of finished leather.

4. Heard both sides.

5. The appellant is contesting only the enhanced penalty in the impugned order. The original authority had imposed penalty of Rs.8,500/- under section 114 of the Customs Act, 1962 which was enhanced to Rs.3,74,786/- by Commissioner (Appeals). After hearing the submissions as well as perusal of records, it is

seen that only in a few items the defect of not having protective coating was detected. The appellant has sought return of the goods for reprocessing the same for the purpose of exporting. It is explained by the appellant that the defect occurred due to mistake at the end of the job worker. The appellant ought to have ensured that the goods fulfilled the conditions as per the Public Notice. The appellant cannot shift the blame on the job worker. However, taking note of the entire facts presented before us, we are of the considered opinion that the imposition of penalty of Rs.3,74,786/- is on the higher side. The appellant has also submitted that he is facing financial difficulty and prayed for lenient view. We therefore reduce the penalty to Rs.8,500/- (Rupees eight thousand five hundred only) as was imposed by the original authority. The impugned order is modified to the extent of reducing the penalty to Rs.8,500/- (Rupees eight thousand five hundred only). The appeal is partly allowed in the above terms with consequential relief if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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