IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40197 of 2020

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 729/2019 dated 18.12.2019 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Sri Reshika Enterprises **: Appellant**
T. Raja
No. 168, E Block, MMDA Colony,
Arumbakkam, Chennai – 600 107

VERSUS

The Commissioner of Customs **: Respondent**
Chennai-II Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri G. Vijayabalan, Advocate for the Appellant

Shri Vikas Jhajharia, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41670 / 2021

DATE OF HEARING: 05.07.2021

DATE OF DECISION: **12.07.2021**

Order :

The only issue involved is the denial of refund of Duty.

2. When the matter was taken up for hearing, Shri G. Vijayabalan, Learned Advocate, appeared for the assessee-appellant and Shri Vikas Jhajharia, Learned Departmental Representative, appeared for the Revenue.

3. The Adjudicating Authority vide Order-in-Original has rejected the refund *inter alia* on the grounds that an

offence had been committed and thereafter, the case was adjudicated by the AC/DC of the appraising group in terms of proviso to Section 23(2) of the Customs Act, 1962; that upon adjudication, a fine of Rs.30,000/- and a penalty of Rs.10,000/- was imposed; that the out of charge order had already been issued by the proper officer on 21.02.2017 itself due to which the question of abandonment did not arise; that once out of charge order is given by the proper officer for home consumption, the Customs did not have any control over the impugned goods and that therefore, the question of abandoning the goods at a later date in terms of Section 23(2) ibid. could not be permitted, etc.

4. In the First Appellate proceedings, the First Appellate Authority has noted that the goods were given out of charge after all the proceedings of Customs were over and that an offence had been committed as there was a mis-declaration in the quantity which came to be adjudicated, consequent to which fine and penalty were imposed. Thus, the First Appellate Authority having upheld the rejection of refund, assailing the same, the present appeal has been filed.

5.1 After hearing both sides and from a perusal of the pleadings and the documents placed on record by the appellant, I find that the appellant had paid the fine amount of Rs.30,000/- and the penal amount of Rs.10,000/- vide Challan No.2017457502 and the mode of payment being e-payment, the appellant did not challenge, but paid the same without questioning the legality of the same. This means that the offence, as alleged, had indeed been committed, which aspect is clearly hit by the proviso to Section 23(2) ibid., which takes away the right of the owner to relinquish his title to such goods.

5.2 It is too late a stage for the appellant to raise an issue in so far as the levy of fine and penalty are concerned since, without questioning the same at the appropriate time before making the e-payment, the said plea cannot be urged for the first time now. Therefore, the contention of the Learned Advocate for the appellant that the collection of fine and penalty was without the authority of law cannot be gone into by this forum now.

6. Moreover, there is a specific observation by the Adjudicating Authority that the appellant/importer had requested for adjudication without issuance of Show Cause Notice as well as personal hearing, which fact has not been denied by the appellant, but without challenging the same it is strange as to how the appellant can now say that no opportunity was given. If there was no such commitment made, nothing prevented the appellant from adducing proper evidences or, at least, a supporting affidavit duly sworn-in, to the contrary; but nothing has been done, even before this forum.

7. In view of the above, I do not see any merit in the appeal and accordingly, the appeal is dismissed.

(Order pronounced in the open court on **12.07.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd