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

Appeal No.C/32/2009

[Arising out of Order-in-Appeal No.C.Cus.465/2008 dt. 20.11.2008passed by the Commissioner of Customs (Appeals) Chennai]

Padmalay Enterprises — Appellant

Versus

Commissioner of Customs, Chennai — Respondent

Appearance:

Shri A.K. Jayaraj, Advocate
For the Appellant

Shri B.Balamurugan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision :11.08.2017

FINAL ORDER No. 41723/2017

PerBench

The issue in dispute in this appeal relates to import of "old and used photocopiers" vide Bill of Entry dated 10.7.2007. Pursuant to inspection by local Chartered Engineer, the declared value of Rs.12,34,784/-(C&F), was proposed to be rejected and enhanced to Rs.19,61,369/- (C&F). It further appeared to the department that for the said import, specific licence was required being second-hand office equipment, therefore, import appeared to be unauthorized and in contravention of Section 3 (3) of Foreign Trade (Development & Regulation) Act, 1992. The appellant-importer vide letter dt. 03.09.2007 accepted the proposed enhanced value and requested to adjudicate the case without issue of show cause notice and personal hearing. After due process of adjudication, original authority vide order dated 05.10.2007, rejected the declared valued and determined the value of said goods at Rs.19,83,434 (CIF), as appraised by the Chartered Engineer under Rule 8 of Customs Valuation Rules, 1988. He further ordered confiscation of the goods under section 111(m) *ibid,* however, allowed the importer to redeem the same on payment of fine of Rs.5,50,000/-. Penalty of Rs.4,50,000/- under section 112 (a) *ibid* was also imposed on the importer. On appeal, lower appellate authority vide impugned order dt. 20.11.2008 upheld the order of original authority. Hence the appeal before this forum.

2. Today, when the matter came up for hearing, on behalf of the appellants, Shri A.K. Jayaraj, Ld.Advocate, submits that prior to 19.10.2005, there was no restriction for import of such goods. He draws attention to Tribunal's Final Order No.41176/2016, dated 26.09.2016 in the case of *M/s.Pentagon Engineering Enterprises Vs Commissioner of Customs (Port-Import), Chennai,* wherein it was held that for the goods not restricted, the confiscation was found to be unwarranted and redemption fine and penalty was set aside.

3. On the other hand, Ld.AR Shri B. Balamurugan supports the adjudication order.

Customs, Excise & Service Tax Appellate Tribunal

4. Heard both sides and have gone through the facts. Without doubt, the import of photocopiers had become restricted only after 19.10.2005. Goods imported herein have been done by a Bill of Entry filed on 27.04.2004. This being the case, they cannot be confiscated for want of a specific import licence and accordingly, the provisions of section 111 (d) will not be applicable in this matter. However, there is under declaration of value particulars requiring enhancement of assessable value by almost 60% and hence the goods will become liable for confiscation under Section 111 (m) of the Act. However, taking into account all factors in particular, the aspect of the goods not being restricted at the time of their import, we are of the considered opinion that the interests of justice would be adequately served in this case by reducing the redemption fine imposed under section 111 (m) to **Rs.3,00,000/-** [Rupees three lakhs only] and penalty imposed under section 112 (a) *ibid* to **Rs.2,00,000/-** [Rupees two lakhs only]. We also find that an additional redemption fine of Rs.1 lakhs has been imposed over and above on the grounds of "undeclared connectivity and variations in the model". Such additional redemption fine on the same goods does not have any legal basis and therefore will not sustain and hence will have to be set aside, which we hereby do. So ordered. Appeal partly allowed as above, with consequential relief if any, as per law.

(Operative part of the order pronounced in court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

gs

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai