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

C/8/2009

(Arising out of Order-in-Original No. 8310/2008 dated 28.11.2008 passed by the Commissioner of Customs (Seaport – Import), Chennai)

M/s. Leo Fasteners Appellant

Vs.

Commissioner of Customs (Import), Chennai Respondent

Appearance

Shri G. Derrick Sam, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **24.03.2017**

Final Order No. 40590/2017

Per D.N. Panda

Appellant says that there is no mis-declaration of description of the goods. Even the NML report did not go against the appellant. Therefore, there is no need of any disturbance of the valuation or imposition of redemption fine and penalty. The appellant bonafide believed on the declaration of the exporter as to the description of the goods.

2. Revenue on the other hand says that the goods imported as per Bill of Entry No. 808763 dated 4.8.2008 was CHQ Wire Rods (Dia 11 & 17 mm). But that description failed to stand when the

Customs, Excise & Service Tax Appellate Tribunal contents of the goods were tested by NML vide their test report No.NML/DQM/MC/F-06 (Ref. No. 20125) dated 21.8.2008. Therefore, also the mis-declaration dragged the appellant to CTH 72139920. Accordingly, exemption benefit claimed by the appellant was denied. Having mis-declared the goods both on description and classification, the appellant was to face the penal consequence of law with the duty liability.

3. Heard both sides and perused the records.

4. There is no rebuttal to the NML report ~~by~~ leading any cogent evidence to show that the goods of the description stated in the NML report was not imported. The goods imported having been tested by National Metallurgical Laboratory, which provided the technical assistance and guidance, there is no difference to the test result. Accordingly, the appeal fails in its contention as to the description of the goods. Revenue's stand on the mis-declaration of the goods is established. Added to that, learned Commissioner has very thoroughly examined in para 2 of his order what was the case before him and to appreciate his understanding, the said para is reproduced:-

> "The subject bill of entry was presented for assessment along with invoice No. TY080700068 dated 12.7.08, packing list and mill certificate No. 08071204 dated 12.7.2008 issued by the foreign supplier M/s. Tycoons World Wide Group (Thailand) Public Co. Ltd. Thailand. The referred invoice and packing list also have confirmed the description of goods as declared in the Bill of Entry. The composition of goods given in Mill Certificate showed the goods as "Non Alloy" steel of given description. Accordingly, the importer had filed the Bill of Entry for the subject goods viz. Non-Alloy-CHQ wire rods claiming benefit of Notification No.21/2002, Serial No. 190C, under CTH 72139920. As per the said Notification, "Non-

Alloy Steel" products failing under CTH 72 were exempted from payment of Basic Customs Duty."

5. So far as the valuation is concerned, once mis-declaration is established, the appellant loses its right to challenge the valuation further. Therefore, the valuation adopted by Revenue for adjudication remained unchallenged and duty is leviable thereon.

6. There is no material on record to show that the redemption fine of Rs.5,75,000/- imposed was, by any means, unreasonable or excessive when value to the extent is considered to be Rs.57,34,140/- for which duty was levied. Therefore, redemption fine remains untouched and that is upheld.

7. So far as imposition of penalty is concerned, mis-declaration follows the consequence of illegitimacy. Therefore, the penalty imposed also remains untouched and that is upheld.

8. In the result, appeal is dismissed.

(Dictated and pronounced in open court)

04/04/2017

(MADHU MOHAN DAMODHAR)
Technical Member

4-4-2017
(D.N. PANDA)
Judicial Member

Rex

Customs, Excise & Service Tax Appellate Tribunal

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