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

Appeal No. C/283/2007

[Arising out of Order-in-Original No.5987/2007 dt. 12.03.2007 passed by the Commissioner of Customs (Exports-Seaport), Chennai]

Commissioner of Customs (Export-Seaport)
Chennai — Appellant

Versus

Gazebo Industries Ltd. — Respondent

Appearance:

Shri K. Veerabhadra Reddy, JC (AR)
For the Appellant

None
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 : 07.06.2017

FINAL ORDER No. 41230/2017

Per Bench

The brief facts of the case are that the Customs authorities detained export consignments of Knitted T-Shirts covered under five Shipping Bills, all filed on 17.12.2005 by the respondent-exporter on intelligence that inferior quality cotton garments were being exported with inflated values for obtaining excess drawback fraudulently. On examination, it emerged that against shipping bill quantity of 900

Customs, Excise & Service Tax Appellate Tribunal cartons, only 615 cartons were physically available and that against total declared quantity of 1,29,600 numbers of cotton knitted T-Shirts, actual quantity was only 88,560 numbers. Vide a letter dt. 19.10.2005, respondent informed the Deputy Commissioner of Customs (Adjudication) that due to oversight they had despatched wrong consignment of lower quality T-Shirts which was supposed to be shipped to Mozambia and requested for shutout of entire cargo of 615 cartons. Exporter vide another letter dt. 26.12.2005 sought permission to effect shipment to the same buyer by reducing the value of the goods to US$ 1.00 per piece. Vide letter dt. 19.1.2006, exporter requested permission to amend consignee name and unit price in shipping bill from M/s.Green Trade Company, Moscow, Russia to M/s.Vezuvl, Moscow, Russia and the unit price from US$ 3.250 to US$ 0.900. Pursuant to this request, consignment which had been placed under seizure was allowed to be exported on provisional basis on execution of personal bond from exporter for an amount of Rs.61,17,000 and after amendment of unit price to US$ 0.90. Subsequently, SCN dt. 26.06.2006 was issued proposing confiscation of the goods under Section 113 (d) and (i) of the Customs Act, 1962 and imposition of penalty on various persons under Section 114 (iii) ibid. In adjudication, lower authority, vide impugned order dated 15-03-2007, imposed penalties, of Rs.10 lakhs on Shri M.P.S. Bharara, Rs.2 lakhs on Shri Avinash Maheswari and

Customs, Excise & Service Tax Appellate Tribunal

Rs. 50,000/- each on Shri N. Saravanan and Shri J.R. Sathiamoorthy, under Section 114 (iii) ibid. However, taking into consideration that goods had been permitted to be exported to another buyer by way of amendment in the shipping bill for a lower value, adjudicating authority did not pass any order on the said goods, but only rejected the value and drawback amounts claimed in the original shipping bill dt. 17.12.2005.

2. Department has come in appeal against this impugned order on the following grounds :

(a) The adjudicating authority has come to the conclusion that the exporter has attempted to export the impugned goods, which were of inferior quality by over invoicing the value of the goods as well as mis-declaring the quantity of the goods and tried to claim a higher amount of ineligible drawback. The goods have, therefore, become liable to confiscation under Section 113 (d) and (i) of the Customs Act, 1962. Though the show cause notice proposes confiscation of the impugned goods under Section 113 of the Customs Act, the adjudicating authority has not passed any order on the goods taking into consideration the fact that the goods have been permitted to be exported for a lower value. The adjudicating authority should have confiscated the goods under Section 113 of the Customs Act and imposed a fine in lieu of confiscation under Section 125 of the Act.

Customs Excise & Service Tax Appellate Tribunal

(b) Further, the adjudicating authority has imposed penalties under Section 114 (iii) of the Customs Act, on the exporters, the CHA and he exporter's representative. Sec 114 of the Customs Act very clearly states that a penalty is liable to be imposed on any person, who in relation to the goods, by his acts has rendered the goods liable to confiscation. The adjudicating authority has not passed any order for confiscation of the goods, but has passed an order penalizing the persons related to the goods under Section 114 of the Customs Act. This is not legally correct.

3. On 07.06.2017, when the matter came up for hearing, for appellant Shri K. Veerabhadra Reddy, Ld. A.R, reiterated the grounds of appeal and submitted that in view of the said grounds, confiscation of the goods was very much merited.

4. Respondent was not represented.

5. After going through the facts on record, it emerges that Customs authorities found lesser cartons and lesser numbers of cotton knitted T-shirts against the export quantity declared in the five shipping bills filed on 17.12.2005. Examination of the goods showed that T-Shirts being exported were inferior in quality and of much lower value. These facts have been reiterated even by the adjudicating authority in para-34 of the impugned order. We find that the lower authority has also found that had the goods not been seized, ineligible export drawback of Rs.8,23,146/- would have been claimed.

He has agreed that it was clearly established that wrong declarations were made with respect to quantity and value of the goods with the sole purpose to obtain huge amount of ineligible drawback. Lower authority has further held that it is conclusively proved that the goods were willfully and intentionally misdeclared with the sole view to gain ineligible amount of drawback. He has also found that Shri M.P.S. Bharara M.D of the respondent as also Shri N. Saravanan, Shri Avinash Maheswari who played active role in the whole matter and are hence liable for penal action, based on which conclusion only the penalties indicated herein above have been imposed on these persons. He has also dismissed the defence of the respondents and has found, in para-33 of the order that "*the entire story of mix up and filing wrong documents is an afterthought and concocted. There are many gaping holes in the story, which cannot be ignored*". Thus the impugned goods of inferior quality have been found to be mis-declared in terms of quantity, and also overinvoiced to claim ineligible amount of drawback. In these circumstances, when the lower authority has arrived at such findings and conclusions, by corollary, the goods also became liable for confiscation under Section 113 (d) and (i) of the Customs Act, 1962. The fact that they have been allowed to be re-exported at a lower value to a different buyer will not automatically redeem or erase the act of attempting to export those goods initially by misdeclaration of quantity and value and accordingly, they should have been confiscated in terms of Section 113 of the Act and if found proper, given the exporter an option to redeem the goods in lieu of confiscation on imposition of fine under Section 125 ibid. We, therefore, find merit in the appeal filed by the department and agree that the goods should have been confiscated. However, for the limited purpose of arriving at the quantum of redemption fine, keeping in mind the facts and circumstances of the case, the matter is being remanded to the adjudicating authority. Needless to say, in such de novo proceedings, adjudicating authority should give suitable opportunity to the respondent before passing any order. Appeal is allowed by way of remand.

(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

14/8

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