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

C/00049,00050,00051 & 00052/2007

[Arising out of Order-in-Original No.5577/2006, dated 30.10.2006 passed by the Commissioner of Customs, Chennai]

M/s.AWESOME CLOTHING CO. PVT. LTD. APPELLANT/S
VIJAY LAKHANI
S. SANATH KUMAR
VENKATESH RAO

Versus

COMMISSIONER OF CUSTOMS, CHENNAI RESPONDENT

C/00206/2007 and C/CO/40972/2016

[Arising out of Order-in-Original No.5577/2006, dated 30.10.2006 passed by the Commissioner of Customs, Chennai]

COMMISSIONER OF CUSTOMS (EXPORT-SEAPORT), CHENNAI-I APPELLANT

Versus

M/s.AWESOME CLOTHING CO. PVT. LTD. RESPONDENT

Appearance:

For the Assessee Shri Adv.

For the Revenue Shri A. Cletus, ADC (AR)

CORAM:

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

Date of hearing/decision **06-03-2017**

FINAL ORDER NO... 40442 - 40446/2017

Per D.N. Panda:

When it was mentioned before the Bench on 19.12.2006 by the Advocate Shri Venugopal that he had instruction of Shri B.V. Kumar, Advocate on record that his appearance may be ignored and he withdraws his appearance, Registry was directed to issue notice to the appellants to appear today. A copy of the order passed on that date was sent by Registry to the appellants. Although such interim order was dispatched on 19.12.2016 fixing the date of hearing on 07.02.2017, there was no appearance by the appellant.

2. Thereafter matter was fixed for hearing today. In view of the above sequential default and the appeal being 10 years old, it is considered proper dispose of the same on its own merit without further adjournment.

3. When the matter was taken up in the morning session today, none was present for the appellant, for which, it was passed over for hearing in the second session. Even in this session, none appeared for the appellant. Therefore with the assistance of Revenue and perusing the materials borne by the record, the matter has been taken up for disposal.

3.1 Adjudicating authority found that raw material (fabric) were imported duty-free to manufacture ready-made garments and export the same. But desired export was not done. Appellant failed to produce accounts for satisfaction of Revenue as to the utilization of the raw material.

3.2 Investigation conducted revealed that appellant was user of five advance licences for import of the above raw material. They noticed that accounts were fabricated to show consumption of duty free import raw material unreasonably and abnormally contravening the import conditions. Fabrics cleared were not accounted for. There was nothing on record to show fulfillment of the export obligation.

The authority has also recorded that questionable *modus operandi* was followed by the appellant to defraud the exchequer. He held that there should be duty liability imposed in respect of 47891 Sq. Mtrs. Of fabric for the duty forgone at the time of import. Accordingly, he levied duty of Rs.25,82,523/- confiscating 52220 Sq. Mtrs. Of fabric holding that he does not confiscate the same since those were neither seized nor available for confiscation.

3.3 The authority had also imposed penalty of Rs.25,82,123/- under section 114A of the Customs Act, 1962 on Shri Vijay Lakhani, President and one of the Directors of the appellant-Company. Penalty of Rs.5,00,000/- was imposed on Shri Sanath Kumar, Production Executive and one of the Directors of the appellant-Company. So also penalty of Rs.3,00,000/- was imposed on Shri Venkatesh Rao, the Export Manager of the appellant-Company. These penalties were imposed under section 112 (a) of the Customs Act, 1962.

3.4 None of the above said persons caused appearance today, to defend the penalty imposed against them.

4. While the matter thus stood as above, Revenue's grievance is that when the authority came to the conclusion that 52220 Sq. Mtrs. of fabric was liable to confiscation, he did not impose redemption fine. Law is well settled that when the goods are imported under regulatory measure of advance licences and under-bond, that gives rise to concurrent liability, for which, redemption fine is imposable followed by penalty in case of violation of licencing conditions as well as bond terms. This can be said following the judgment of the apex court in the case of *Weston Components Ltd. Vs Commissioner of Customs,*

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New Delhi reported in *2000 (115) E.L.T.278 (S.C.)* and in the case of *Commissioner of Customs, Amritsar Vs Raja Impex (P) Ltd.,* reported in *2008 (229) E.L.T.185 (P&H)*.

5. In view of the above, Revenue appeal is allowed and the adjudicating authority is directed to impose redemption fine and penalty under section 114 & 113 respectively.

6. Learned departmental representative says that there was a proposal in the show-cause notice to impose penalty under section 113 (i) and (ii) and 114A in addition to the penalty under section 114 (iii) of the Customs Act, 1962. Learned authority shall also examine the reason stated against such proposal in the show-cause notice and levy penalty if the facts and circumstances so warrant by a reasoned and speaking order.

7. In the result, all the four appeals of assessees' are dismissed and Revenue appeal is remanded with the above direction.

8. The cross objection C/CO/No.40972/2016 stands disposed.

(Dictated and pronounced in open court)

09/03/17

8/8/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

ksr

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