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

C/288/2008

(Arising out of Order-in-Original No.1/2008 dated 28.5.2008 passed by the Commissioner of Customs and Central Excise, Salem)

M/s. Kee Yes Impex Appellant

Vs.

Commissioner of Customs, Salem Respondent

Appearance

Shri A.K. Jayaraj, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) 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: **20.04.2017**

Final Order No. 40643/2017

Per Madhu Mohan Damodhar

The issue in dispute relates to overvaluation of goods attempted to be exported under five shipping bills with claim for duty drawback all dated 13.7.2006. In adjudication, value of the impugned goods was rejected and market value was confirmed as Rs.9,93,000/-. Goods were also confiscated under various provisions of Customs Act, 1962 and FEMA, 1999, however, allowed to be redeemed on payment of fine of

Rs.9,93,000/- under section 125 of the Act ibid. A penalty of Rs.4 lakhs was also imposed under sections 114(i) and (iii) of the Act. Against the said adjudication order, the appellants had earlier preferred appeal before this Tribunal and in consequence, vide Final Order No.243/2008 dated 14.3.2008, the matter was remanded to adjudicating Commissioner to redetermine the redemption fine and penalty. On re-adjudication, vide the impugned order dated 28.5.2008, the fine was reduced from Rs.9,93,000/- to to Rs.1,50,000/- and penalty was reduced from Rs.4 lakhs to Rs.50,000/- Aggrieved, the appellants are before this forum.

2. Today, when the matter came up for hearing, learned counsel takes us to para 17 of the impugned order and contends that the lower appellate authority has held that goods are having lesser value, was not of very high quality material, lying for more than two years and had lost original market/quality and value. Learned counsel submits that this observation itself indicates that there is no margin of profit. Further, the goods are being taken back to from the port to town and as such redemption fine under section 125 is not sustainable.

3. On the other hand, learned AR vigorously opposes the appeal and points out that as per section 125 ibid, the option

Excise & Service Tax Appellate Tribunal

to pay any fine in lieu of confiscation can be given by the officer adjudging the matter and the quantum of fine can be as such that the said officer thinks fit.

4. Heard both sides and gone through the records.

5. In the matter of penalty, there is already considerable reduction from Rs.4 lakhs to Rs.50,000/-. Taking into account the various acts and omissions on the part of the exporter, penalty under section 114 ibid is definitely imposable on him and in any case, the quantum has been very generously reduced by the Commissioner (Appeals). We, therefore do not find any reason to interfere with the quantum of penalty imposed by the learned Commissioner (Appeals).

6. As regards redemption fine, we find that the same has also been reduced from Rs.9,93,000/- to Rs.1,50,000/-. Learned counsel has done his best to argue that the redemption fine in such cases is not imposable under section 125. This, in our view, is a misconceived notion. Section 125 ibid in any case covers infractions not only in the case of importation but also exportation. As is evident from section 125(1) of the Act, the only conditionality given in the proviso to sub-section (1) is that "such fine shall not exceed the market price of the goods confiscated". Discernibly, no divergence from these conditionalities is seen from the impugned order. The redemption fine of Rs.1,50,000/-, in our

Customs, Excise & Service Tax Appellate Tribunal view, would therefore meet the ends of justice in the matter and therefore on this score also, we are unable to find any scope for interference on our part.

8. In the result, appeal is dismissed.

(Dictated and pronounced in open court)

Sulekha Beevi

(**MADHU MOHAN DAMODHAR**)
Member (Technical)

(**SULEKHA BEEVI**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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