

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41241 of 2014

(Arising out of Order-in-Appeal C.Cus. No. 477/2014 dated 19.03.2014 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Usha International Limited

: Appellant

4/59-A, Mount Poonamallee Road,
Manapakkam, Chennai – 600 089

VERSUS

Commissioner of Customs (Imports)

: Respondent

No. 60, Rajaji Salai, Custom House,
Chennai – 600 001

APPEARANCE:

Shri S. Ganesh Aravindh, Advocate for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 41063 / 2023

DATE OF HEARING: 30.10.2023

DATE OF DECISION: 29.11.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee-importer against the Order-in-Appeal C.Cus. No. 477/2014 dated 19.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2.1 Brief facts are that the appellant filed a Bill-of-Entry No. 3281805 dated 16.09.2013 for clearance of

2960 nos. of goods declared as "Maxx Air Pedestal Fan with essential spares" under CTH 84145130 which were supplied by a Hong Kong based company, the value of which was declared at USD 39042.40/- (FOB). The assessable value of the goods was INR 27,29,010/- and the unit price declared was USD 13.19/- per piece and the declared Maximum Retail Price (MRP) was INR 2100/- per piece. The said goods were imported claiming exemption from payment of Special Additional Duty (SAD of 4%) in terms of Customs Notification No. 21/2012 dated 17.03.2012 (Sl. No. 2).

2.2 There is no dispute that the Bill-of-Entry was assessed and the consequential duty demand of Rs.7,80,482/- was paid by the appellant. It appears that while assessing the Bill-of-Entry, the container was opened on a second check basis and upon inspection, the officials did not find any discrepancy as regards the description of the goods; the packages were found to be in pre-packaged condition and also complying with the labelling requirement in terms of the above Notification, but however, they also appear to have noticed that the MRP on the pre-packaged goods was INR 2650/- as against the declared MRP of INR 2100/-.

3. Accordingly, the Revenue worked out the differential duty of Rs.1,30,793/- as the MRP of the goods was assumed to be mis-declared by the importer to evade payment of duty.

4. It appears that the appellant vide its letter dated 28.09.2013 explained that the declared MRP in the Bill-of-Entry was on the basis of understanding between the appellant and their supplier, in support of which they appear to have furnished printouts of e-mails exchanged between the appellant and their supplier starting from 11.07.2013 up to 14.09.2013. They had also filed the purchase order dated 27.05.2013 wherein the agreed MRP to be printed in INR was INR 2400/- per piece and due to time-lag and on account of the Indian Rupee having depreciated against the U.S. Dollar substantially, in order to cover the cost of foreign exchange, an e-mail was sent to the supplier to revise the MRP to be printed at INR 2650/-.

5. It appears that not satisfied with the explanation, a Show Cause Notice dated 17.10.2013 was issued *inter alia* proposing to confiscate the goods in question under Section 111(m) of the Customs Act, 1962 for mis-declaring the RSP, apart from penalties under Sections 112(a) and 114AA *ibid*.

6. It appears that the appellant filed a suitable reply to the above Show Cause Notice primarily contending that there was no mis-declaration as alleged, but however, the same was unintentional and due to communication gap between the appellant and their supplier / vendor.

7. During adjudication, the original authority having considered the explanation of the appellant and after hearing, vide Order-in-Original No. 22328/2013 dated 29.10.2013 ordered rejection of the declared RSP while ordering to re-assess the Bill-of-Entry at INR 2650/- per piece, also ordered confiscation of the goods in question under Section 111(m) *ibid.*, but however, giving an option to the appellant to redeem the goods on payment of a fine of Rs.5,00,000/- in lieu of confiscation under Section 125 *ibid.* He also imposed penalties under Sections 112(a) and 114AA, as proposed in the Show Cause Notice.

8. Feeling aggrieved by the above order, it appears that the appellant filed appeal before the first appellate authority *inter alia* contending that the intention of the appellant was not to evade payment of duty and upon being pointed out, the appellant had made good the differential duty. It was also contended

that the appellant was a regular importer of consumer products, importing identical goods since a long period of time and that there was no mis-declaration of MRP hitherto; the mis-declaration was only on account of communication gap, but there was no deliberate intention to mention wrong MRP. The Commissioner (Appeals) having considered the plea of the appellant, however, vide impugned Order-in-Appeal No. C.Cus. No. 477/2014 dated 19.03.2014 has rejected the same while upholding the findings of the original authority and it is against this order that the present appeal has been filed before this forum.

9. Heard Shri S. Ganesh Aravindh, Ld. Advocate for the appellant and Shri N. Satyanarayanan, Ld. Assistant Commissioner for the Revenue. After hearing both sides, we find that the following issues are to be decided by us: -

- (1) Whether the order of confiscating the goods in question under Section 111(m) of the Customs Act, 1962 is correct? and
- (2) Whether the imposition of penalties under Sections 112(a) and 114AA *ibid.* is justified?

10. Facts are not in dispute. There was differential duty worked out, which was accepted and also paid by the appellant-importer. From the documents placed

on record, we do not find any *mala fides* on the part of the appellant-importer. A perusal of the e-mail exchanged between the appellant and their vendor clearly indicates the request insofar as the MRP is concerned, but however, it was perhaps the mistake of the vendor/supplier in not effecting the required RSP tag. No doubt, the original price as per the purchase order, which is placed at page number 53 of the appeal memorandum (dated 27.05.2013) was INR 2400 per piece. There was a request e-mail from the appellant to incorporate the new MRP on account of sharp change in INR versus USD and in reply vide reply mail dated 12.07.2013, the seller / vendor appears to have enclosed the new MRP list, which is placed at page number 57 of the appeal memorandum, wherein the new MRP of "400 mm Maxx air pf" is shown as INR 2650/-. However, in one of the e-mail correspondences which is dated 14.09.2013, the vendor has indicated the MRP as INR 2100/- only.

11. Sub-sections (1) and (2) of Section 4A of the Central Excise Act, 1944 read as under: -

"SECTION 4A. Valuation of excisable goods with reference to retail sale price. —

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the [Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or

under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette."

The requirement of Section 4A(1) *ibid.* is the declaration on the package the retail sale price (RSP) of the goods and sub-section (2) thereof states that such declared value shall be deemed to be the retail sale price (RSP) declared on such goods less such amount of abatement, if any. The price tag admittedly on the package was the maximum retail price (MRP) displayed, which cannot be the RSP, since RSP may not always be the MRP and MRP also may not always be the RSP.

12. The above clearly takes the case of the appellant out of the mischief of Section 112(a) since the alleged mis-declaration would not per se justify confiscation of the goods in question under Section 111. This is because the appellant perhaps chose to go by the new MRP list (placed at page 57 of the appeal memorandum) whereas the vendor, for the best reasons known, affixed MRP of INR 2100/- and hence, no *mala fides* could be attached on the part of the appellant.

13.1 Insofar as penalty under Section 114AA is concerned, we also do not find that the Revenue has made out any case even on this. Section 114AA of the Customs Act, 1962 reads as under: -

"Section 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

13.2 The primary requirement of the above Section is knowledge / intention on the part of the importer, which is clearly lacking in the case on hand. The purchase order was clear: the MRP to be affixed was INR 2400/- per piece; the revised MRP, as understood between the parties, was INR 2650/-, against which the vendor affixed INR 2100/- as MRP, which is not as per either the purchase order or even the revised MRP list and for this, the appellant-importer cannot be held to be responsible in any way. Hence, even the penalty under Section 114AA is not warranted.

14. In the light of the above discussion, the penalties imposed under Sections 112(a) and 114AA of the Customs Act are ordered to be deleted.

15.1 Admittedly, the importer claimed exemption from 4% SAD which was ultimately denied as there was alleged mis-declaration of MRP. In any case, the differential duty was duly remitted by the appellant and moreover, we find that the MRP affixed on the goods imported (of INR 2100) was never the agreed amount; the purchase order gives a different amount, which was sought to be revised as per the new MRP list at INR 2650/-. Hence, how the MRP of INR 2100/- was affixed lacks any support since the same was never agreed upon nor is there any discussion, other than the e-mail dated 14.09.2013. The logic at paragraph 11 above of this order is also required to be read and understood here.

15.2 Section 111 prescribes confiscation of improperly imported goods, etc. Clause (m) of the said Section reads as under: -

"(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

As per the above clause, any goods which do not correspond in respect of value shall be liable for confiscation.

15.3 Facts of the case on hand are very peculiar inasmuch as, clearly there was an understanding as regards the value is concerned, in support of which documents in the form of e-mails have been placed on record, which are not disputed by the Revenue. The value affixed on the label did not clearly show the price agreed upon in the purchase order dated 27.05.2013. Further, the said price tag was sought to be revised for the reason of fluctuation in the value of the Indian Rupee as against the U.S. Dollar, which fact was also not disputed, but however, the same apparently was not implemented by the foreign vendor / supplier.

15.4 Moreover, what was declared in the Bill-of-Entry by the appellant was duly supported by the revised MRP list, which was also agreed to between the parties. Even otherwise, as clarified elsewhere in this order, MRP is the maximum retail price at which an item could be sold whereas RSP is the retail sale price, which is at the discretion of the seller.

16. Hence, we are of the view that the *bona fides* of the appellant cannot be suspected just because the vendor / supplier chose to affix a different price tag and therefore, there is no case for the Revenue to order confiscation of the goods in question.

Consequently, there is no question of redemption fine under Section 125 *ibid*.

17. In view of our above discussions, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on **29.11.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd