CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 51547 of 2018-SM

(Arising out of Order-in-Appeal No.CC(A)CUS/D-II/ICD/PPG/787/2018 dated 06.04.2018 passed by the Commissioner of Customs (Appeals), New Delhi.]

M/s. Bharat Industries **Appellant**
Near Khadi Ashram, GT Road,
Panipat-132 106.

VERSUS

Commissioner of Customs (Import) **Respondent**
ICD, Patparganj,
New Delhi- 110 096.

APPEARANCE:

Shri Vaibhav Singh, Advocate for the appellant.
Shri P.R.Gupta, Authorised Representative for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51294/2019

DATE OF HEARING: 24.05.2019
DATE OF DECISION: 24.05.2019

ANIL CHOUDHARY:

Heard the parties.

2. The appellant is a partnership firm, which is engaged in the business of import of rags for trading.

3. Appellant, filed a Bill of Entry No.9511181 dated 09.06.2015 for the clearance of 25744 kgs of Old original completely pre-mutilated & fumigated mixed rags imported, falling under CTH 63109040 covered under invoice No.FEXMR15/03/00165 dated 31.03.2015 having value of USD 1287.2 (CIF) with unit price of USD 0.05 CIF per kg. The imported goods were in 56 compressed Bales and having net weight 25744 kgs.

4. The consignment was presented before Import Shed officers of Customs with documents viz Bill of Entry, Bill of lading, packing, list, invoice, GATT declaration and fumigation certificate obtained from the port of shipment for examination under 1st check, in the presence of representative of the CHA. The container No.MSKU8723233 was opened in presence of representative of the CHA and the entire goods were de-stuffed and stored in the import werehouse for the examination. As per examination order 20% of the bales were burst opened and thereafter it was noticed by the examining officer that the entire goods were not rags as claimed by the importer in their referred documents filed with the Customs for clearance of the same. But certain quantity of goods were worn clothing which were not declared in the documents filed by the importer with the Customs. The shed officers have recorded their observation on the reverse page of 1st check Bill of Entry as is "In the presence of CHA M/s Vinesh Cargo Servise opened and examined 100% goods and found that 14 bales out of 56 are found to contain worn clothing instead of rags, whereas the party has declared the goods as mixed rags. Worn clothing is classified under CTH 6309000 and a restricted item. The goods can be cleared after adjudication by the competent authority after deciding the value of the goods. Categorization of goods can be ascertained after thorough examination."

5. Accordingly detailed examination was conducted on 15.06.2015 in presence of panchas and other witnesses under proper panchnama. It resulted in recovery of 19308 kgs of mutilated mixed rags and 6436 kgs of worn clothings of different types i.e.pant, coat etc.

6. Further Dhruv Garg partner of M/s Bharat Industries requested that they waive right to show cause notice, and issue may be considered with leniency while imposing fine and penalty upon them as it was an un-

intentional error, which was caused because of wrong supply by their supplier.

7. Shri Dhruv Garg partner of M/s Bharat Industries, vide letter dated 22.06.2015 submitted that they do not want personal hearing and show cause notice in the matter, and are ready to pay differential duty/fine/penalty as determined by the department. He also requested to adjudicate the case on merit and accepted the enhancement of value as per DRIs Alert/National Import Database (NIDB).

8. Joint Commissioner of Customs decided the case vide his order in original dated 01.07.2015 which read us under:-

> (i) The importer has mis-declared 6436 kgs of worn clothing as mutilated woollen rags valued at US$0.050 per kg (as per invoice) in order to evade Customs duty amounting to Rs.86,692/- and hence the same appear to be liable to confiscation under section 111(m) of the Customs Act, 1962.
>
> (ii) The importer has mis-declared the value of mutilated woollen rags to evade Customs duty by declaring a value of @US$ 0.05 per kgs which are re-determined @US$ 0.34 per kgs. Accordingly the mixed woollen rags appear liable to confiscation under section 111(d) & 111(m) of the Customs Act, 1962.
>
> (iii) Imported goods (worn clothing) which are restricted in nature have been imported by him without a valid import license and hence, imported goods appear to be liable to confiscation under section 111(d) of the Customs Act, 1962.
>
> (iv) For his act of omission and commission which rendered the impugned goods liable to confiscation, the importer have also become liable for penal action under section 112(a)(i) of the Customs Act, 1962.

And further ordered:-

> (i) I reject the declared value of the container amounting to Rs.84,180/- of the offended goods i.e. mutilated mixed raged and worn clothing/worn articles imported vide Bill of Entry No.9511181 dated 09.06.2015 under section 14 of the Customs Act, 1962 read with the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
>
> (ii) I order for assessment of above said offending goods on re-determined assessable value Rs.10,18,574/- in respect of the Bill of Entry No. 9511181 dated 09.06.2015 under section 14 of the Customs Act, 1962 read with Rule 9 of CVR, 2007.
>
> (iii) I confiscate the offending goods i.e. worn clothing /worn articles and mutilated mixed woollen rags valued at Rs.10,08,489/- (CIF) under section 111(d) & 111(m) of the Customs Act, 1962. However, I give the importer an option to redeem the goods on payment of Redemption fine of Rs.2,52,000/- under section 125 of the Customs Act, 1962.

(iv) I impose penalty of Rs.1,00,000/- under section 112(a)(i) of the Customs Act, 1962 on the importer M/s Bharat Industries.

9. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to dismiss their appeal. Being further aggrieved, the appellant is before this Tribunal.

10. Ld. Counsel urges that, Revenue has adopted proposed rates for valuation, as per letter of DRI dated 6.1.2009, which is by guess work and assumption. However, the appellant in order to minimise demurrage on the consignment, paid differential duty as demanded and took delivery. In this view of the matter, imposition of redemption fine and penalty is not justified, and it is on the higher side. As admitted, the consignment was found mainly of rags, though some part of the consignment was found to be of worn clothing, which was not ordered by the appellant importer. However, on being so proposed by shipper, the appellant offered to take the delivery on payment of differential duty, without disputing the valuation being adopted by the Revenue. Further, it is stated that there is no deliberate mis-declaration on the part of the appellant. Bill of entry was filed based on the bill of lading, wherein it is mentioned that the container contains of 56 compressed bales of rags and having net weight of 25744 kgs. He further states that the definition of rags is vague. Accordingly, the ld. Counsel prays for waiver of redemption fine and penalty, there being no active violation of the law.

11. Opposing the appeal Ld. Authorised Representative points out that contention of the appellant cannot be taken on the face value, that worn clothing was sent by mistake by shipper. Further, the goods were admittedly found to be undervalued. Differential duty, fine and penalty has been rightly imposed. Sofar as the revaluation of rags is concerned, it is pointed out that

the same has been done on the basis of NIDB prices, as mentioned in the aforesaid letter of DRI.

12. Having considered the rival contentions, I find that the goods which are declared for less than Rs.1 lakhs, have been valued more than Rs.10 lakhs, i.e. the value has been increased 10 times approximately. In this view of the matter, it is found that the appellant has already suffered differential duty of Rs.1,18,000/- and also suffered demurrage charges of Rs.2,26,000/- (approximately), including the warehousing charges, as the goods were subject to 100% checking on first check basis after destuffing the container. Accordingly, in the interest of justice, redemption fine of Rs.2,50,000/- is reduced to Rs.1,00,000/- and penalty under Section 112 (a)(i) is reduced from Rs.1 lakh to Rs.25,000/-. Thus, the appeal is allowed in part. The appellant is entitled to consequential benefit.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Ckp.