

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

CUSTOMS APPEAL No. 51028 of 2020 [DB]

(Arising out of Order in Appeal No. CC(A)/CUS/D-II/ICD/TKD/Exp/239/2020-21 dated 25.06.2020 passed by Commissioner of Customs (Appeals), New Delhi)

M/s. S.D. Impex

House No.340, V & PO Burari,
Near Takia Chowk,
Delhi-110084.

...Appellant

Versus

Principal Commissioner of Customs (Export)

New Customs House,
Near IGI Airport,
New Delhi – 110037.

....Respondent

APPEARANCE:

Mr. Vaibhav Singh, Advocate for the appellant

Mr. Manish Kumar Chawda, Authorized Representative for the Respondent

CORAM :

HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MR.P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/ Decision: **06/07/2023**

FINAL ORDER No. 50985/2023

DR.RACHNA GUPTA

Present is an appeal against the order in appeal No. CC(A)/CUS/ D-II/ ICD/ TKD/ Exp/ 239/ 2020-21 dated 25.06.2020. The facts in brief are as follows:-

The goods were examined twice on 02.08.2017 and on 04.05.2017 and the same were found to be thermal paper in rolls of 3 types (CTH 48101390) as different from declared stocklot of coated/uncoated paper rolls of mix sizes and mix GSM at value of Rs.6,49,256/- in Bill of entry No.8710199, dated 28.02.2017. The

said value is rejected under Rule 12 of the Customs Valuation Rules, 2007 (CVR) and the same is re-determined as Rs.18,55,986/- under Rule 5 of CVR read with section 14 of the Customs Act, 1962 vide O-I-O No.97/2017 dated 12.06.2017 without issuing the Show Cause Notice as appellant requested for the waiver. Penalty of Rs.80,000/- is imposed on the importer under section 112 (a) of the Customs Act, 1962 and penalty of Rs.50,000/- is imposed on the importer under section 114AA of the Customs Act, 1962. Appellants had filed a Bill of entry No.8710199 dated 28.02.2017 for clearance of declared goods i.e. 20.55 MTS of stock load coated/ uncoated paper rolls of mix size and mix GSM. Still being aggrieved, appellant is before this Tribunal.

2. We have heard Shri Vaibhav Singh, Id. Counsel for the appellant and Shri Manish Kumar Chawda, Authorised Representative for the Department.

3. Ld. Counsel for the appellant has submitted the following facts:-

That the Additional Commissioner of Customs, vide his order dated 12.06.2017 passed the order which reads as under:-

(i) The declared value of Rs.6,49,256/- declared in Bill of entry No.8710199, dated 28.02.2017 is rejected under Rule 12 of the CVR, 2007 and the same is re- determined as Rs.18,55,986/- under Rule 5 of the CVR, 2007 read with section 14 of the Customs Act, 1962.

(ii) I confirm the duty of Rs.5,46,421/- on the impugned goods covered under Bill of Entry No.8710199 dated 28.02.2017 and order that impugned Bill of Entry may be re-assessed accordingly.

(iii) The impugned goods having re-determined value of Rs.18,55,986/- are confiscated under section 111(m) of the Customs Act, 1962. However, in terms of section 125(1) of the Customs Act, 1962, I give option to the importer to redeem the goods on payment of Redemption fine of Rs.2,00,000/-.

(iv) Penalty of Rs.80,000/- is imposed on the importer under section 112(a) of the Customs Act, 1962.

(v) Penalty of Rs.50,000/- is imposed on the importer under section 114AA of the Customs Act, 1962

4. Being aggrieved, the appellant preferred an appeal before Hon'ble Commissioner (Appeals) who vide his impugned order in appeal dated 25.06.2020 has rejected the appeal of appellant and upheld the order in original dated 12.06.2017.

5. The impugned order dated 25.06.2020 is alleged to be illegal, void and not sustainable on facts and in the eyes of law as the goods have been declared correctly as per transaction value for clearance of goods i.e. 20.55 MTS of Stock Lot coated /uncoated paper rolls of mix size and mix GSM, in accordance with

the Import invoice received from supplier M/s AM Trading UK Ltd, packing list, Bill of lading and purchase order, which was furnished by the supplier. However the same have been alleged as mis-declaration but only after the examination of the goods. Therefore invocation of Section 114AA and invocation of Section 111 and 112 of Custom Act, 1962 is not in accordance with the law and the duty charged on enhanced value on the basis of the price of prime quality of thermal paper, instead on the basis of stock lot of thermal paper, is not sustainable in the eyes of the law. The Additional Commissioner of Customs is alleged to have arbitrarily loaded the value of impugned goods taking same to be of Prime-grade of thermal paper of Mixed sizes and GSM and not a stock-lot of thermal paper as claimed by the Appellant, and ignoring the submissions of the importer supported by supplier declaration and affirmation by the manufacturer.

6. It is further submitted that the goods are rightly classifiable under CTH 48101390 but the valuation of the goods has been wrongly done by the adjudicating authority on the basis of NIDB data pertaining to similar goods i.e. Thermal paper of prime-grade which was cleared through ICD-TKD vide BE no.9249687 dated 10.04.2017. The contemporary import value of similar goods was found to be in the average arrange of Rs 80/- to Rs 106/-. The adjudicating authority has not done the valuation of the Stock-lot of thermal paper and held that since the importer had not declared true value of the goods hence the NIDB data of import of similar goods i.e. of prime-grade of thermal paper accessed from

the NIDB data at the same period of time and also same country of origin. Since the valuation of prime grade thermal paper was resorted to the goods in question on the basis of NIDB data the same are not sustainable at all in the eyes of law as the goods in question is stock-lot only. The adjudicating authority should have assessed the goods on the basis of similar value of stock lot of thermal paper and not on the basis of value of the prime-grade thermal-paper. Thus the re-determination of value amounting to Rs 18,55,986/- on the basis of above said valuation based on NIBD data that is at higher side and re-determining the duty Rs 5,46,421/- accordingly is totally unjustified and deserves to be set aside. The Additional Commissioner of Customs has not given any reason at all before resorting to load the value neither, has he given any proof of higher value of any contemporaneous import of similar or identical goods, nor has he given any reason for rejection of the transaction value. Thus, Additional Commissioner has not followed any judicial norms as laid down in Section 14 of the Customs Act, 1962 and principles laid down in the Customs Valuation Rules, 2007.

7. Regarding Redemption fine and penalty, in this regard it is submitted that during the adjudication proceedings demurrage and detention charges have been accrued remarkably and same have not been taken into account into by the department while imposing the fine in the instant case. Therefore it can very well be said conclusively that adjudicating authority has not considered these elements while imposing the redemption fine as envisaged

in section 125 of the Customs Act, 1962. In view of the demurrage and detention charge and otherwise also, redemption fine was not warranted at all however it is once again emphasized that the goods in question are not liable to confiscation and accordingly no fine was leviable. Further the adjudicating authority has imposed penalty under section 112 and 114AA of Customs Act, 1962 which is not sustainable as both the sections can only be invoked when the importer knowingly and willingly acts and such acts render the goods liable to confiscation. As discussed in pre paras it was never in knowledge of the importer that different nature of paper has been supplied by the supplier as they had clearly ordered for coated uncoated paper in nature of stock lot.

8. With these submissions the said impugned order dated 25.06.2020 passed by Commissioner of Customs (Appeals), NCH, New Delhi is prayed to be set aside and the appeal is prayed to be allowed.

9. Per contra Id. D.R. has submitted that there were two issues before the adjudicating authority to be decided i.e.:

- (i) Whether the goods are coated/uncoated paper or thermal paper and,
- (ii) Whether the goods are stock-lot or not.

It is submitted that during investigation the importer had admitted that though they have ordered for coated/uncoated of stock-lot but supplier inadvertently supplied the stock-lot of thermal paper. This was mentioned to be a clear cut mistake on the part of supplier which has been affirmed vide the letter dated 06.03.2017 given by the supplier acknowledging it to be the mistake at the end of mill loader from where the good were loaded. Therefore the adjudicating authority has rightly held that the importer is not contesting rather accepting that the goods under import are thermal paper and not coated/uncoated as declared. Admissions, if not retracted or not proved otherwise, are the best evidence which need no further proof. Admittedly, there is no retraction of appellant's said statement.

10. The goods in question were observed to not to be the stock-lot of thermal paper.

11. It is noted that goods were found to be different from what were declared in Bills of entry and packing list. Accordingly, the declared value could not be accepted and has been rightly rejected under rule 12 of the Customs Valuation Rules, 2007. Since section 112 (a) requires imposition of penalty on any person who in relation to any goods, does or omits to do anything which render such goods liable to confiscation under Section 111. The

imposition of penalty under section 112 (a) is just and proper.

Appeal is accordingly, prayed to be dismissed.

12. Having heard the rival contentions of both the parties, we observe and hold as follows:-

The Appellants have acknowledged and admitted that they had ordered for coated /uncoated stock lot of paper rolls, but the thermal paper was supplied by the exporter due to mistake on the part of loader of the supplier as acknowledged vide letter dated 06.03.2017 but appellant impressed it to be the stock lot. We are of the opinion that due to this acknowledgement the appellant importer is not contesting rather is accepting that the goods under import are thermal paper as different from coated/uncoated stock lot of paper rolls as it was otherwise declared. We further observe that despite acknowledging the same the appellant has contested the valuation on the ground that the Assessing Authority has taken the value of prime grade of thermal paper despite that the consignment was for the stock lot of thermal paper. Resultantly the valuation has still been challenged.

13. We are of the opinion that in the light of the above admission by appellant, the sole burden was on the appellant to prove that the goods found with the impugned Bill of Entry were the stock lot of thermal paper. We find that there is nothing on record to prove the same. We take judicial note of the meaning of stock lot which means something that is sold in bulk by its

weight or quantity with a varying range in quality from top brands to local ones and also from brand new ones to waste material. The stock lots are not supposed to confine to a one particular product. The stock lot sale includes wide variety of goods. We further observe that there is no denial, as also recorded by original adjudicating authority in para 15 of the Order-in-Original, that on physical examination of goods the same were found to be thermal paper rolls only. Admittedly, the value declared in the Bill of Entry relates to coated /un-coated paper stock lot but the actual goods are Roll of thermal paper. Thus, the goods found though was a bulk quantity but there is nothing brought on record that the entire lot consists wide range of quality of thermal paper or that the new and old rolls of thermal paper were found in the consignment. Merely because thermal paper was found to be of different GSM and size, it cannot be called to be the lot of branded and un-branded thermal paper nor it could be called as the lot of new and waste thermal paper. Nor even it can be called as the thermal paper of different brands. The entire onus was of the importer. Thus there seems no infirmity in the redetermination of value and confirmation of additional demand and even while confiscating the goods in question.

14. Thus there is no reason to doubt the observation of the examining authority that the goods on examination were found to be the prime grade thermal paper instead of relying upon the importer who has declared something else and has imported something else. The possibility of letter dated 06.03.2017 from

the supplier cannot be ruled out to be an afterthought. In such circumstances, we are of the opinion that the appellant had all mens rea about the impugned mis-declaration. Hence no infirmity can be attributed to imposition of penalty under both the sections of Customs Act, 1962 (section 112 (a) & section 114AA).

15. In view thereof and in view of the observed admission of the importer, we do not find any infirmity in the order under challenge. Resultantly, the order under challenge is upheld and the appeal in hand is hereby dismissed.

[Pronounced in the open Court]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Anita