CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 30.01.2017

Customs Appeal No. 50036 of 2017 with Cus. CoD No. 50013 of 2017
(Arising out of order in appeal No. BHO-EXCUS-01-APP-114-16-17 dated 02.06..2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service tax, Bhopal).

CC, Indore — Appellant

Vs.

M/s Mittal Appliances Limited — Respondent

Appearance:

Shri K. Poddar, AR for the appellant - Revenue
None for the assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50623 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed alongwith condonation of delay application.

2. List revised. Heard Shri K. Poddar, ld. AR for the Revenue. None appeared on behalf of the respondent –assessee.

3. The delay of two (2) days is condoned for the reasons mentioned in the application.

<u>ON MERIT</u>-

4. Brief facts of the case are that in the instant case, mis-declaration of imported goods has taken place due to inadvertence and human error on the part of the CHA who was instrumental in clearing the goods and filing of the bill of entries in question. This mis-declaration is not attributable to any intention or evasion of duty, on the part of the assessee. However, as and when the mistake was brought to the notice of the assessee they deposited the differential duty alongwith interest. Assessee have no objection regarding appropriation of the said amount of differential duty paid by them alongwith interest. However, penalty was levied of equal amount under Section 114A of the Customs Act, 1962, by the authority concerned which was dropped by the Commissioner (Appeals) for the reasons mentioned in the order. Being aggrieved, the department has filed the present appeal.

5. With this background, we heard Counsel for the Department and perused the material available on record. From the record, it appears that in the instant case, the duty was paid alongwith interest. The mis-declaration was due to mistake which was rectified. The assessee was under the bonafide belief that the goods were rightly classified by their customs broker. Before cancellation of penalty, the Commissioner (Appeals) has relied upon number of case laws which includes ***Shaf Broadcast Pvt. Ltd. vs. Commissioner of Customs (Import) Mumbai- 2007 (207) ELT 554 (Tri. Munbai);*** and in ***Reliance Rasayan Pvt. Ltd. vs. CCE, Ahmedabad-I – 2006 (200) ELT 251 (Tri. Del.)***. In the above mentioned cases, penalty was not warranted in cases, where the mis-declaration under bonafide belief pertaining to classification was the issue.

6. By following the ratio laid-down by the Tribunal in the cases mentioned above, we find no reason to interfere with the impugned order passed by the Commissioner (Appeals).

7. In the result, the appeal filed by the department is dismissed. CoD application also stands disposed of.

(Dictated and pronounced in the open Court).

(Ashok K. Arya) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant