CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 25.01.2017
Date of Pronouncement: 28.2.2017

Appeal No. C/52280/2015-CU[DB]
[Arising out of the Order-in-Appeal No. CC(A)CUS/ICD/255/2015, dated 16.03.2015 passed by the Commissioner of Central Excise, New Delhi]

M/s. Choice International … Appellant

Vs.

C.C.E. New Delhi ... Respondent

Appearance:

Present Shri G.P. Singh, Advocate for the appellant
Present Shri K. Poddar, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER NO. 51975/2017

Per V. Padmanabhan:

The present appeal is directed against the order in appeal dated 16.03.2015 passed by the Commissioner (A) New Delhi. The appellant filed Bill of Entry no. 8454370 dated 09.11.2012 declaring the imported goods as old and used completely pre mutilated mix hosiery rags under CTH 63109040 and declared invoice value of US $ 8482.18 equivalent to Rs.4,62,693/-. When the goods were examined, it was found to contain "old and used worn clothing" instead of the "pre-mutilated rags". The Department found that the pre mutilated rags are classifiable under CTH 63090000 and the import of such goods are restricted in terms of the Foreign Trade Policy 2009-14. Since the appellant did not have import license the original authority ordered confiscation of the same under section 111(d) and (m) of the Customs Act 1962. The goods were allowed for redemption on payment of redemption fine of Rs.6,50,000/-. The value of the goods were reassessed to Rs.18,77,307/- and the customs duty to the extent of Rs.2,70,332/- was demanded. The original adjudicating authority also imposed a penalty of Rs.6,50,000/- under section 112(a) of the Customs Act. When this order was challenged before Commissioner (A) the appellant did not receive any relief. Hence the present appeal.

With the above background, we have heard Shri G.P. Singh, Advocate for the appellant and Shri K. Poddar, DR for the respondent.

2. The submission of the Ld. Counsel is that the value has been enhanced solely on the basis of the DRI letter which is not a valid basis for enhancing of value in terms of Customs Valuation Rules. He further submitted that the appellant has abandoned the goods and are not interested in redeeming the same. He further prayed for waiving the heavy penalty imposed.

3. As against the importer's declaration of old and used completely pre mutilated rags, the goods were found, on examination, to be old and used worn clothing which is a restricted item for import. Since the appellant could not produce any import license, the goods become prohibited goods and are liable to be confiscated under section 111 (d) and (m) of the Customs Act 1962. Accordingly, the confiscation of the goods ordered is upheld.

4. The appellant have already submitted that they are not interested in redeeming the goods and have chosen to abandon the same. Consequently, we do not consider it necessary to discuss the plea of valuation and demand of customs duty. The levy of redemption fine also has become immaterial. The appellant has submitted that the penalty imposed is too stiff. They have submitted that they were not

aware of the actual nature of the goods as they had ordered only pre mutilated rags. However, the supplier has wrongly supplied used worn clothing. Accordingly they have submitted that the mis-declaration was not deliberate and a lenient view may be taken.

We have considered the above submission of the importer. In the facts and circumstances of the case, since the mis-declaration was made but not deliberate, so we take the view that the penalty imposed merits reduction from Rs.6.5 lakhs to Rs.3 lakhs under Section 112(a).

5. In view of the above discussion, the impugned order is upheld but for the reduction in penalty as above.

[Pronounced in the open court on 28.02.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu