IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:08.05.2017

Customs Appeal No.51368/2014-SM

[Arising out of Order-in-Appeal No.CC(A)/Cus/644/2013 dated 26.11.2013 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

CC, New Delhi Appellant

Vs.

Akasaki Technology Pvt. Ltd. Respondent

Appearance

Rep. by Shri K. Poddar, DR for the appellant.
Rep. by none for the respondent.

Coram: Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53286/2017

Per B. Ravichandran:

The Revenue is in appeal against order dated 26.11.2013 of Commissioner (Appeals), New Customs House, New Delhi. The brief facts of the case are that the respondent filed a bill of entry on 17.01.2013 for clearance of imported items. The Customs Authorities, on examination of the cargo, found that the consignment contained goods of reputed brands and the goods were mis-declared in description as well as in value. After due inquiry, the case was adjudicated. The Original Authority held that the branded goods worth Rs.33,63,458/- found to be counterfeit and accordingly cannot be allowed for commercial trade. He absolutely confiscated the said items. On other items, he re-assessed the value at Rs.1,10,62,837/- and ordered them to be confiscated in terms of Section 111(m) of Customs Act, 1962. However, the importer was given an option to redeem the said goods on payment of fine of Rs.15 lakhs in terms of Section 125 of the Act. The importing company was imposed with a penalty of Rs.6 lakhs under Section 112(a) of the Customs Act, 1962 and two directors of the importing company were imposed with a penalty of Rs.2 lakh each under Section 112(b) of Customs Act, 1962. On appeal, by the impugned order, the Commissioner (Appeals) upheld the order of the lower authority except with reference to redemption fine and penalties. He reduced the redemption fine from Rs.15 lakhs to Rs.5 lakhs and penalty on the importing company from Rs.6 lakhs to Rs.2 lakhs. The penalties on the directors were set aside.

2. Aggrieved by the above order, the Revenue preferred this appeal. Ld. AR elaborated the grounds of appeal. He submitted that the mis-declaration admitted by the importer has been duly dealt within the original order and has been upheld by the impugned order. However, without recording any justification or reason, the impugned order reduced the fine and penalty to 1/3rd of the original amount imposed. The fine and penalty now confirmed against the goods and importer is too meagre to meet the ends of justice, considering the misdeclaration admitted as well as the value of goods involved in the import. Regarding penalties on the directors, ld. AR submitted that the directors are apparently fully aware of the implication of the misdeclaration as evident from their statement given before the Customs Authorities. Both the directors are promoters and the owners of the importing company and are directly benefiting out of misdeclared import. As such, penalties imposed under Section 112(b) is fully justified and has to be upheld.

3. None appeared on behalf of the respondents despite issuance of notice.

4. It is seen that the case was earlier listed before the Division Bench on 15.11.2016, 17.01.2017 and again on 27.02.2017, on that date, the matter was transferred to Single Member Bench and again a notice was issued to the respondent. It is seen that on none of these occasions, the respondent appeared or sent in any representation. As such, noting that already adequate opportunities have been provided, on more than four occasions, the matter is taken up for decision based on appeal records and with the assistance of the ld. AR.

5. I have perused the appeal records and the grounds of appeal by the Revenue.

6. On the issue regarding reduction of redemption fine and the penalty imposed on the importer, I agree with the submissions made by the Revenue. On perusal of the impugned order, I find that the said order upheld the findings of the original order regarding mis-declaration of the imported goods in quantity as well as value. There were counterfeit goods with name of well known brands. The value was also substantially mis-declared. The mis-declared value is only Rs.10,51,137/-, which was enhanced to Rs.1,10,62,837/-. This excluded the value of counterfeit branded goods valued at Rs.33,63,458/-. This revision of value is made basically in terms of revised invoice produced by the importers themselves during the course of examination of the goods. Admittedly, the value of goods (permissible for import) was mis-declared, at the lower side, by 10 times. This shows the seriousness of the offence. A revised value of the permissible goods alone comes to Rs.1,10,62,837/-. The Original Authority imposed a redemption fine of Rs.15 lakhs, which works out to less than 15% of the assessable value. I find such a redemption fine is fair and reasonable in terms of Section 125 of the Customs Act, 1962. The reduction of the

said fine to Rs.5 lakhs by the impugned order is not justified. There is no reason at all recorded for such reduction. The impugned order fails in not justifying the reduction with any cogent reasons. In any case, the redemption fine imposed by the Original Authority, can by no means, be called excessive or arbitrary. Accordingly, I find that the reduction of redemption fine, as ordered by the Commissioner (Appeals) is not legally sustainable or justified. Similarly, there is no reason recorded for reduction in penalty on the importing company, from Rs.6 lakhs to Rs.2 lakhs. Following the same reasons recorded above and considering the magnitude of the offence, I find such reduction is neither justifiable nor legally sustainable.

7. Regarding penalties on the directors, the impugned order records that they acted in their capacity as Directors. There is no individual role in the offence.

8. I have perused the original order. The statements given by the Directors, clearly bring out their knowledge and their long experience in dealing with the similar imported goods. It is also noted that the importing company is a family owned company, where the Directors have a stake. Accordingly, based on the evidences on record, I note that the Directors' action of filing mis-declared documents (with counterfeit branded goods and with $1/10^{th}$ of value) with the customs will attract penal consequences as rightly held by the Original Authority. The knowledge of the Directors is coming from their statement. The reasons recorded by the impugned order for setting aside the penalty is not legally justifiable. The provisions of Section 112(b) is correctly invoked for penalties on these Directors.

9. In view of the above discussion and findings, the final conclusion of the impugned order with reference to reduction of redemption fine and penalty on the importing company as well as non-imposition of penalties on the Directors of the importing company is set aside. The redemption fine and penalties, as imposed in the original order, is restored. The appeal by Revenue is allowed to that extent.

[Order dictated & pronounced in open court]

(B. Ravichandran)
Member (Technical)

Ckp.