IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 7.6.2017

Appeal No. C/51985/2014-SM

(Arising out of Order-in-Appeal No. CC(A)Cus/688-689/2013 dated 26.12.2013 passed by the Commissioner of Customs (Appeals), New Delhi)

DHL Express (I) Pvt. Ltd. Appellant

Vs.

CC, New Delhi Respondent

Appearance

Shri Jayant Kumar, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53837/2017

Per Ashok K. Arya :

The appellant viz. DHL Express (I) Pvt. Ltd. is in appeal against the Order-in-Appeal No. 688-689/2013 dated 26.12.2013 whereunder penalty of Rs. 1 lakh and Rs.20 lakh under Sections 112 and 114AA of the Customs Act have been imposed.

2. The brief facts are that:

(i) The item viz. 'housings' made up of plastic used in electrical industry, which is classified under Customs Tariff Heading 85472000 as insulating fittings of plastics, were imported by the importer viz. M/s Motherson Sumi Systems Ltd. (M/s MSSL) by using the services of the appellant, who operates as courier as well as custom house agent/Custom Broker.

(ii) It is alleged by the department that the appellant mis-declared the subject item as connectors under Customs Tariff Chapter Heading 85365090 claiming benefit of Notification No. 21/2002-Cus which exempts connectors from whole of the basic Customs duty.

(iii) The appellant pleads that in the invoice which accompanied the goods imported described the goods as connectors; that is why they declared them as connectors and classified the same under Customs Tariff Heading 85365090.

(iv) The Revenue's stand is that they are not connectors; they are insulated fittings of plastics correctly classifiable under Customs Tariff Heading 85472000.

(v) The appellant agreed with the classification of the goods under Customs Tariff Heading 85472000 as insulated fittings of plastics (Housing) and the importer M/s MSSL, in whose name the goods were imported, paid the differential duty along with interest.

(vi) The department issue Show Cause Notice dated 3.9.2008 to the appellant as well as the importer, which was adjudicated by the order in original No. 32/2009 dated

8.4.2009 whereunder inter alia differential duty of Rs.3,96,053/- along with interest was confirmed. Penalties of Rs. one lakh was imposed on the importer viz. M/s MSSL and penalties of Rs. 1 lakh and Rs. 20 lakh under Sections 112 and 114AA of Customs Act were imposed on the appellant assessee.

(vii) The appellant went in appeal before Commissioner (Appeals) who sustained the original order.

(viii) The appellant is now in appeal before the Tribunal against the impugned Order-in-Appeal of Commissioner (Appeals).

3. Both sides represented by ld. Counsels, Shri Jayant Kumar for the appellant and Shri K. Poddar, for the Revenue have been heard.

4. After having carefully considered the facts of the case and submissions of both the sides, it appears that the penalty of Rs. 20 lakhs under Section 114AA of the Customs Act is very high, when the differential duty on account of mis-declaration is of Rs.3,96,063/- The appellant along with work of courier is also engaged in clearing the import goods in the capacity of custom broker/CHA. From the facts, it is clear that he omitted to do required due diligence work and committed certain contraventions of Customs law which led to recovery of differential Customs duty of Rs.3,96,063/- along with interest. However, the penalty imposed of Rs.20 lakh under Section 114AA of the Customs Act is disproportionate to the contraventions done by the appellant. Therefore, the said penalty of Rs.20 lakh is reduced to Rs. one lakh only.

5. In the result, the impugned order is modified to above effect and appeal partly allowed in above terms.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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