IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/51290/2016-CU(DB)

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD/704/2015 dated 14.07.2015, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

C.C.E. New Delhi **....Applicants**

Vs.

M/s. Zam Zam Impex Pvt. Ltd. **....Respondent**

Appearance:
Shri R. K. Manjhi, DR for the Appellant
Ms. Prabhjyoti K. Chadha, Advocate for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon’ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 06.04.2017

FINAL ORDER NO. 54770/2017-CU(DB)

Per V. Padmanabhan:

The appeal filed by the Revenue is against the order in appeal no. 704/2015 dated 14.07.2015.

2. The respondent entered certain goods for export and filed shipping bills declaring the goods as readymade garments and meant for Dubai, UAE. Revenue suspected overvaluation and the case was investigated by SIIB. During the course of interrogation of Shri Sabahuddin, Director of the respondent company, he submitted the relevant purchase orders, invoices, bank statements, etc. and admitted that the consignment was overvalued. Subsequently, the respondent applied for withdrawal of consignment. The case was adjudicated by the Additional

Commissioner who allowed withdrawal of the consignment by imposing redemption fine of Rs. 16 lakhs and a penalty of Rs. 4 lakhs under section 114 of the Customs Act 1962. When the order of the adjudicating authority was challenged before the Commissioner (A), he passed the impugned order in which he reduced the redemption fine to Rs. 2.5 lakhs and penalty to Rs.75,000. Aggrieved by this impugned order Revenue has filed the present appeal. Revenue has agitated against the reduction in the redemption fine and penalty and seeks to reinstate the original order passed by the adjudicating authority.

3. With the above background we have heard Shri R. K. Manjhi, DR for the Appellant and Ms. Prabhjyoti K. Chadha, Advocate for the Respondent.

4. The Ld. DR submitted that the consignment was heavily over valued and the same has been admitted by the Director during his interrogation. In the light of the same order of confiscation is to be upheld and redemption fine imposed by the original authority is justified.

5. The Ld. Counsel for the respondent has submitted that the value has been appraised without any basis. No market survey has been conducted to arrive at the correct value of the export consignment. Consequently, they prayed that the impugned order may be upheld.

6. Heard both sides and perused the records.

7. Eight shipping bills have been filed by the respondent after entering goods for exports described as readymade garments.

Revenue suspected that the export consignment was overvalued. During the course of investigation the Director of the respondent submitted the relevant purchase orders, invoice, etc. and admitted that the goods have been over valued with a view to realizing extra amount by way of drawback claim. From the records we find that even though, the appellant presently is contesting the value determined by Revenue without any market enquiry, we find that the value has been determined on the basis of the documents submitted by the Director of the respondent. Further, we also note that the main thrust of the argument raised by the respondent was not on value but on the quantum of fine and penalty ordered after confiscation of the impugned export goods. Consequently, we find no reason to interfere with the value as determined by the adjudicating authority.

8. The Commissioner (A) in the impugned order has reduced the redemption fine from Rs. 16 lakhs to Rs.2.5 lakhs and penalty from Rs.4 lakhs to Rs. 75,000/-. The reasons given by him are:

i) "The value has been determined without adopting objective parameters and without any market enquiry,

ii) The appellant has incurred demurrage, detention and other incidental costs due to detention of goods and,

iii) This is the appellant's first and only offence, I am of the opinion that the appellant has made out a case for reduction of fine and penalty and therefore in view of the totality of circumstances, I reduce the redemption fine to Rs. 2,50,000/- and penalty to Rs.75,000/- as the goods have been allowed to be withdrawn no drawback is payable in this case."

9. After considering the findings of the Commissioner (A) we are in agreement with the same and find no reason to interfere with the impugned order. Hence the same is upheld and Revenue's appeal is rejected.

[Operative part of the Order Pronounced in the Open Court]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu