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

Customs Appeal No. C/156-157/2011-[DB]
[Arising out of Order-In-Appeal No. CC(A)Cus/ICD/20&21/2011 dated 28.01.2011 passed by Commissioner (Appeal) New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

M/s. Lace Gallery Pvt. Ltd. ...Appellant
Narender Rathi, Managing Director

Vs.

Commr. of Customs (ICD) …Respondent
New Delhi

Appearance:
Mrs. Reena Rawal (Advocate) appeared for the Appellant
Mr. A.K. Singh & Govind Dixit (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.19.07.2017

Final Order No. 55388-55389 /2017

Per B. Ravichandran:

These two appeals are against common impugned order dated 31.01.2011 of Commissioner (Appeals), Customs, New Delhi. The appellants imported PVC Sheets and filed bill of entry for clearance on 15.12.2009. Based on certain information that the goods were not properly valued for duty purposes certain inquiries were conducted by the Officers of Customs. During the course of inquiry, statement of Director of the importing company was recorded. The importer admitted that the value of imported goods were not correct and the correct value is much higher than what is declared. Similarly, the freight element also was not properly declared in the bill of entry. Based on details given by the Director of the importing company, the Revenue proceeded to calculate the differential duty on the imported goods covered not only in the present consignment but for the past imports by the appellants. During the course of investigation itself, the appellant waived the requirement of written SCN and also requirement of personal hearing before adjudication. The case was adjudicated by the original authority vide order dated 30.04.2010. He held that the declared value of PVC sheets in the bills of entry filed by the appellant were not correct and based on the details given by the appellants themselves, the differential duty was arrived at Rs. 16,63,649/-. He also ordered for confiscation of seized goods valued at Rs. 25,71,323/- but allowed the redemption on payment of a fine of Rs. 5,00,000/-. The differential duty and the interest paid already was ordered to be appropriated. He imposed penalty of Rs. 17,88,972/- under Section 114A under Customs Act, 1962 and further penalty of Rs. 2,50,000/- on the Managing Director under Section 112 of the Customs Act, 1962.

2. On appeal the Commissioner (Appeals) vide the impugned order upheld the original order except for reduction of redemption fine from Rs. 5 Lakhs to Rs. 3.5 Lakhs.

3. The Ld. Counsel appearing for the appellants submitted that the valuation adopted by the Department is not correct. The Managing Director agreed to the enhancement as suggested by the Department and in the absence of supporting evidence the valuation cannot be held to be sustainable. It is further submitted that the acceptance of higher value is only to facilitate the earlier clearance

of cargo and as such she further submitted that the declared value should be accepted for assessment. Regarding penalty imposed, she submitted that the penalty imposed under Section 114A can be only equal to duty and in the present order even the interest portion is taken into the consideration while calculating the penalty. She also prayed for reduction of fine imposed under Section 125 for release of the goods and for setting aside the penalties imposed on the importer as well as the Managing Director.

4. The Ld. AR submitted that when an inquiry was conducted by the officers, the valuation particulars were provided by the importer. In fact the valuation as well the freight element was based on the details provided by the importer. The importer not only provided the details but paid the differential duty for the current as well as past consignments along with interest. They have also executed provisional release bond along with bank guarantee in terms of the particulars provided by them. They have waived the written SCN and also personal hearing as they are fully aware of the facts of the case. The lower authorities followed the details furnished by the importer and decided the case. The Managing Director even admitted that they will pay the fine and penalty and requested for lenient view. In such circumstances, there is no merit in the present appeals.

5. We have heard both the sides and perused the appeal records.

6. The facts of the case are not in dispute that the goods which are imported were not assessed to proper duty was admitted by the import themselves. Based on the particulars and details given by

the managing director of the importing company, the valuation including freight element was considered by the assessing officer before calculating the differential duty. Now in the present appeal the appellant pleads that the valuation adopted is wrong and is in violation of the Valuation Rules. Since the correct value is only in the knowledge of the importer and is not arrived based on certain materials collected by the Revenue from third party sources, we are not finding any force in the submission of the appellants which is against their own submission made before the lower authorities. In this connection the following portion of the impugned order is relevant.

> "7. The value of the importer goods is the deemed price at which such of like goods are ordinarily sold, or offered for sale. The appellants are dealing with the imported goods; the value of the imported goods, including that of previous imports, as submitted by them to the investigation authority was accepted as the true value. The allegations that the value has been enhanced without ascertaining the same under Rules 4 to 8 of Valuation Rule is, therefore, not acceptable under the circumstances. Further, I find that the contention of the appellants that impugned order is contrary to the principles of natural justice is not based on facts. The Managing Director of the appellants himself requested in his statements that they did not want show case notice and personal hearing. The Director and Managing Director tendered their voluntary statements under section 108 of Customs Act, 1962 on 31.12.2009, 08.01.2010 and 11.01.2010 and there is no evidence on record of their retraction.
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> 8. I find that the value of the imported goods was mis-declared by the appellants. It was not a simple mistake, as submitted by the Director in his statement. The value of imported goods was mis-declared in six Bill of Entries filed between Feb./2009. This clearly shows intention of the appellants to evade duty. Since the declared value was not the true value, the imported goods were rightly liable to confiscation and as the importer attempted to evade duty and defraud revenue, they were rightly liable to penal action under section 114 A and 112 of Customs Act, 1962."

7. We have perused the impugned order and findings as recorded above. We have no reason to interfere with such findings. Accordingly, on merit as well as on imposition of penalties and fine we are in agreement with the impugned order. However, regarding the quantification of penalty under Section 114A, we note that the original authority has considered the interest portion also. We find no support for such calculation. The penalty should be equal to duty only and cannot include interest portion of such duty. Accordingly, the penalty is reduced equal the duty. Except for this modification the appeals are otherwise dismissed.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

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