CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 51236 of 2017 with
Customs/COD/50598/2017

(Arising out of Order-in-Original No. AO-04/2017/Commr/ICD/TKD dated 10.03.2017 passed by the Commissioner of Customs, New Delhi**)**

DATE OF HEARING : 09.08.2017
DATE OF DECISION : 09.08.2017

M/s Monark (I) Pvt. Ltd. …. Appellants
(Rep by Ms. Reena Rawat, Adv.)

VERSUS

CC, New Delhi …. Respondent
(Rep. by Sh. M.R. Sharma, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 55850/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

Heard Ms. Reena Rawat, learned counsel for the assessee-Appellants and Shri S. Nunthek, learned DR for the Revenue. The delay of 34 days is condoned for the reasons mentioned in the COD Application. COD Application is allowed.

2. On the request of both sides, the appeal is also taken up for final disposal.

3. The present appeal is filed by the assessee-Appellants against the Order-in-Original No. AO-04/2017/Commr/ICD/TKD dated 10.03.2017 passed by the Commissioner of Customs, New Delhi.

4. The brief facts of the case are that, in the year 2013 the assessee-Appellants had imported a consignment of "Kitchen Shutters and Kitchen Fillers" from M/s Top Linea S.P.A., Itlay, through indenting agent M/s Edifice Ventures Ltd. wherein declared weight was 62064 kg. However, on examination weight was found to be 74580 kgs. For the excess weight, the Department had re-assessed the goods under Rule 5 of the Customs Valuation Rules, 2007 as per the Circular dated 16.01.2013. Finally, the Department had imposed redemption fine of Rs. 15,00,000/- and penalty of Rs. 5,00,000/- and enhanced the duty for Rs. 11,08,809/-. Against the redemption fine and penalty, the assessee-Appellants have filed the present appeal.

5. Ms. Reena Rawat, learned counsel for the assessee-Appellants, submits that there was no intention of the assessee-Appellants to evade the duty. The mistake was on the part of the supplier and for the purpose she drawn our attention to the letter dated 23.02.2017 written by the supplier wherein it is mentioned that the mistake was inadvertent and in future will not be committed.

6. On the other hand, Shri S. Nunthek, learned DR for the Revenue, has justified the impugned order and submits that there was an attempt on the part of the assessee-Appellants to evade the duty by making a mis-declaration.

7. After hearing both sides and on perusal of the material available on record, it appears that in the instant case the difference of duty was just Rs. 11,08,809/- for which the redemption fine of Rs. 15,00,000/- and penalty of Rs. 5,00,000/- was imposed. In the peculiar facts and circumstances of the case, the same appears to be on higher side. Therefore, we modify the impugned order by reducing the redemption fine to Rs. 8,00,000/- (Rupees eight lacs only) and penalty to Rs. 3,00,000/- (Rupees three lacs only). Thus, the assessee-Appellants will get the partial relief.

8. In the result, the appeal filed by the assessee-Appellants is partly allowed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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