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

COURT NO. III

DATE OF HEARING : 22/08/2017.
DATE OF DECISION : 22/08/2017.

Customs Appeals No. 59767-59768 of 2013

[Arising out of the Order-in-Appeal No. CC (A) CUS/207-208/2013 dated 26/03/2013 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

M/s Pacific International Appellant

Versus

CC, New Delhi (ICD TKD) Respondent

Appearance

None – for the appellant.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 56132-56133/2017 Dated : 22/08/2017

Per. B. Ravichandran :-

These two appeals are on identical issue regarding valuation and penal proceedings with reference to import of used garments. The appellant filed bills of entry for clearance of goods declared as "used and worn un-mutilated and fumigated mix clothing". The goods were examined in the presence of the importer. Used garments require import licence by the Director

General of Foreign Trade as per the Import Policy (para 2.17). As the importer/appellant did not have any valid licence in this regard and also the goods appeared to have been grossly under valued, the matter was taken up for adjudication by the Original Authority. The appellant/importer waived the requirement of issue of written show cause notice and also opportunity to be heard in person, before the decision is taken. They have given a specific letter to the Customs Authorities accepting the value for re-assessment as proposed by the Assessing Authority. Accordingly, the Original Authority passed orders dated 27/12/2012 and 20/02/2013 re-assessing the imported goods with enhanced value and also ordering confiscation of the said goods with the permission to redeem on payment of fines under Section 125 of the Customs Act, 1962. The assessable value was fixed on Rs. 16,30,126/- and Rs. 34,25,397/- in respect of two import consignments. Redemption fine of Rs. 4,07,600/- and Rs. 10,27,700/- respectively were fixed for redemption of the goods. Penalties of Rs. 2,44,600/- and Rs. 3,42,600/- respectively were imposed under Section 112 (a) of the Act.

2. On appeal vide the impugned orders while upholding the re-assessment of value, the Commissioner (Appeals) reduced the redemption fines to Rs. 2,25,000/- and Rs. 4,80,000/- respectively. He also reduced penalties to Rs. 1,45,000/- and Rs. 3,00,000/- respectively.

3. When the appeals are called none appeared on behalf of the appellant in spite of notice. As per appeal records the appeals were listed on many occasions – 05/09/2016, 24/10/2016, 23/11/2016, 14/03/2017, 12/04/2017, 15/05/2017, 19/06/2017, 25/07/2017 and finally today. On most of the occasions none appeared on behalf of the appellant in spite of notices. Accordingly, we take up these appeals for disposal based on appeal records and also after hearing the learned AR for Revenue.

4. Admittedly, the present imports are in violation of import policy prevalent during the material time. As such, importer/appellant is liable for penal action. The goods are liable for confiscation. There can be no legal dispute on this aspect. In the appeal, the appellant submitted that the lower authorities did not examine the valuation of the goods in correct prospective. It is contended that the imported used garments were not correctly valued based on a proper market enquiry. He also submitted that comparison with other consignments cannot be made as the items generally are of different nature. Certain case laws also were cited. It is submitted that due reasons for redemption of transaction value and for enhancement of transaction value has not been recorded by the lower authorities. As such, the appellant prays for setting aside the impugned orders.

5. We note that the goods were examined in detail by the Custom Authorities in the presence of importer/his representative

and after due examination of the items imported and also noting the prevailing import value of similarly placed items during the material time the Original Authority recorded his reasons and enhanced the value. It is relevant to note that the appellant/importer is fully aware of background and the quantum of enhancement and chose to waive the requirement of written show cause notice as well as the opportunity of being heard before a decision is taken by the Original Authority. In the present appeal, they assert summarily, contesting the findings of the lower authorities. The appellant did not offer any material evidence to support his claim that the used garments imported by them are any different from the used garments which were compared as per the standing instructions and prevailing import value during the material time. They were of fully aware of the background of enhancement including the violation of import policy with reference to the import consignments. The import in violation of import policy has been made with full knowledge. The re-assessment ordered by the Original Authority has been made after due examination and we find no reason to interfere with the said findings. In fact, we note that the redemption fines and the penalties imposed on the appellant/importer have been reduced by the First Appellate Authority adequately and, as such, there is no reason to interfere further in the findings recorded by the Commissioner (Appeals). The case laws relied upon by the appellant and also by the Commissioner (Appeals) have been duly examined. We find no sustainable ground in the present appeals to merit consideration. Accordingly, the appeals are dismissed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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