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 : 29/08/2017.
DATE OF DECISION : 19/09/2017.

Customs Appeals No. 50256-50257 of 2017

[Arising out of the Order-in-Original No. 04/2016 dated 28/10/2016 passed by The Principle Commissioner of Customs (Import), New Custom House, New Delhi.]

M/s G.M. Enterprises]
M/s I.G. Cargo Services] Appellants

Versus

CC, New Delhi Respondent

Appearance

Shri R.P. Jindal, Consultant – for the appellants.

S/Shri R.K. Manjhi and A.K. Singh, Authorized Representative (DRs) – for the Respondent.

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

Final Order No. 56587-56588/2017 Dated : 19/09/2017

Per. B. Ravichandran :-

These two appeals are against order dated 28/10/2016 of Principle Commissioner of Customs (Import), New Custom House, New Delhi. M/s G.M. Enterprises, Gurgaon is the main appellant. M/s I.G. Cargo Services, Custom Broker, who processed the import by the main appellant, is the second appellant. The brief facts of the case are that the main appellant through the second appellant filed a bill of entry on 19/09/2016 for clearance of goods imported from China. On the same day, the second appellant filed a request for amendment of the said bill of entry on the ground that goods covered by another invoice dated 16/09/2016 have not been included in the bill of entry. The amendment was allowed and the goods were subjected to detailed examination. On such examination it was revealed that some of the goods declared were found in excess quantity; the description and model/brand of the imported items were different than what was declared. The imported items are mainly branded or unbranded RAM, USB Memory Stick, Micro SD Card, Touch Glass and I-Phones. The declared value was Rs. 42,36,297/- after detailed enquiry, proceedings were initiated against the appellant for mis-declaration of the goods for IPR/BIS violations with reference to imported consignment. The case was adjudicated. The Original Authority held that the goods were mis-declared and there were violations of BIS and IPR regulations apart from under valuation of the goods. Accordingly, the declared value was rejected and the goods were reassessed to Rs. 1,22,02,895/-. Goods valued Rs. 44,39,217/- and Rs. 19,61,100/- were ordered to be confiscated with a permission to redeem on payment of fine of Rs. 10,00,000/- and Rs. 4,00,000/- respectively, under Section 125 of the Customs Act, 1962. Option to re-export the goods was also given to the importer. A penalty of Rs. 4,50,000/- on the main appellant and Rs. 2,00,000/- on the second appellant was imposed in terms of Section 112 (a) of the Customs Act, 1962.

2. The learned Consultant for the appellant submitted that initially there was a mistake while filing the bill of entry as they have not considered the second invoice which covered goods that were also shipped alongwith the first consignment. As soon as they realized the position, CHA (second appellant) filed request for amendment of bill of entry and also first check examination of the goods. They were not fully aware of the complete contents of the imported items and accordingly requested for first examination before assessment of the goods. The learned Consultant pleaded that they have no intention to mis-declare any items. The main appellant is importing these items for the past 10 years from the similar set of suppliers. Earlier they had no problem of such lack of full details on the import consignments. Expecting certain possible mistakes of the consignment they have requested for examination. There is no mis-declaration of value. The redemption fines imposed for re-export of goods are very high. The redemption fines require revision. Accordingly, the main prayer of the learned Consultant is only with reference to reduction of redemption fine and penalty on the main appellant.

3. Regarding the second appellant he submitted that there is no case for imposition of penalty as they have no role in any mis-declaration of the impugned consignment. They were not aware

of nature of goods supplied and it is for the importer to provide full details of the imported goods. Penalty under Section 112 is not imposable on the appellant who bonafidely acted in his capacity as customs broker. They have asked for 100% examination. They have acted promptly to safeguard the Government revenue and amended the bill of entry and simultaneously asking for examination for import consignment before assessment.

4. The learned AR submitted that the Original Authority has examined the issue in great detail. In the present case admittedly neither the importer nor the custom broker is fully aware of the contents of the import consignments, as per their own admission. It is not tenable for the importer/customs broker to proceed to file a bill of entry with details of imported cargo alongwith value when they themselves claimed not to have full particulars of import consignment with them. Asking for first examination itself will not absolve the appellants from penal consequences. The appellants are well aware that these type of electronic goods are subjected to detailed examination to verify the description, IPR violation as well as under valuation. There are standing instructions by the DRI as well as Jurisdictional Commissioners regarding the need for detailed examination of such cargo. Keeping this in view the appellants tried to escape the penal consequences by filing an amendment in the bill of entry. Even after such amendment on physical verification it was found that there are huge variations in the quantum, description and value

of the imported items. As such, the learned AR supported the findings of the Original Authority. He also submitted that considering the gravity of the offence, the redemption fine and the penalties are reasonable and justified.

5. We have heard both the sides and perused the appeal records. It is clear that initially the appellants filed a bill of entry with one invoice and thereafter requested for amendment by adding another invoice of the same date. The description and the quantity of the import consignments were also amended. However, on detailed examination it is noticed that even after amendment there were wide variations between the declared items and the actual import. There were violations of BIS/IPR regulations in respect of certain items. The findings of the Original Authority with reference to mis-declaration are categorical and revealing :-

> "22. The inference that is evident from the examination report and the subsequent correspondence between the Group and the Shed is that there was gross mis-declaration in the quantity of goods as well as their description by the importer. These differences are already brought out in columns 3,4 & 5 of Table C at para 12 above. What is noteworthy is that the differences are quite significant as against the declared quantity of 21,456 RAMs (S. No. 1 and 2 of the Table C), a total quantity of 31,072 (44% more) were actually found. Moreover, they were declared to be unbranded but almost 20% were found to be branded. Likewise, it was declared that there are 2910 USB flash drives of 16 GB capacity in the consignment. During examination, it turned out that it contains 3800 pieces

(excess of 30%) of which only 750 pieces were of 16 GB, the rest being of higher memory capacity of 32 GB and 64 GB respectively. The importer also omitted to declare that all USB flash drives were of San Disk brand. The same was true of Micro SD cards where total quantity was found to be 2098 pieces compared to declared quantity of 1450 pieces. According to the Bill of Entry, they were all of 16 GB capacity. In actual fact, only 50 pieces were of 16 GB capacity and the large balance was either 32 or 64 GB. Lastly, the importer declared that the consignment contains 36 pieces of iPhone7 while the truth was that there were only 15 pieces of this brand and model and remaining 21 pieces were iPhone7 Plus which is a costlier model. Not only are these discrepancies significant they have a direct bearing on the total assessable value of the goods and hence the duty liability which would both the obviously much higher for the quantities and the specifications/ models actually found in the consignment. It is also true that in one case i.e. Touch Glass the actual quantity was found to be less by 53 pieces (1800 against declared quantity of 1853) but this being a small difference and the unit value of the item being quite low compared to the rest of the items, the negative difference is far overshadowed by the excess quantities of costlier goods in the consignment. What is of relevance is also the fact that the examination of the goods was done in the presence of the Customs Broker and neither the importer nor the Customs Broker have denied or refuted the findings of the examination report. As such, the factum of mis-declaration of description (including specifications) and quantity of goods covered by the Bill of Entry even after taking into account the amendments sought and allowed therein stands established".

6. Both the appellants submitted that there is no case for mis-declaration as they themselves were not fully aware of the contends of import consignments. We note such submission is very strange and untenable. By making such submission, the appellants cannot escape the liability for wrong declaration before the Customs Authorities, in the statutory documents. It is expected that a bonafide importer will be aware of the contents of items imported by him. During the course of argument, the learned Consultant was specifically asked that in case the importer was apprehending any mix up of the consignments he should have got the matter verified and confirmed from the exporter. For this, he replied that even the exporter is not fully aware of the contents of the shipped consignments. We find such situation is totally untenable and this cannot be the basis for a claim that the appellants are not liable for any mis-declaration made in the bill of entry. It is also clear that being aware of the standing instructions and the practice followed by Assessing Authorities in respect of such sensitive consignments, the appellants asked for first check examination. This is apparently to avoid the penal consequences that may arise in case the authorities find out discrepancies upon detailed examination of the import cargo. We are not convinced with the submissions of the appellants regarding their bonafide act with reference to the clearance of the present impugned consignments. Accordingly, the charge of mis-declaration against the main appellant will stand.

7. The learned Consultant submitted that the goods have been redeemed and re-exported. He pleaded for reduction of redemption fines imposed by the Original Authority. For this, he submitted that the value adopted by the Original Authority is faulty. We have examined para 23 of the impugned order closely. The Original Authority examined the valuation in respect of each type of items found in the consignment. After detailed examination, he concluded that the assessable value has to be arrived at by applying Customs Valuation Rules, 2007. He accordingly re-determined the value at Rs. 1,22,02,895/-. We note that the Original Authority adopted the applicable valuation provisions either under Rule 4 readwith Rule 11 to arrive at the value of various items. The reasons have been elaborately recorded for each one of the items. On careful consideration of the said analysis, we find no reason to differ with the conclusion. In fact even the appellants indicated that the value of shipment can work out to Rs. 71.37 lakhs instead of Rs. 1.22 crores as decided by the Original Authority. On their own admission it is clear that the value declared in the B.E. is not acceptable in terms of Section 14 of the Customs Act.

8. The redemption fine and penalty is contested by the main appellant as being excessive. They pleaded that since the goods were cleared for re-export there is no profit margin to be wiped out by imposing redemption fine. The prayer is to set aside redemption fine or to reduce the same to a minimum. Reliance

was placed on certain decided cases. We note that for goods valued at Rs. 44.39 lakhs and Rs. 19.61 lakhs redemption fine of Rs. 10 lakhs and Rs. 4 lakhs have been fixed. We note the said redemption fine is on the higher side as per the standards generally adopted in respect of fixing of redemption fine. The Hon'ble Supreme Court in **Stoneman Industries – 2011 – TIOL – 12 – SC – CUS** held that a standard formula cannot be laid for imposition of redemption fine and penalty. In the present case, the goods have been re-exported. The appellant, apparently could not sell these items in domestic market for any profit. Considering the facts of the case, we find the fines could be fixed at Rs. 5 lakhs and Rs. 2 lakhs. The same will meet the ends of justice. The penalty imposed on the main appellant is also accordingly reduced to Rs. 2 lakhs.

9. Regarding the penalty on the second appellant, Customs Broker, we note that facts as brought out in the impugned order make it clear that the appellant/Customs Broker did not advice the importer for due compliance of customs provisions. They have filed documents including the amended B/E which they have reason to belief are not containing full factual particulars. In fact, the items were mis-declared in various parameters. The appellant/Customs Broker's role in this case cannot be considered as part of their routine activity. Hence, we are not inclined to interfere with penalty imposed on the second appellant except for reduction of the same to Rs. 1 lakh keeping in view the reduction considered for fines and penalty on the main appellant.

10. Accordingly, in view of our above findings, the appeals are dismissed except for reduction in fines and penalties as recorded above.

(Order pronounced in open court on 19/09/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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