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 : 09/10/2017.

Customs Appeals No. 50669-50670 of 2017

[Arising out of the Order-in-Original No. 05/PR. COMMR/CUS/ IND/2016 dated 28/12/2016 passed by The Principal Commissioner of Central Excise, Customs & Service Tax, Indore.]

Shri Gaurav Kushwaha] Appellants
M/s Shivam Marketing]

Versus

CCE, Indore Respondent

Appearance

Shri V.K. Puri, Advocate – for the appellant.

Shri Govind Dixit, 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. 57046-57047/2017 Dated : 09/10/2017

Per. B. Ravichandran :-

These two appeals are against common impugned order dated 28/12/2016 passed by Principal Commissioner, Indore. M/s Shivam Marketing (main appellant) filed bill of entry dated 12/02/2015 for clearance of imported items like glass beads, plastic resin and metal cup chain for clearance at ICD, Kheda.

Based on certain information, the officers of DRI detained the goods and subjected the same for detailed examination. Government approved jewellery valuer was called to examine and give his opinion regarding the consignments. On completion of further enquiry, proceedings were initiated against the main appellant and Shri Gaurav Kushwaha, Director of the main appellant to enhance the value of imported goods, to confiscate the goods and to impose penalties under various provisions of Customs Act, 1962. Earlier, pending completion of enquiry the goods were provisionally assessed and released on execution of bond by the importer.

2. The case was adjudicated resulting in the impugned order. The Original Authority held that the value of the goods is to be re-determined at Rs. 2,51,25,568/- and the importer is liable to pay duty of Rs. 70,21,633/-. He ordered appropriation of Rs. 69,48,207/- already paid at the time of provisional assessment. The goods which were earlier seized and released were ordered to be confiscated in terms of the bond executed by the main appellant. A redemption fine of Rs. 10 lakhs was imposed in terms of Section 125 of the Customs Act, 1962. Penalties of Rs. 5 lakhs and Rs. 2 lakhs were imposed on the main appellant and the second appellant under Section 112 (a) of the Customs Act, 1962. A further penalty of Rs. 3 lakhs was imposed on the second appellant under Section 114AA of the Customs Act, 1962.

3. The learned Counsel appearing for both the appellants submitted on the following grounds :-

(i) a case of mis-declaration was made out against the appellants on the basis of some computer print out of unsigned commercial invoice. The said evidence is not admissible in terms of Section 138C of the Customs Act, 1962 ;

(ii) when the appellants received the bill of lading/IGM they have contacted the supplier regarding the discrepancies and for correction in the description of the items. The appellants cannot be held liable for the discrepancy in the bill of lading/IGM. The original invoice with the seal of the supplier was filed with the bill of entry. The description and the value declared in the bill of entry tallied on physical verification and cannot be disputed.

The Revenue relied on the statement of second appellant which was retracted immediately. There is no mis-declaration in the bill of entry and the invoice filed alongwith the bill of entry ;

(iii) the Government approved valuer is not competent to value the present consignment. He is only a jewellery valuer. The valuation report did not mention on what basis the value is recommended. It is not known whether the same is market value or assessable value ;

(iv) there is no under valuation of goods. There is no evidence of any extra payment to the supplier ;

(v) since the goods were declared with proper description and correct value, there is no ground for confiscating the same and imposing penalties on the appellants ;

(vi) the classification of glass chatons is not correct. The Correct classification is only CTH 70181020.

4. The learned AR reiterated the findings of the Original Authority. He submitted that though the description and the value declared in the bill of entry almost tallied with the final finding of the Original Authority, the evidences gathered during investigation in the form of another invoice in the computer indicated that the appellants attempted to mis-declare the description and value of the goods. In fact, there is serious discrepancy in the bill of lading/IGM. This was intentionally corrected in the bill of entry by the appellant in order to avoid penal consequences. The appellants made attempt to mis-declare the items and accordingly the impugned order is correct in its finding.

5. We have heard both the sides and perused the appeal records. In the present case we note that the bill of entry filed by the importer contained description of the goods and quantities which were found to be tallying on physical examination. The case of the Revenue is that upon knowing the DRI action to hold and examined the consignment, the appellant declared the cargo and value correctly. In other words, the document retrieved from the E-mail account of the appellant with gross mis-declaration of description and value of goods would have been filed but for the intervention of the officers of DRI. Accordingly, a view was taken by the Revenue that the invoice which was filed alongwith the bill

of entry was a fabricated one and the invoice which was found in the E-mail account should be considered as invoice for transaction which will establish the attempted mis-declaration of the appellant. We find in this aspect the present case is a peculiar one. The bill of entry which is a statutory document contained the description and value of the goods correctly. The invoice with stamp of the supplier was filed with the said bill of entry. We could not find any substantial evidence to hold that the invoice which is filed alongwith the bill of entry is not genuine or is a forged one. The invoice which is retrieved from the E-mail account of the appellant was never filed with the Department and the same was recovered during investigation. Such material particulars in possession of the appellant in his private capacity and not filed for clearance of any import consignments cannot substantiate a case of mis-declaration.

6. Further, we also note that the provision of Section 138C of the Customs Act relating the admissibility of computer print out as evidence in the proceedings have not been followed in the present case. The charge of mis-declaration against the importer was sought to be supported by the details contained in the bill of lading and IGM. We note that the bill of lading and IGM are not the documents filed by appellant before the Customs Authorities for clearance of imported cargo by them. To hold that there were discrepancies between the bill of entry filed by the appellant and the bill of lading/IGM details and, as such, the appellant is responsible for mis-declaration is not legally sustainable. We

note that the Original Authority has not allowed the cross-examination of Shri T.K. Mohan Das. We also note that at the time of filing bill of entry the appellant sought for first check of detailed examination by the customs before the assessment and clearance of the goods.

7. Based on the facts recorded in the impugned order and the defence submission made by the appellant, we are of the considered view that when the bill of entry declared the products correctly alongwith value with supporting invoice, the charge of mis-declaration cannot be sustained on the basis of certain documents retrieved from the E-mail account of the appellant, which was never used for customs clearance. We are also not in agreement with the reason recorded by the Original Authority on the liability of the appellant with reference to incorrect description of impugned goods in the bill of lading and IGM. The failure of the appellant to get the IGM and bill of lading amended was construed as a mis-declaration by the Original Authority. We note that these two documents were not to be filed by the importer/appellants.

8. Regarding re-determination of declared value, we note that the Original Authority recorded that the value cannot be determined under Rule 4 and 5 of the Customs Valuation Rules, 2007. We note that before proceeding with the re-determination, the Original Authority should reject the transaction value as declared by the importer. A perusal of the impugned order

indicates that the Original Authority only examined the applicability of various valuation rules to the present case. The value declared by the appellant is Rs. 2,45,95,984/-, the value re-determined based on Valuation Certificate of the Government approved valuer is Rs. 2,51,25,568/-. Considering the nature of the goods and possible variation in appraising the case by different persons, we note that there is no case of mis-declaration of value. The duty difference comes to around Rs. 73,000/- only. When considering the total liability of duty being more than Rs. 70 lakhs such difference is mainly attributable to appraisal method and variation in opinion. As such, no legal ground could be substantiated for rejection of declared value.

9. As noted already the whole case is made on the basis that the appellant declared correct description and value before the Customs Authorities while filing bill of entry, in order to avoid possible penal consequences. Even if it is accepted that the appellant had intended to mis-declare the impugned goods to evade duty, what is to be considered is the contends of the bill of entry and the supporting documents statutorily filed by the appellant. Even if the appellant had purported intention of mis-declaration the same has not manifested in their act. No confiscation or penalty can follow on an intend only, without an actual act of violation of the provisions of law.

10. In view of the above discussion and analysis, we find that the impugned order is devoid of merit and the same is set aside. The appeals are allowed.

(Order pronounced in open court on 09/10/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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