IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Customs Appeal No.C/52912/2016-CU [DB]

[Arising out of Order-in-Original No.SRB/COMM/ACE/17/2016 dated 29.09.2016 passed by the Commissioner of Customs, Delhi]

Shri Pramod Kumar **...Appellant**

Vs.

C.C., New Delhi **... Respondent**

Present for the Appellant : Mr.Kamaljeet Singh, Advocate
Present for the Respondent: Mr.Govind Dixit, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing: 28/08/2017
Pronounced on :04/12/2017

FINAL ORDER NO. __58188/2017___

PER: S.K. MOHANTY

Brief facts of the case are that the appellant imported three nos. of Speed Post Parcel at Foreign Post Office (FPO), Kotla, New Delhi. The goods were containing the declaration of "Artificial Gift Item", valued at USD 110. The Customs Officers after examining the goods, found that the parcel contained "unbranded Micro SD Cards” of various storage capacities. Since there was mis-declaration, the Department seized the same on 20.01.2016. A show cause notice dated 20.07.2016 was issued, proposing to confiscate the goods on the ground of mis-declaration and under-valuation of the same. By the impugned order, the ld. Commissioner of Customs, Air Cargo Exports, rejected the value as declared by the appellant and re-determined the assessable value of 1,78,500 Nos. of Micro S.D. Cards at Rs.2,10,71,523/- and also confiscated the goods under Section 111(d) and (m) of the Customs Act, 1962, with the option to redeem the same on payment of redemption fine of Rs.40,00,000/-. Further, the impugned order has also imposed a penalty of Rs.20,00,000/- under Section 112 and 114 AA of the Act.

2. The ld. Advocate appearing for the appellant argued the matter at length on merit. It is submitted that memory cards are classifiable under sub-heading No.85235220 and not under 85235100, as claimed by the Department. It is also submitted that even the memory cards are classifiable under sub-heading No.85235100, as claimed by the Revenue, still the same are covered by the exemption Notification No.24/2005-Cus., dated 01.03.2005, as amended, in respect of the Customs duty leviable thereon. Thus, he submitted that the excess paid Customs Duty should be eligible for refund to the appellant. It is also contended that the overseas supplier of the goods had

made the declaration in the post parcels that the goods contained therein were artificial gift items. Since, the appellant had no knowledge of the mis-declaration of goods, confiscation of the same and imposition of fine and penalty are not justified.

3. The ld. DR for Revenue reiterated the findings of the adjudicating authority. It is submitted that the adjudicating authority after considering the CBEC Circular No. 12/2012 dated 01.05.2012 observed that Micro S.D. Cards are classifiable under CTH No. 85235100. He also stated that since the goods were mis-declared, the appellant is exposed to the penal consequences provided under the statute and accordingly, imposition of redemption fine and penalty in the adjudication order is proper and justified.

4. Heard both sides and perused the case records.

5. In this case, the appellant had classified the imported goods i.e. "unbranded Micro SD Cards" under CTH 85235220, providing for 'Nil' rate of Basic Customs Duty. However, the ld. adjudicating authority had classified the subject goods under CTH 85235100, which attract 10% Basic Customs Duty. For arriving at the classification issue, the ld. adjudicating authority has referred to the CBEC Circular No. 12/2002 dated 01.05.2012. We note that the goods of Tariff Item No. 8523

are exempted from payment of Basic Customs Duty under Notification No. 24/2005-Cus., dated 01.03.2005, as amended. Further, the CBEC vide Circular dated 20.07.2016 has also clarified that the benefit of the said notification is extendable to Micro/Mini SD cards classified under CTH 85235100. Thus, it is apparent that change in classification of subject goods by the Department will not create any additional Basic Customs Duty liability for the appellant. Therefore, the appellant is not liable to pay the Basic Customs Duty on the imported goods, even under the classification made by the Department, which was different than the classification made by it.

6. With regard to mis-declaration of the imported goods in question, the contentions of the appellant are that the declaration regarding the contents in the post parcel as 'artificial gift items' were made by the overseas supplier and the appellant had no knowledge regarding such declaration; and that, it came to know about such incident, only after the officers of DRI seized the consignments. We find that the impugned order at paragraph 25(c) has recorded the submissions of the appellant that it did not mis-declare the goods and also no documents were filed by it before investigation of the matter by the DRI.

7. In this case, the adjudicating authority has rejected the value of imported goods declared by the appellant on the import documents and re-determined the assessable value as Rs.2,10,71,523/-. Further, such goods were confiscated under Section 111(d) and (m) of the Act, with option to the importer-appellant to redeem the same on payment of redemption fine of Rs.40,00,000/- in terms of the provisions of Section 125 of the Act. So far as the issue of confiscation of impugned goods is concerned, we are of the view that the provisions of clause (m) of Section 111 *ibid* is attracted, inasmuch as, the value and declaration of the goods made in the post parcel do not correspond to the actual goods imported by the appellant. Thus, confiscation of goods and imposition of redemption fine in the impugned order is sustainable under the law. However, considering the quantum of redemption fine imposed on the appellant, we are of the view that the same is in the higher side, inasmuch as, the appellant had not made any false declaration with regard to the actual content in the parcel, filed proper documents for assessment of the Bill of Entry, paid applicable duty. Therefore, in the interest of justice and keeping in view of possible benefit of Commercial profit on such import, the quantum of redemption fine is reduced to Rs.20,00,000/-.

8. We note that the impugned order has confiscated the impugned goods and imposed penalties on the ground that the appellant had contravened the provisions of Section 82 of the Act. In case of import of goods by post parcel, a deeming fiction has been created in Section 82 *ibid*, providing that any label or declaration accompanying the goods should be deemed to be an entry for import, for the purpose of the Customs Act. In other words, as per such statutory provision, the proper officer of Customs goes by the declaration of the content of goods in the parcel, declared or labelled. So far as imposition of penalty under Section 112 and 114 AA of the Act is concerned, the same are not dependant on the provisions of deeming fiction under Section 82 of the Act. Since the goods were not accompanied by correct declaration as to the contents, the confiscation and redemption is justifiable. However, the statute mandates that penalty can be imposed for use of false and incorrect material, the authorities have to prove that in fact, the person concerned has deceived the exchequer for his wrongful gain. In this case, the Department has not brought on any evidence to prove appellant's guilt in mis-declaring the goods. Rather, the submissions of the appellant recorded vide paragraph 25 (c) in the impugned order has been completely ignored and brushed aside by the original authority. Thus, in absence of any specific

substantiation regarding the involvement of the appellant in fraudulent activities like mis-declaration in the present case, imposition of penalty, in our considered view, will not stand for the judicial scrutiny. Accordingly, penalty imposed on the appellant is set aside.

9. To sum up, the appeal is disposed of in the following terms:-

(a) The appellant is not liable to pay Basic Customs Duty in terms of Notification No. 24/2005-Cus., dated 01.03.2005, as amended read with CBEC Circular dated 20.07.2016.

(b) Redemption fine is reduced from Rs.40,00,000/- to Rs.20,00,000/-.

(c) Penalties imposed under Section 112 and 114 AA are set aside.

[Pronounced in the open Court on__04/12/2017_]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita