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

Date of Hearing/Order: 6.12.2017

Appeal No. C/51041/2017-SM

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/Export/TKD/197/2017 dated 6.4.2017 passed by the Commissioner of Customs (Appeals), New Delhi)

A.V. Global Corporation Pvt. Ltd. Appellant

Vs.

CC, New Delhi Respondent

Appearance

Shri R.K. Hasija, Advocate - for the appellant

Shri U. Sengraj, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58371/2017

Per S.K. Mohanty :

Imposition of penalty under Section 112(b)(ii) of the Customs Act, 1962 is the subject matter of the present dispute.

2. The brief facts of the case are that M/s IPM India Wholesale Trading Pvt. Ltd. had imported 10 consignments of cigarettes and got the same cleared vide the bill of entry filed before the Inland container depot, TKD. An intelligence was gathered by the officers of DRI that M/s IPM India Wholesale Trading Pvt. Ltd. had short levied and short paid duty of customs on the consignments of cigarettes inasmuch as instead of the correct rate of CVD of 1974/1000 per stick, it had short paid such duty at Rs.1624/1000 per stick. On the basis of such intelligence, the department has proceeded against the

importer and the CHA (the appellant herein) for confirmation of the duty demand and for imposition of penalty. Vide the adjudication order dated 17.12.2013, a penalty of Rs. 1 lakh was imposed on the appellant under Section 112(b)(ii) ibid.

3. The ld. Advocate appearing for the appellant submits that due to error in the EDI system, the new rate of CVD prescribed in the budget was not updated, which has resulted in payment of duty at the old rate. He further submits that the moment, the Customs department pointed out the mistake regarding short payment of duty, the appellant advised its client for payment of the differential amount and accordingly, the differential amount of duty along with interest was deposited before issuance of the show cause notice. Thus, he submits that in absence of any lapses on the part of the appellant in improper importation of goods, penalty cannot be levied against it.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the finding recorded in the impugned order.

5. Heard both sides.

6. I find that the rate of CVD from 1624/1000 per stick was enhanced to 1974/1000 per stick with effect from 28.5.2012, when the Finance Act, 2012 received the accent of the President of India. Since the EDI system in the Customs House was not updated, to capture the enhanced rate of duty, the same has accepted the old

rate for the purpose of assessment. Upon pointing out such mistake, since the importer had paid the differential amount of CVD along with interest, the bona fides of both the importers as well as the CHA were proved that they had no intention to defraud the Government revenue. Further, on perusal of the case records, I do not find any reason being assigned against the appellant in support of imposition of penalty. Thus, in view of the fact that the differential duty along with interest was paid before initiation of the show cause proceedings and such amount was appropriated into the Government account in the adjudication order, penalties cannot be imposed in absence of any specific substantiation by the Revenue with regard to the involvement of the appellant in the fraudulent activity.

7. Therefore, I do not find any merits in the impugned order, so far as it imposed penalty on the appellant. Accordingly, after setting aside the impugned order, I allow the appeal in favour of the appellant.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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