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

Date of Hearing/Order: 18.12.2017

Appeal No. C/50067-50068/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-333 & 334-16-17 dated 22.9.2016 passed by the Commissioner (Appeals), Bhopal)

M/s Commercial Synbags Ltd. Appellant
Shri Virendra Singh Pamecha

Vs.

CCE & ST, Indore Respondent

Appearance

Shri Manish Saharan, Advocate - for the appellant

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

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

Final Order No. 58741-58742/2017

Per S.K. Mohanty :

These appeals are directed against the impugned order dated 22.9.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal.

2. The brief facts of the case are that the appellant M/s Commercial Synbags Ltd. is engaged in the manufacture of Flexible Intermediate Bulk Container (FIBC) and Polypropylene Woven Fabrics (PWF), falling under Chapter sub-Heading 6305300 and 39269080 respectively of the Central Excise Tariff Act, 1985. The appellant company was granted the advance authorisation by the

office of DGFT, Indore for export of PP woven fabrics. On 18.9.2012, the appellant company furnished the bill of export along with other documents for inward of goods viz. PP woven fabrics, declaring the same to be packed in 16 rolls/bundles. For allowing inward of the goods, the departmental officers examined the goods with the documents and found that out of 16 rolls/bundles of PP woven fabrics, only 12 rolls/bundles were of same PP woven fabrics and four bundles of Flexible Intermediate Bulk Container (FIBC). Since, there is mis-declaration of goods, the department proceeded against the appellant for confiscation of goods, confirmation of the Central Excise duty liability and for imposition of penalties. The show cause notice dated 8.3.2013 issued by the department was adjudicated vide order dated 10.6.2014, wherein four bundles/packages of FIBC valued at Rs.1,89,960/- was confiscated under Section 113 of the Customs Act, 1962, with the option to the appellant company to redeem the same on payment of redemption fine of equivalent amount under Section 125 of the Customs Act, 1962. Besides, the adjudication order also confirmed Central Excise duty on the said goods along with interest. Further, penalties were imposed on various persons including the appellants herein. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 22.9.2016, has upheld the penalties imposed against the appellants. The appellant company is not contesting the Central Excise duty demand of Rs. 23,479/- confirmed against it under Section 11A of the Central

Excise Act, 1944. However, the appellant has assailed the impugned order on the ground that the confiscation of FIBC and imposition of redemption fine is not proper and justified. Further, grievance of the appellant is that the penalties cannot be imposed on the appellants under Section 11AC of the Central Excise Act, 1944 and Section 114 of the Customs Act, 1962.

3. Heard both sides and perused the records.

4. I find that the appellant has filed the wrong declaration with regard to the export of goods mentioned in the bill of export inasmuch as against 16 rolls of PP woven fabrics, only 12 rolls of PP woven fabrics and 4 rolls of FIBC were actually loaded for export. Thus, it is the case of mis-declaration of the goods and accordingly, Section 113 of the Customs Act, 1962 is attracted for confiscation of goods and for imposition of redemption fine. However, considering the quantum of the seized finished goods of FIBC, I am of the view that the imposition of redemption fine is in the higher side and accordingly, same should be reduced in the interest of justice. Therefore, the redemption fine of Rs.1,89,960/- imposed under Section 125 of the Act on the appellant company is reduced to Rs. 30,000/-.

5. With regard to the penalty imposed on the appellant company under Section 11AC of the Central Excise Act, 1944, I find that the authorities below have not specifically brought out any evidence to show the mala fides of the appellant in defrauding the government revenue. Since wrong filing of declaration is due to the lapses of the concerned person and is not attributable to any suppression, fraud, collusion etc., I am of the view that the penalty cannot be imposed under Section 11AC of the Act on the appellant company. Accordingly, penalty imposed is set aside.

6. However, I find that the order imposing penalty on the appellants under Section 114 of the Customs Act, 1962 cannot be interfered with at this juncture, for the reason that both the appellants have admitted that the declaration was incorrectly filed in comparison with the goods actually loaded into the vehicle for export. Therefore, the impugned order imposing penalty under Section 114 of the Act against the appellants are proper and justified and accordingly the impugned order, imposing penalty on the appellants under Section 114 ibid sustains.

7. Appeals are disposed of in above terms.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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