IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Customs Appeal No.C/53053/2016 [SM]

[Arising out of Order-in-Appeal No.DLI-CUSTM-TKI-APP- 646 – 16-17 dated 13-07-2016 passed by the Commissioner (Appeals), Customs, New Delhi]

Customs Appeal No.C/53054/2016 [SM]

[Arising out of Order-in-Appeal No.DLI-CUSTM-TKI-APP- 648 – 16-17 dated 12-07-2016 passed by the Commissioner (Appeals), Customs, New Delhi]

Shri Narinder Kumar
Shri Roshan Singh **...Appellants**

Vs.

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

Present for the Appellants : Mr.Jay Kumar, Advocate
Present for the Respondents: Mr.K. Poddar, D.R.

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

Date of Hearing: 13/09/2017
Pronounced on: 10/01/2018

FINAL ORDER NO. 50096-50097/2018

PER: S.K. MOHANTY

These appeals are directed against the impugned orders dated 12.07.2016 and 13.07.2016 passed by the Commissioner of Customs (Appeals), New Delhi.

2. Brief facts of the cases are that the appellant Shri Roshan Singh, Proprietor of M/s. Roshan Singh and Company had imported goods from China covered under Bill of Entry No.8200883 and 8200884 both dated 12.10.2012, declaring

the imported goods as "E Glass off SPEC Chopped Strand Mat (B Grade)". The goods contained in the container were examined by the officers of DRI, who found that fire crackers were contained therein instead of the declared items. Since imports of fire crackers are restricted under Import / Export Policy, the Department seized the same. On the basis of further investigation, the Department initiated show cause proceedings against appellants' alongwith other persons for confiscation of the seized goods and for imposition of penalties. The show cause notice issued by the Department was adjudicated vide order dated 19.03.2014, wherein the fire crackers were absolutely confiscated, under Section 111 (d) (f), (g) (i), (j), (l) and (m) of the Customs Act, 1962. Other seized goods were also confiscated, with the option to redeem the same on payment of redemption fine. Besides, penalties were imposed on various persons including the appellants herein. In case of Shri Roshan Singh, the penalty of Rs.10.00 Lakh was imposed under Section 114 AA of the Act and Rs.20.00 Lakh under Section 112 (a) of the Act. As regards the other appellant Mr. Narinder Kumar, the quantum of penalty under Section 112 (a) was Rs.15.00 Lakh and Rs.20.00 Lakh under Section 114 AA of the Act. In appeal, the ld. Commissioner (Appeals) vide impugned orders has upheld the adjudged penalty confirmed in the adjudication order.

3. The ld. Advocate appearing for the appellants submitted that since the goods were absolutely confiscated and where in

possession of the Department, no benefit was obtained by the appellants in respect of such import and thus, penalties cannot be imposed under Section 112 (a) and 114 AA of the Act. He further submitted that the provisions of Section 114 AA are not applicable in the case of the appellant Shri Narinder Kumar on the ground that he had not made any declaration or signed any document/statement containing any incorrect material particulars.

4. On the other hand, ld.D.R. appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. The fact is not under dispute that the imported goods, in this case, were not only mis-declared but also under-valued by the importer Shri Roshan Singh, Proprietor of M/s. Roshan Singh and Company. Since the import of fire crackers is restricted in terms of the EXIM Policy, confiscation of the same by the Department under Section 111 of the Customs Act is proper and justified. However, considering the fact that the goods were absolutely confiscated and were not released to the appellant Shri Roshan Singh, Proprietor of M/s. Roshan Singh and Co. for his use or sale in the market and the value of the offending goods, I am of the view that penalties imposed under Section 112 (a) and 114 AA can be reduced in the interest of justice. Accordingly, the impugned order, in the

case of Shri Roshan Singh is modified to the extent of reducing the quantum of penalties to Rs.5.00 Lakh and Rs.10.00 Lakh respectively.

7. With regard to imposition of penalty on Shri Narinder Kumar, it is a fact on record that he is not the importer of the subject goods and did not file any Bill of Entry or made any declaration or statement before the authorities, regarding the importation of such goods. Therefore, penalty under Section 114 AA of the Act cannot be levied against him. However, considering the fact that he abetted the importation of the prohibited goods, resulting in their confiscation under Section 111 of the Act, imposition of penalty under Section 112 (a) of the Act is justified. Since, he has not obtained any benefit of the imported fire crackers, which being absolutely confiscated by the Department, the penalty imposed against him under Section 112 (a) can be reduced in the interest of justified. Accordingly, the penalty of Rs.15.00 Lakh imposed on him under Section 112 (a) of the Act is reduced to Rs.10.00 Lakh.

8. Both the appeals are disposed of in above terms.

[Pronounced in the Open Court on **10/01/2018**]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita