CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 25.01.2018

Custom Appeal Nos. 51802 - 51803 of 2017
(Arising out of order in-appeal No. CCA/CUS/DII/ICD/TKD/EXP/851-852/2017 dt. 18.09.2017 passed by the Commissioner of Customs (Appeals), New Delhi).

M/s Falcon India Appellant

Vs.

CC, ICD, Tughlakabad, New Delhi Respondent

Appearance:

Sh. D.S. Nagi, Advocate for the appellant
Sh. R. K. Manjhi, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 50399- 50400/2018

Per: **Justice (Dr.) Satish Chandra**:

Both the appeals have been filed against order in-appeal No. CCA/CUS/DII/ICD/TKD/EXP/851-852/2017 dt. 18.09.2017 passed by the Commissioner of Customs (Appeals), New Delhi.

2. Brief facts of the case are that M/s JMD India has imported the Screw and hardware items from China in the month of April, 2012. The appellant has filed the papers for clearance of the goods packed in the boxes. Later, it was found by the Department that the weight was exceeding what was declared. So, the Department has enhanced the value

and demanded the differential duty from the importer. The department has levied penalty under Section 112(a) and 114AA on the appellant who is the CHA firm. Being aggrieved, the present appeals have been filed by the appellant.

3. With this background, we heard Sh. D.S. Nagi, ld. Advocate for the appellant and Sh. R. K. Manjhi, ld. AR for the Revenue.

4. After hearing both sides and on perusal of record, it appears that what the documents were supplied by M/s JMD India, the appellant has filed bill of entry on the basis of the papers where the number of boxes were matching. There was no discrepancy found in the number of boxes at the time of landing of the goods. The CHA was not aware about the weight of the goods. Only later stage, it was found that the goods are having different weight. The importer has not disclosed the weight of the goods to the CHA. When it is so, then CHA cannot be penalised. Hence, we set aside the impugned order and cancel the penalties.

5. In the result, both the appeals are allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant