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

COURT NO. II

DATE OF HEARING : 01/12/2017.
DATE OF DECISION : 01/12/2017.

Customs Appeal No. 51574 of 2017 (SM)

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/ICD/ PPG/334/2017 dated 22/05/2017 passed by The Commissioner of Customs (Appeals), New Delhi.]

M/s S.C.I. Exports Pvt. Ltd. Appellant

Versus

CCE, PPG, New Delhi Respondent

Appearance

Shri Kumar Vikram, Advocate – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Final Order No. 58782/2017 Dated : 01/12/2017

Per. Anil Choudhary :-

The issue in this appeal is whether under the admitted facts that the appellant imported 7140 numbers of polyester blanket vide bill of entry dated 12th August, 2015 at ICD, Sonepat, as per the bill of entry, the appellant declared the goods as polyester blankets supported by bill of lading No. YSBNF1506503 dated 6th July, 2015 supported by invoice, in container No. DFSU 7736018-

40. The goods were given out of charge after 10% examination by the shed officer on 17th August, 2015. Subsequently, on suspicion the said container given out of charge was not allowed to go out of ICD and was detained and subjected to re-examination which was done on 18th August, 2015 when it was opened for detailed examination by Customs Officer in presence of two independent witnesses and un-declared goods namely 60 pieces of BT-Led Light Bulb Speaker in two cartons and 70 pcs. of handbags/packing bags in one carton were found concealed in the imported consignment alongwith declared goods i.e. polyester blanket.

2. The further investigation by the Customs Officer, the statement of Director of the appellant was recorded wherein he stated that the impugned consignment of the imported was regards the declared goods polyester blankets. Though after examination apart from declared goods, polyester blanket, undeclared goods i.e. the BT-Led Light Bulb Speaker/in parts was found concealed in the imported consignment alongwith declared goods i.e. polyester blanket. They had not placed any order for these undeclared goods. Neither they are claiming the undeclared goods, placed in the container by the supplier, located at Hong Kong. Had they known about the same, would have entered in the bill of entry. Further the goods were of nominal value of about Rs. 36,000/- only against the declared goods valued at Rs. 20,33,073/-. They further, as per facts on record, abandoned the

goods by stating that they have never ordered for the same. Further they waived the requirement of show cause notice.

3. In the order-in-original dated 6th October 2015 it was ordered to confiscate the declared goods 7140 pcs. of blankets valued at Rs. 20,33,073/- as per declaration with option to redeem on redemption fine Rs. 3 lakhs. Further, 70 pcs. of hand bags were ordered/absolutely confiscated. Further, penalty of Rs. 1 lakh was imposed on the appellant/importer.

4. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals) who was pleased to reject the appeal upholding the findings of the Original Authority.

5. Being aggrieved appellant is before the Tribunal. The learned Counsel for the appellant states that they have never ordered for the said items found undeclared. Further, eventually these items were sent by the supplier of the blankets by way of free goods. The said items were nowhere mentioned in the bill of lading and other supporting documents. It has nowhere come on record that the appellant had ordered for the undeclared goods found. Further, the value of the undeclared goods is insignificant and are only Rs. 36,000/- as compared to the value of declared goods being Rs. 20.33 lakhs. Further, it is not the case of Revenue that the appellant could have made a wind fall profit from such small quantity of goods found undeclared. Accordingly, the learned Counsel states that there is no case of mis-declaration suppression of fact on the part of the appellant and,

as such, prays for setting aside the order of confiscation and penalty.

6. The learned AR for Revenue relies on the finding of the impugned order.

7. Having heard the rival contentions, I find that it is an admitted fact that the undeclared goods are very small quantity or by way of sample or by way of gift sent by the foreign supplier in the said container. That appears to be a small item by way of sample or goods in the invoice or bill of lading or another connected documents. Further, it is also admitted fact that these goods are very small in value, less than 5% of the value of the declared goods. Further, I find that it is not the case made out by the Revenue that the appellant have made windfall by importing item found undeclared in the facts of the present case. Under these facts and circumstances, I find that the order of confiscation of the blankets is bad and the same is set aside. So far the confiscation of the undeclared goods is concerned, as the appellant has abandon the same, I uphold the absolute confiscation by the Revenue. Under the facts and circumstances, the penalty imposed on the appellant is reduced to Rs. 5,000/- imposed under Section 112 and 114AA of the Customs Act, 1962.

8. Thus, the appeal is allowed in part. Appellant shall be entitled for consequential benefit in accordance with law.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

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