IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Customs Appeal No. 51772 of 2017

[Arising out of Order-in-Original No. 11/2017 dated 31.8.17 passed by the Commissioner of Customs, New Delhi]

M/s. Ankit Pandey **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri S N Panda, Advocate for the Appellants
Shri R K Majhi, AR for the Respondent

<u>CORAM</u>:

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

Date of Hearing/ Decision: 20.2.2018

<u>FINAL ORDER NO. 50835/2018</u>

<u>Per: Justice (Dr.) Satish Chandra:</u>

The present appeal has been filed against Order-in-Original No. 11/2017 dated 31.8.17.

2. Brief facts of the case are that the appellant is a proprietor of M/s. Kalyan Enterprises who imported consignments from China and filed Bill of Entry declaring the goods as 'Limestone powder'. Upon investigation, it was found to be high value pesticides/

insecticides /fungicides attracting high value of duty. So penalty of Rs.10 lakh was also imposed on Shri Ankit Pandey, proprietor of appellant M/s. Kalyan Enterprises, and Shri Arun Yadav, other noticee. Being aggrieved, Shri Ankit Pandey has filed the present appeal.

3. Shri S N Panda, learned advocate submits that it was China buyer who has only sent the pesticides / insecticides. The appellant imported limestone powder. For the reason he should not be penalized. He draw our attention to the detailed submissions made by the appellant before the lower authorities where it was mentioned that lenient view may be taken as it was first offence of the appellant. He submits that his client Shri Ankit Pandey is innocent and he did the work on behalf of Shri Arun Yadav.

4. Learned Counsel also informed that supplier of goods M/s. China National Chemical Westzhong Co. Ltd. has filed a writ petition before Delhi High Court (WP (C) 2971/2012) where on 17.5.2012 Hon'ble Delhi High Court has allowed the appellant supplier to file a representation before the competent authority, which was rejected by the lower authorities.

5. Shri Majhi, learned Counsel for the Department justified the impugned order and submits that it is Ankit Pandey who has imported the goods, pesticides, Insecticides in their names. Further, he submits that appellant does not deal with limestone powder. The

supplier exclusively deals with the supply of pesticides / insecticides. So, it is wrong to submit that wrong material has been sent.

6. We have heard both the parties at length. From the record, it appears that undoubtedly the appellant has mis-declared the imported goods as limestone powder instead of pesticides/ insecticides/ fungicides which attract higher rate of duty. The appellant was well aware about the contents of the container, because one of the container was already released. The dispute arose when from the second container, samples were taken. Hence, we find that appellant is guilty for making mis-declaration and liable to penal action. However, in the peculiar facts and circumstances, it appears that it is first offence of the appellant and he accepted his guilt before the lower authorities. So, the penalty is looking on higher side.

7. When it is so, we sustain the impugned order but reduce the penalty amount to Rs.6,00,000/-. (Rupees Six lakh only). The appellant will get the relief for the balance.

8. In the result, appeal filed by the appellant is partially allowed.

(dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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