CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 537 of 2011

(Arising out of Order-in-Appeal No. 75-CUS/GZB/2011-12 dated 30.05.2011 passed by the Commissioner of Customs (Appeals), Ghaziabad**)**

DATE OF HEARING : 15.03.2018
DATE OF DECISION : 15.03.2018

M/s Kemilink International …. Appellants
(Rep by Ms. Shreya Dahiya, Adv.)

VERSUS

CC, New Delhi …. Respondent
(Rep. by Sh. R.K. Manjhi, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51060/2018

PER B. RAVICHANDRAN :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 75-CUS/GZB/2011-12 dated 30.05.2011 passed by the Commissioner of Customs (Appeals), Ghaziabad.

2. The brief facts of the case are that, the assessee-Appellants have imported the goods from Malaysia and filed Bill of Entry by declaring the same as 54,000 kgs of "off grade soap

noodles" in three containers. The goods were examined and found to contain different quality of soap noodles along with soaps (branded and unbranded). The total quantity was determined as 55,749 MT. Accordingly, the Revenue made a case against the assessee-Appellants for mis-declaration of goods as well as under-valuation of the sale. Certain market inquiries were conducted and also comparison made with NIDB. Thereafter, assessment was completed by issuing order dated 23.12.2010. The goods were re-assessed to the value of Rs. 34,93,446/- in place of the declared value of Rs. 12,26,673/-. The goods were ordered to be confiscated and permitted to be redeemed on payment of fine and imposition of penalty. On appeal, the impugned order confirmed the original order except for reduction of redemption fine from 6,58,000/- to Rs. 4,50,000/- and penalty from Rs. 2,20,000/- to Rs. 1,50,000/-.

3. We have heard both sides and perused the material available on record. The learned counsel for the assessee-Appellants submitted that the supply by the Malaysian exporter is a mistake. She relied on the correspondence of seller as well as intended buyer of the consignment, to say that the goods reached them by mistake. She also contested the valuation of the goods as the assessee-Appellants themselves imported similar goods in the past and produced evidence of the same which was not considered by the lower authorities. Stating that the market inquiry is faulty and made comparison of different branded soaps from Indonesia

also. She submitted that the enhancement of value by three times is legally not sustainable. She accordingly prayed for setting aside the impugned order.

4. The learned DR submitted that this is a clear case of mis-declaration and the assessee-Appellants cannot escape the liability of penal consequences for such mis-declaration. Correspondence, post import, cannot be considered on the face value. The market inquiries were conducted generally on similar type of products as these are not standard or well known brands.

5. We note that on the first aspect regarding mis-declaration, the facts available on record shows that the product found on physical examination had not tallied with the product as declared in the Bill of Entry. Whatever explanation given by importer cannot mitigate the fact that the goods were, in fact, mis-declared. However, on the valuation, the reasons recorded by the lower authorities on the basis of such findings are not fully convincing. The market inquiries generally compared with the similar goods and the assessee-Appellants claim regarding similar imports in the past and assessment for such import were not examined and commented. We also note that for comparison, it is necessary to have similar quality of products and also from very same country. The goods were cleared and not available for re-examination. However, finding that there is mis-declaration of goods and the assessee-Appellants are liable for penalty and fine,

we are inclined to reduce the redemption fine to Rs. 2,00,000/- (rupees two lacs only) and penalty to Rs. 1,00,000/- (rupees one lac only). Thus, the assessee-Appellants will get the partial relief.

6. In the result, the appeal filed by the assessee-Appellants is disposed of in the above terms.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

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