CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

APPEAL No. C/2427/2010

(Arising out of Order-in-Appeal No. 45/2010 (H-II) Cus, dated 16.07.2010 passed by CCCE&ST (Appeals-II), Hyderabad).

H T Company .. APPELLANT

Vs.

CC, Hyderabad (Customs) .. RESPONDENT

Appearance
Shri T. Jagapathi Rao, Advocate for the Appellant.

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 22.10.2018
Date of Decision: 22.10.2018

FINAL ORDER No. A/31381/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. 45/2010 (H-II) Cus, dated 16.07.2010.

2. Heard both sides and perused the records.

3. Appellants herein had imported the goods and filed bill of entry No. 003336, dated 01.09.2005. On examination, it was found that the container had declared items as well as non declared items. The assessing officer assessed the declared items on the value declared by the appellant and duty was paid, and having imported such items without a license, the goods (i.e. used pentium III, 'B' Grade motor including power cables) were confiscated with an option to redeem the same on payment of redemption fine and penalty was imposed; on the non-declared goods, the adjudicating authority assessed the bill of entry based upon Chartered Engineer's certificate, confiscated the goods with an option to redeem the same on payment of redemption fine and also imposed penalties. Against such an order, an appeal was preferred before the first appellate authority. The first appellate authority, after following due process of law, upheld the Order-in-Original, but reduced the redemption fine and penalty. Aggrieved by such an order, an appeal was preferred to the Tribunal. The Tribunal by its final order No. 125 to 128/2008, dated 19.02.2008, remanded the matter back to the adjudicating authority to reconsider the issue of valuation of declared goods by considering the actual insurance paid and in respect of not declared items, consider the Chartered Engineer's certificate. The Tribunal also directed the adjudicating authority to limit the redemption fine to 10% and penalty at 05% of the re-assessed value in the case of declared items and in the case of non-declared items, redemption fine and

penalty of 10% and 5% was not to be considered. The adjudicating authority in the remand proceedings has confirmed the demands raised on the non-declared items by re-assessing the value and imposing penalty as well as redemption fine but has not re-assessed the value of declared items and has not followed the directions of the Tribunal. The said Order-in-Original No. 16/2009, dated 04.08.2009 was challenged before the first appellate authority only in respect of the findings recorded by the adjudicating authority on non-declared items, as has been recorded by the first appellate authority in Order-in-Appeal No. 65/2009 (H-II)Cus, dated 16.10.2009 (in para No.4). The first appellate authority upheld the Order-in-Original but reduced the redemption fine and penalty imposed. Against this Order-in-Appeal dated 16.10.2009, no appeal has been preferred.

4. Appellants subsequently filed a refund claim for the refund of the amount as paid in excess. They filed the refund claims for the amounts paid in excess, as calculated by them, in respect of declared items also, considering the first order of the Tribunal. Adjudicating authority rejected the refund claim and allowed the refund claim only to the extent on the non declared items. The first appellate authority also upheld the said views of the adjudicating authority in the current impugned order. Appeal of the appellant which is directed against the impugned order in this appeal, is infructuous to the extent of non refund of the amount in respect of declared items inasmuch as, appellant had not challenged the Order-in-Original dated 04.08.2009 to the first appellate authority and subsequent Order-in-

Appeal dated 16.10.2009 wherein both the lower authorities have not re-assessed the value of the declared items. In the absence of any such contest, we find that the impugned order rejecting the refund claim as filed by the appellant is correct and does not require any interference.

5. Appeal stands rejected.

(Dictated and pronounced in open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg