CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. C/524/2009

(Arising out of Order-in-Appeal No.56/2009 (V) CH dt.14.05.2009 passed by CCCE & ST (Appeals), Visakhapatnam)

M/s Sri Balaji Associates
No.13, 1st floor, Kandappa Mudaliyar Street,
Puducherry – 605 001 **......Appellant**

VERSUS

Commissioner of Customs & Service Tax – Visakhapatnam - CUS
4th floor, Customs House, Port Area,
Visakhapatnam, AP – 530 035 **......Respondent**

Appearance

Present for the Appellant: None
Present for the Respondent: Shri N. Bhanu Kiran, Authorized Representative.

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30463/2019

Date of Hearing: 12.04.2019
Date of Decision: 12.04.2019

[Order per: P. VENKATA SUBBA RAO.]

1. This appeal is filed against Order-in-Appeal No. 56/2009 (V) CH dated 14.05.2009.

2. The appellant herein have imported old and used photocopiers and filed a bill of entry for clearance of the same for home consumption. The goods in question were restricted for import during the relevant period in terms of Para 2.17 of Foreign Trade Policy (FTP) 2004-2009 and could be

imported only against a valid license issued by the Directorate General of Foreign Trade. The appellant did not posses any valid license and further there was a suspicion that the goods were under-invoiced. Therefore, the officers of Customs examined the goods 100% in the presence of the importer's representative and a local Chartered Engineer. After completing the examination, Order-in-Original was passed enhancing the value of old and used photocopiers to Rs.18,50,272/-. The goods were confiscated under Sec.111(d) and 111(m) of the Customs Act read with Rule 3(2) and Rule 3(3) of Foreign Trade Development and Regulations Act, 1992 as the goods were imported in violation of Para 2.17 of FTP as applicable to the goods during the relevant period. The appellant were given an opportunity to redeem the goods under Sec.125 of the Customs Act on payment of redemption fine of Rs.6,50,000/-. Further, a penalty of Rs.1,00,000/- was imposed upon the appellant under Sec.112(a) of the Customs Act.

3. Aggrieved, the appellant appealed to the first appellate authority who upheld the order of the lower authority and rejected the appeal. Hence, this appeal on following grounds:

(i) They dispute the loaded value arrived at by the department based on the Chartered Engineer's certificate although they have accepted the same at the time of clearance of the goods.

(ii) The department had not furnished any details of market enquiries made by them even after repeated requests regarding the price arrived at.

(iii) The principles of natural justice have been violated and if market enquiry was held an opportunity must have been given to the appellant to challenge the same.

(iv) No work sheet order has been given by the department to the appellant regarding calculation of the value of goods imported.

(v) Penalty should not have been imposed as a matter of course as has been done by the learned Commissioner in the impugned order.

(vi) The redemption fine of Rs.6,50,000/- and penalty of Rs.1,00,000/- imposed are purely arbitrary and unreasonable. In view of the above, the redemption fine and penalty imposed may be set aside.

4. None appeared on behalf of the appellant despite notice. Records show that the matter has been regularly coming up for hearing and has been adjourned several times.

5. Heard learned departmental representative and perused the records.

6. We have considered the arguments in the appeal and find that when the goods were imported, the value of imported goods were doubted by the Customs authorities and in the presence of the representative of the importer as well as a Chartered Engineer the goods were opened and examined. The value was assessed with the help of the Chartered Engineer. The value so assessed was accepted by the appellant vide their letter dated 16.04.2008 and based on such acceptance the assessment was completed. We, therefore, find no force in the argument of the appellant that a market enquiry should have been conducted and they should have been provided a copy of such market enquiry when they have not disputed the value of the goods at the time of assessment. Insofar as the confiscation of the goods and imposition of redemption fine is concerned, we find that the goods were undisputedly imported in violation of Para 2.17 of FTP without a license.

Therefore, the goods were liable for confiscation under Sec.111 and have been rightly confiscated so. The redemption fine imposed is Rs.6,50,000/- on a total estimated value of Rs.18,50,272/-. It works out to about 33% of the estimated market value. In cases of confiscation, usually, we have been adopting the value of 10%. Accordingly, we find the appellant has a case for reduction of redemption fine to Rs.2,00,000/-. The penalty of Rs.1,00,000/- imposed under Sec.112(a) works out to about 5% of the value of the goods and therefore, we find it requires no interference.

7. In view of the above, the appeal is partly allowed by reducing the redemption fine from Rs.6,50,000/- to Rs.2,00,000/- but otherwise upholding the impugned order.

8. The appeal is disposed of as indicated herein above.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Veda