IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Customs Appeal No. C/299/2009

(Arising out of Order-in-Original No. KOL/CUS/PORT/37/09 dated-31/03/2009 passed by the Commissioner of Customs (Port), Kolkata)

M/s.Engser Limited

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Port), Kolkata

Respondent (s)

Appearance:

Shri N.K. Chowdhury, Advocate for the Appellant (s)
Shri S.K. Naskar, A.C (AR) for the Respondent (s)

CORAM:

HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision :- 01/05/2018

ORDER NO : F/75863/2018

Per Shri V.Padmanabhan

The present appeal is filed against the Order-in-Original No. KOL/CUS/PORT/37/09 dated-31/03/2009 passed by the Commissioner of Customs (Port), Kolkata. The appellant filed bill of entry for clearance of goods described as "H.R. Sheets" (Non Alloy) of 2 to 5 mm thickness. The goods were purchased on High Seas Sale basis from M/s. PEC Limited who had imported the said goods from Canada. During the course of examination of the goods, it was found that the imported goods were not H.R. Sheets of 2-5 mm thickness but were found to be of 25 mm thickness. The Customs Department accordingly took the view that the goods were mis-declared and proceeded to reject the declared unit value of USD 600.00 PMT and reassessed the value to USD 815 (CIF). The differential duty was demanded and the goods were ordered for confiscation for mis-declaration and allowed for redemption on payment of redemption fine and penalty. Aggrieved by the decision, the present appeal has been filed.

2. With this background, we heard Shri N.K. Choudhury, Advocate for the appellant and Shri S.K. Naskar, A.C. (A.R.) for the Department.

3. It is the submission of the Ld. Counsel that the goods were not intentionally mis-declared by them but were purchased on High Seas Sales basis from M/s. PEC Limited who had originally imported the goods. He drew our attention to the finding in the impugned order in which it has been clearly recorded in para 23 of the Order-in-Original that the supplier has accepted their mistake and clarified that the goods were wrongly supplied to the appellant. He further submitted that the value of the goods was enhanced on the basis of NIDB data. Finally, he submitted that the transaction value may be accepted and redemption fine and penalty set aside.

4. On the other hand, the Ld. D.R. for the Revenue justified the impugned order. He submitted that the goods were found to be entirely different from what was declared in the import documents. Accordingly, he justified the confiscated of the goods as well as imposition of the penalty.

5. We have considered the submissions made by both sides and also perused the records. As against the declared goods of H.R. Sheets of 2.5 mm thickness, the goods were found to be of entirely different specification of 25 mm as found during the search on 5/12/2007. Since entirely different goods were found, mis-declaration on the part of the importer is established and hence is liable to be sustained. Consequently, the order of confiscation made under Section 111 (l) as well as (m) of the Customs Act, 1962 by the lower authority is justified and hence upheld.

6. It is the submission of the appellant that there was no intention to mis-declare but the goods were purchased on High Seas Sales basis and the original importer was M/s. PEC Ltd. Further, it has been submitted that the original supplier has admitted to the fact that the goods were wrongly supplied to the appellant and that such goods were meant for supply to others.

7. Keeping in view the facts and circumstances of the case, we are of the view that the redemption fine and penalty is on the higher side. Accordingly, while upholding the re-assessment of value and payment of differential duty, we reduce the redemption fine and penalty by 50%. Thus the appellant will get partial relief.

8. In the result, the appeal filed by the appellant is partly allowed with consequential relief.

(Dictated and pronounced in the open court)

Sd/-	Sd/-
(JUSTICE DR. SATISH CHANDRA)	**(V.PADMANABHAN)**
PRESIDENT	**MEMBER (TECHNICAL)**

k.b/-