IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.C/550/2009

(Arising out of Order-in-Original No.Kol/Cus/Airport/Admn./14/09 dated 31.03.2009 passed by the Commissioner of Customs (AP & ADMN), Kolkata)

Commissioner of Customs (AP & ADMN.), Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s. National Aviation Co. of India Ltd.

Respondent (s)

Appearance:

Shri S.Guha, AC(AR) for the Appellant (s)
Shri Manoj Arora, Advocate for the Respondent (s)

CORAM:
Hon'ble SHRI P.K.CHOUDHARY, Member (Judicial)
Hon'ble SHRI Bijay Kumar, Member (Technical)

Date of Hearing/Decision:- 18.05.2018

ORDER NO.FO/76198/2018

Per Shri P.K.Choudhary

1. Heard both sides and perused the appeal records.

2. We find that the issue in dispute relates to the non-payment of duty on 817.565 KL of imported Aviation Turbine Fuel (ATF) for conversion of their flights from foreign to domestic runs, during the period from October, 2008 to December, 2008 due to the upliftment of the said ATF from different foreign destinations by M/s. National Aviation Company of India Ltd. at NSCBI Airport, Kolkata. It is the case of the Revenue that M/s. National Aviation Company of India Ltd. at NSCBI Airport, Kolkata have brought into India the Air Turbine Fuel which were uplifted from foreign destinations after consuming certain quantity when the aircraft returns from abroad to Kolkata which amounts to import of ATF from such foreign country into India and failed to file such information in the import manifest as required under Section 30 of the Customs Act, 1962. The Adjudicating Authority has confirmed the demand and held the goods liable for confiscation under Section 111(d) & (f) of the Customs Act, 1962, but since the goods were not available for confiscation, he

refrained from imposing any redemption fine. However, penalty of Rs.25.00 lacs was imposed on the respondent under Section 112(a) of the Customs Act, 1962.

3. Revenue has filed this appeal that though the adjudicating authority has held the imported goods liable for confiscation and even though the goods are not available, the same can still be confiscated and redemption fine can be imposed in lieu of such confiscation.

4. We observe that the Notification No.119/2008 dated 31.10.2008 exempts all goods falling under Chapter Heading 27101020 from so much of duty as in excess of the duty mentioned in Entry 77C. Accordingly, M/s. National Aviation Company of India Ltd. are exempt from paying duty in respect of upliftment of ATF from foreign destination for their return journey to Kolkata during the period November, 2008 – December, 2008. In the present case the appeal period is October, 2008 and accordingly the respondent is not covered by the said notification.

5. We observe that there was no proposal for imposing redemption fine in the show cause notice. It has been held in various cases by the Tribunal and the High Courts, that the adjudicating authority cannot travel beyond the scope of show cause notice and accordingly there is no infirmity in the impugned order and the same is hereby sustained.

6. In the result, the appeal is dismissed.

(Operative portion of the order already pronounced in the Open Court)

S/d.
(P.K.Choudhary)
Member (Judicial)

S/d.
(Bijay Kumar)
Member (Technical)

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