CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH : KOLKATA

Customs Appeal No.76462/2017

(Arising out of the Order-in-Original No.KOL/CUS/PORT/20/2017 Dated-18/05/2017 passed by the Commissioner of Customs (Port), Kolkata)

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

M/s. Janvi Impex

...APPELLANT(S)

VERSUS

Commr.of Customs, Kolkata (Port)

...RESPONDENT(S)

APPEARANCE

Sri Hasmukh Kundalia, Advocate &
Arnab Chakraborty, Advocate

FOR APPELLANT(S)

Sri S.K. Naskar, A.C. (A.R.)

FOR THE RESPONDENT(S)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 04/04/2018 **Date of Pronouncement:03/07/2018**

FINAL ORDER NO.: F/76384/2018

Per SHRI P.K. CHOUDHARY

Briefly stated the facts of the case are that vide the impugned order, the Adjudicating Authority has confiscated 78560 pieces of calculators

Under Sections 111 (f) and 111 (g) of the Customs Act, 1962, as the appellant had failed to file the required Bill of Entry. The impugned order further imposed a penalty of Rs.6,00,000/- on the appellant under Section 112 (a) of the Act. Aggrieved by the impugned order, the appellant has preferred this appeal.

2. The Ld. Counsel for the appellant stated that one Mr. R.K. Nayyar, a friend of the appellant, had placed an order with M/s. A.K. International Trading Co. Ltd., Zhejiang, China in the name of the appellant. Mr. R.K. Nayyar had then requested the appellant to clear the goods and it was then that the appellant came to know of the order placed by Mr. Nayyar. The order had been placed for two items, pumps and calculators, in the name of the appellant’s concern M/s. Janvi Impex. The appellant accepted the order and orally conveyed his consent to Mr. Nayyar. However, the appellant soon realised that the order placed is not economically viable and accordingly, told Mr. Nayyar to cancel the order and sell it to another importer. The Ld. Counsel further stated that Mr. Nayyar made persistent requests to the appellant and finally, the appellant reluctantly gave in to Mr. Nayyar’s perseverance. The appellant then realised that the Bill of Lading dated-19.08.2015 reflected only one item, the pumps and there was no mention of calculators. The appellant then informed Mr. Nayyar that he would clear the goods only if the bill of lading is amended to reflect both items and the goods are re-exported at Mr. Nayyar’s cost. Thereafter, the bill of lading was amended and vide letter dated- 13.03.2016, the steamer agent in Kolkata, M/s. Chakiat Shipping Services Pvt. Ltd. requested Kolkata Customs to amend the description of goods in IGM to include Electronic Calculator along with the declared PVC Water Pump.

Subsequently, the Appraiser, Special Investigation Branch issued summons to the appellant with respect to the importation of the impugned goods. The statement of the appellant was recorded on 04.07.2016. Two months after recording the statement of the appellant, the officers of the Special Investigation Branch examined the goods under Panchnama dated 26.09.2016. As per the Panchnama, the officers had received specific intelligence that the import container bearing No. CAIU9619106 and Bill of Lading No. SZXCB15009539 contained mis-declared goods. The goods were then examined and samples of each item were drawn and the goods were re-packed and sealed by the Customs authorities. It is the submission of the Ld. Counsel that since no infirmity was found, the IGM was not amended and hence, the appellant submitted letter dated-27.02.2017 to the department requesting waiver of show cause notice since the goods had already suffered demurrage charges of more than Rs.15 Lakhs.

3. The Ld. A.R. for the Revenue reiterated the findings of the impugned order.

4. Heard both sides and perused the appeal records.

5. On perusal of records, I find that the Commissioner failed to appreciate that in the access of any Bill of Entry which is yet to be filed by the assessee/consignee, there can be no scope for alleged evasion of anti dumping or basic customs duty. No statement or other evidence has been put forth to establish such intent or evasion of duty either. The appellant being no more than a declared consignee in the subject consignment, has also not remitted any payment against the said goods and exercised no rights of ownership thereon either. The appellant is yet to self assess its

duty liabilities vis-à-vis to state as to duty and not made any declaration in respect thereof to the concerned Customs authority at Calcutta. In the premises, appellant cannot be said to have attempted to evade payment of duty as alleged. The Hon'ble Tribunal in the case of Manishakaria@ Manisha Shah Vs. CC (Import), Nhava Sheva, 2014 (301) E.L.T. 415 (Tri.-Mumbai) held that there cannot be any finding on declaration or under valuation if the bill of entry has not been filed by the appellant. Likewise, no penalty under 112 (a) of the Customs Act is imposable upon the appellant either. It is further observed that the request of IGM amendment was placed by the Steamer agent and that the same was prepared and exported by it. Such request was placed against a letter of indemnity issued to it by the shipper through its load port agent in China. The appellant therefore, being no more than a declared consignee of the said goods as under rule in the amendment was concerned to the IGM. It is also well established by precedents that the responsibility for mis-declaration in the IGM is to be fixed by the declarant being Steamer Agent herein and not the consignee of the said goods.

6. Section 30(3) of the Act provides that "If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented". In the present case, the Commissioner by the impugned order has appropriated to attribute fraudulent intention of the consignee, the appellant herein and thereby rejected the amendment of the said IGM.

7. However, it is unfathomable that the desire to ensure that the shipping documents were consistent with each other and fully reconciled with the shipping goods, could be attributed to a fraudulent intention.

Such implication makes 30 (3) of the Act totally redundant. In the event of the amendment being proper, there can be no basis for imposing fine or penalty in terms of Section 111(f), 111(g) or 112 (a) of the Customs Act, 1962.

8. In view of the above discussion, I find that in the absence of finding of a fraudulent intention and the need for adjudication of the application for amendment, the action of the lower authorities in proceeding to confiscate the goods, impose fine and penalty was not warranted. Accordingly, the impugned order is set aside and the appeal allowed with consequential relief to the appellant.

(Pronounced in the Court on 03-07-2009)

Sd/-

(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b./-