IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST ZONAL BENCH AT KOLKATA

APPEAL NO: C/13, 192 & 193/2012

[Arising out of Order-in-Original No: KOL/CUS/AIRPORT/ADMN/10/2011 dated 3rd November 2011, No. KOL/CUS/AIRPORT/ADMN/07/2012 and No. KOL/CUS/AIRPORT/ADMN/26/2012 dated 10th April 2012 passed by the Commissioner of Customs (Airport & Administration), Kolkata.]

Bharat Enterprises
Imperial Ifotrage
Veekay Trading Corporation é ***Appellants***

versus

Commissioner of Customs (Airport & Administration),
Kolkata ***…Respondent***

Appearance:

Shri Ravi Raghavan, Advocate with Shri H Shukla, Chartered Accountant for appellants

Shri AK Das, Special Counsel for respondent

CORAM:

Hon'ble Shri P K Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 16/03/2018
Date of decision: 16/03/2018

ORDER NO: FO/A/76766-76768/2018
Per: C J Mathew

These three appeals of M/s Bharat Enterprises, M/s Veekay Trading Corporation and M/s Imperial Infotrade seek relief from the penalty under section 114 of Customs Act imposed *vide* order-in-original no. KOL/CUS/AIRPORT/ADMN/10/2011 dated 3rd November 2011, no. KOL/CUS/AIRPORT/ ADMN/07/2012 and no. KOL/CUS/AIRPORT/ADMN/26/2012 dated 10th April 2012 of Commissioner of Customs, (Airport & Administration), Kolkata. These impugned orders have found the appellants to be culpable in suppressing material particular pertaining to the goods in the export of óladies midisô with intent to avail unearned entitlement to import ófabricsô and thus defraud the exchequer. Besides visiting penalties of `3,00,00,000, ₹ 8,00,00,000 and ₹ 6,00,00,000, the privileges of import under the DFIA scheme of the Foreign Trade Policy was also deprived.

2. Relying upon the permitted import of ófabricô measuring 4 m^2 per piece of óladies midiô under the Standard Input Output Norms in the Foreign Trade Policy made applicable to claimants under the DFIA scheme, the incorrect declaration of the fabric contained in the export product as 250 GSM, the opinion of the National Institute of Fashion Technology and the Apparel Training & Design Centre whose expertise in matters of textile fabrics is acknowledged and the computation of unduly high wastage or inaccuracy of description as intended for ladies, the adjudicating authority has held that the declaration mandated under section 50 of Customs Act, 1962 was contravened by suppression of description and misdeclaration leading to the confiscability of the export goods under section 113 (d) and

113(i) of Customs Act, 1962 with consequent penalties under section 114 of Customs Act, 1962.

3. Learned Counsel for appellants contends that there was no material evidence for the conclusion of misdeclaration/undue wastage in the impugned order which has relied upon arithmetical calculations that are not validated. According to him, the Standard Input Output Norms do not prescribe the quantity of fabric that should be found in the export product and that, moreover, the appellants are merchant exporters who procured the goods as described from the market and would be unable to certify, or be responsible for, the quantity actually used in the production. It is his further contention that the approval in the shipping bill endorsing the value and the description of the goods has not been countermanded before arriving at the conclusions in the impugned order. Furthermore, it is his contention that the DFIA issued by the licensing authority after due verification has not been cancelled and that the regularity of the issue of the said DFIA cannot be questioned in proceedings under Customs Act, 1962. It is also contended that the norms committee had, only on 24 May 2007, decided that the restriction on wastage should determine the eligibility for DFIA and that the order of the adjudicating authority has rendered a retrospective application that was not contemplated by the competent authority.

4. According to Special Counsel for Revenue, the adjudicating authority has correctly relied upon the conditions in the DFIA scheme requiring a proper declaration and has correctly placed reliance upon the norms contained in the Foreign Trade Policy. With this ascertained misdeclaration, he contends that the impugned order cannot be faulted for confiscation of the goods and imposition of penalties.

5. It is unnecessary for us to state that proceedings under the Customs Act, 1962 are required to be in conformity with the prescriptions in that statute. The adjudicating authorities are competent to recover duty short-paid and erroneous refunds and to confiscate goods that are improperly imported or improperly exported. Our perusal of the Customs Act, 1962 does not provide any enlightenment for the authority to deny the benefits of DFIA sanctioned by the competent authority. There is no doubt that the exemption notification governing the import of inputs claiming entitlement under the DFIA scheme can be denied at the time of import. The records do not indicate that any such imports are the subject of subject to the present impugned proceedings.

6. It is alleged that the appellants had contravened the mandates of section 50 of Customs Act, 1962. From a perusal of the relevant provisions in the order, it appears that there is a prescribed form that is

to be subscribed to by the exporter. There is nothing on record to indicate that the details found to be deficit in the impugned order can be incorporated in the prescribed form. The invoking of the prescriptions in section 50 of Customs Act, 1962 for the purpose of determining confiscability of the export goods must necessarily be related to the entries prescribed for the purposes of assessment and grant of ólet export order.ô The various requirements of declaration under the DFIA scheme, separately for pre-import and post-export, are for compliance with the scheme and cannot be a prescription under Customs Act, 1962 unless specified particularly. The invoking of section 113 (d) would therefore, not appear to be a valid application of the law.

7. Section 113(i) of Customs Act, 1962 is invokable for non-conformity of goods with any material particular declared in the shipping bill. The adjudicating authority relied upon the vast difference between the computed GSM and the declaration in the shipping bill to justify the confiscation. The consequence of false declaration is first manifested in the reappraisal of the value of the export goods. Despite the findings arrived at by the adjudicating authority that the weight/size of the goods does not conform to the measurements that normally fit óladiesô or that the fabric content in the export goods was unduly inadequate, the impugned order is strangely silent on assigning a fresh value to the exported goods. In

the absence of such a revaluation, the findings of the adjudicating authority on the description of the goods, notwithstanding the logical clarity of arithmetical computation, would not sustain. In the absence of a finding on the value of export goods, confiscation under section 113(i) of Customs Act, 1962 would fail.

8. Without the sustenance of the confiscation of the goods, the imposition of penalties is incorrect. For this reason, we set aside the impugned orders and allow the appeals.

(Pronounced in Court)

(P K Choudhary)
Member (Judicial)

(C J Mathew)
Member (Technical)

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