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

REGIONAL BENCH – COURT NO.1

Cus. Misc. Application (COD) No. 76342 of 2018
AND
Cus. Misc. Application No. 76031 of 2019
AND
Cus. S. P. No. 76343 of 2018
AND
Cus. Appeal No. 77494 of 2018

Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/75-77/2018 dated 04.01.2018 passed by the Commissioner of Customs (Appeals), Kolkata.

Commissioner of Customs (Port), Kolkata
15/1, Strand Road,
Kolkata-700001

Appellant (s)

VERSUS

M/s. S. S. Traders
VPO- Parijan Kalan, Vill.
Mehatpur, Jalandhar-
144041, Punjab

Respondent (s)

APPERANCE :

Shri S. Guha, AC (AR) for the Appellant
None for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

ORDER NO. MO/76120-122/2019 & FO/A/75705/2019

Date of Hearing/Decision : 25.06.2019

PER P.K.CHOUDHARY :

The present Miscellaneous Application has been filed by the Appellant for condoning the delay in filing the appeal before the Tribunal.

2. In view of the reasons as explained in the Miscellaneous Application, the delay in filing the appeal is condoned. The Miscellaneous Application (COD) is allowed.

3. When the matter was called, none appeared on behalf of the Respondent. However, we observe that the present issue involved in this appeal, lies in a narrow compass. Accordingly, the appeal is taken up for final hearing today itself with the consent of Ld. AR for the Revenue.

4. The respondent imported used and worn unmutilated and fumigated mix cloth and three Bills of entry were filed covering the consignments of the import. At the time of original assessment, the declared value of the imported goods was enhanced from CIF price of US$ 1.05/1.20 per kg to US$ 1.316 per kg. The original adjudicating authority ordered confiscation of the imported goods for violation of Import Trade Control restrictions and the goods were confiscated under Section 111(d) of the Customs Act, 1962. He also imposed redemption fine under Section 125 of the Act @ 25-30% (approx.) and personal penalty under Section 112(a) of the Act, 15 % (approx).

5. The order passed by the original adjudicating authority was challenged before the Commissioner (Appeals) by the importer. The First Appellate Authority, by passing the impugned order, upheld the order of confiscation and enhancement of value. However, he reduced the redemption fine and penalty imposed to 10% and 5% respectively. Revenue has challenged this order by filing the present appeals with the prayer that the order of the Ld. Commissioner (Appeals) reducing redemption fine and personal penalty, merits review.

6. Heard Shri S. Guha, Ld. AR on behalf of the Revenue. He submitted that the redemption fine and personal penalty merit to be increased in view of the fact that the respondent is a frequent importer of used and worn unmutilated and fumigated mix cloth in violation of ITC Regulations. He also submitted that a high amount of redemption fine and penalty will act as a deterrent for such imports by such unscrupulous persons.

7. After hearing the Ld. AR for the revenue and on perusal of record, we find that the enhancement of value has been ordered by the First Appellate Authority on the basis of concurrence given by the importer for such enhancement. There is no challenge to the order of confiscation, but Revenue is challenging the quantum of redemption fine and penalty, which stand reduced by the Ld. Commissioner (Appeals).

8. On perusal of the impugned order, we note that the Ld. Commissioner (Appeals) has ordered reduction of redemption fine and personal penalty on the basis of ratio laid down by the Three Member Bench of CESTAT, Delhi in the case of Omex International Vs. commissioner of Cusoms, New Delhi reported in 2015 (328) ELT 579(Tri.-Del.). The Three Member Bench has taken the view that redemption fine of 10% and penalty of 5% of the value of the imported goods, would be appropriate in case of import violating Exim Policy Provisions. we find no reason to interfere with the findings of the Ld. Commissioner (Appeals) on the basis of such decision.

9. In the result, the impugned order is upheld and the appeal filed by the Revenue is rejected. Revenue's Stay Petitions are disposed of.

(Dictated and pronounced in the open court.)

(P. K. Choudhary)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)

Pooja