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

Cus.Miscellaneous Application (COD) No.75365 of 2019
&
Cus.Stay Petition No.75366 of 2019
&
Cus.Appeal No.75524 of 2019

(Arising out of Order-in-Appeal No.Kol./Cus/Port/AA/1522-1523/2017 dated 26.10.2017 passed by Commr. of Customs (Appeals), Kolkata)

CC (Port), Kolkata
15/1, Strand Road,
Kolkata 700001.

Applicant

VERSUS

M/s Jatin Impex
Shop No.32, First Floor,
Shivaji Road, Behind Azad Market,
Delhi-110006.

Respondent

Appearance:

Shri S. Guha, A.R. for the Appellant
None for the Respondent
CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

MA/SP ORDER NO.76852-76853/2019
FINAL ORDER NO.76008/2019

DATE OF HEARING : 05.08.2019
DATE OF DECISION : 05.08.2019

PER P.K.CHOUDHARY :

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

2. 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.D.R. for the Revenue.

3. The respondent imported old and used worn clothing and two bills of entry were filed covering the four consignments of the importer. At the time of original assessment, the declared value of the imported goods was enhanced from CIF price of US$ 1.05 - 1.10 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 @ 30% and personal penalty under Section 112 (a) of the Act, varying from 10% to 11%.

4. 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.

5. Heard Shri S. Guha, Ld.D.R. 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 worn and used garments 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.

6. After hearing the ld.D.R. 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).

7. 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 Customs, 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.

8. In the result, the impugned order is upheld and the appeal filed by the Revenue is rejected. Stay Petition also gets disposed off.

(Dictated and pronounced in the open court)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Bijay Kumar)
Member (Technical)

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