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

Customs Appeal No.248 of 2009

(Arising out of Order-in-Original No.08/Cus/CC(P)/WB/2009 dated 06.03.2009 passed by Commr. of Customs (Preventive), Kolkata)

Shri Bikash Saha,
Prop. of M/s Moly Exports, Station Para,
Near Sitala Mandir,
Bethuadahari, Dist.-Nadia,
West Bengal,
Pin-741126

Applicant

VERSUS

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

Respondent

Appearance:

Shri R.N.Bandapadhyay, Consultant for the Appellant
Shri S.K.Naskar, A.R. for the Respondent

CORAM:

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER
HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

FINAL ORDER NO.76159/2019

DATE OF HEARING : 26.08.2019
DATE OF DECISION : 26.08.2019

PER P.ANJANI KUMAR :

The appellants have imported two consignments of ready-made garments and filed Bills of Entry No.868/08 dated 21.07.2008 and 836/08 dated 09.07.2008. The consignments were intercepted by the Officer of Head Quarters P & I Branch; it was found that there was mis-declaration, in the consignments consisting 229 bales, to the extent of 81 bales;81 bales were found to contain full pants and trousers in place of declared payjamas. Accordingly, the Department has seized the materials and issued a show-cause notice to the appellant proposing confiscation and imposition of penalties. Show-cause notice was adjudicated by the Commissioner vide Order-in-Original No.08/Cus/CC(P)/WB/2009 dated 06.03.2009, vide which, Commissioner confiscated the goods totally revaluated Rs.38,09,430 and allowed redemption on payment of fine of Rs.45,00,000; imposed penalty of Rs.41,86,625/- on Shri Bikash Kumar Saha, Proprietor of the Appellant Company under Section 112(b)(ii) of the Customs Act, 1962 and penalty of Rs.1,00,000 0n Shri Bimal Roy, Authorized Employee of CHA Firm.

2. The Learned Counsel for the appellant submits that the importer was not aware of any misdeclaration and has submitted a Fax Message received from their foreign supplier stating that it was a mistake on their part in loading the goods, which was not indented by the Indian Importer. The Learned Counsel submits that the Department has not accepted their submissions and proceeded with the confiscation of the goods and imposition of penalties; Commissioner has attempted to re-value the goods on the basis of report, by the Chairman, Chamber of Textile, Trade & Industry, Kolkata, given at the behest of the Department. Counsel also alleges that the sample sent for testing to CRCL was too small and not at all representative. The Learned Counsel further submits that as there was no misdeclaration on their part, no penalty can be levied on them; the revised value of the goods was arrived in an arbitrary manner and the same should be set aside. Learned Counsel submits that they are willing to take the consignment released at the value declared by them.

3. The Learned Authorised Representative, for the Department, reiterates the findings of the Order-in-Original and submits that the Commissioner has given the detailed reasoning for adopting differential value by passing the impugned order.

4. Heard both sides and perused the records.

5. We find that the appellants have imported 229 bales of Pajamas, Shorts and Head Gears. However, 81 bales consisted of full pants in place of Pajamas. The Learned Counsel has submitted a letter purported to have been sent by Fax from M/s Chandra Export, Kalampur, Bangladesh. The said letter dated 22.07.2008 mentions that due to electricity shut off, the goods were loaded under candle light and by mistake, some old and used garments have loaded. It does not mention that pants were loaded in place of pajamas. After perusing this letter, we find that the reason put forth by the Learned Counsel for the appellant, for importing full pants in place of indented pajamas, is not at all forthcoming from the said letter. The said letter does give any reason for the misdeclaration of 81 bales of cargo. Therefore, it is difficult to believe the submissions of the appellant that they had no Knowledge of the misdeclaration of the cargo. We find that Learned Commissioner has found that the goods are misdeclared; the appellants having filed bill of entry have misdeclared the goods. We find that *mens rea* is not an essential ingredient either for the purposes of confiscation under Section 111 or for levy of penalty under 112(a)of the Customs Act, 1962. Therefore, we hold that the fact or otherwise of the appellant having intention or knowledge has no bearing on confiscation of the goods. To that extent, we find that the impugned order is acceptable. We therefore, uphold that confiscation. We however, hold that the redemption fine should be commensurate with the extent of misdeclaration and the margin of profit.

6. However, we find that the valuation adopted in the impugned order is arbitrary. The Learned Commissioner has not recorded any reason for rejecting the declared value in respect of 148 bales. He proceeded to redetermine the value of all the goods when the misdeclaration was only in respect of 81 bales. Commissioner proceeded to redetermine the entire quantity of goods without giving any reasons for rejecting the value of the goods. The impugned order does not refer to any Valuation Rules and it does not make it clear if the CVR, 2007 have been followed sequentially. Under the circumstances, we find that it is difficult to sustain such un-reasoned order to the extent of value of 148 bales declared by the appellant. We find that the valuation declared by the appellant is to be accepted. However, it is required to redetermine the value of 81 bales in dispute, which were misdeclared.

We find that the issue needs to go back to the adjudicating authority for proper appreciation of the Customs Valuation Rules and to redetermine the value accordingly. We find that the Learned Commissioner has imposed penalty on the appellant keeping in view the revised value of the entire goods, which are partly misdeclared. Such imposition of penalty has no basis of law. Therefore, we are inclined to reduce the penalty, imposable on the appellant, to be equivalent to the applicable duty payable on such redetermination of the value of 81 bales in question. Accordingly, we set aside the impugned order and remand back the same to the adjudicating authority with a direction to accept the declared value in respect of 148 bales and re-determine the value of 81 bales in accordance with law. The penalty imposable on the appellant will be equal to the duty that may be applicable on the 81 bales of garments misdeclared, subject to condition laid down in Section 112 (b) of the Customs Act, 1962. Looking in to the fact that the goods were lying with customs for a long time and have lost substantial value, we restrict the fine, in lieu of confiscation, to Rs.10, 000(Rupees ten thousand only). We direct that so far as practicable, the Learned Commissioner shall pass a suitable order within 12 weeks from the date of receipt of this order.

7. The appeal is disposed off in the above terms.

(Dictated and pronounced in the open court)

Sd/

(P. Anjani Kumar)
Member (Technical)

Sd/

(P. Dinesha)
Member (Judicial)

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