

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Appeal No.77302 of 2019

(Arising out of Order-in-Original No.16/CUS/CC(P)/WB/2019-20 dated 30 October 2019 passed by Principal Commissioner of Customs(Preventive), W.B.)

Shri Bikash Saha, Proprietor

M/s. Bishal Export

(No.35A, Sudhir Bose Road,
P.O.Khiderpore, Kolkata-700023.)

...Appellant

VERSUS

Principal Commissioner of Customs (Preventive), Kolkata

.....Respondent

(Customs House, 3rd Floor, 15/1, Strand Road,
Kolkata-700001.)

WITH

Customs Appeal No.77314 of 2019

(Arising out of Order-in-Original No.15/CUS/CC(P)/WB/2019-20 dated 30 October 2019 passed by Principal Commissioner of Customs(Preventive), W.B.)

Shri Jhunu Dutta, Proprietor

M/s. Dutta Enterprise

(Ojha Mansion, 1st Floor, Hill Cart Road,
Siliguri-734001..)

...Appellant

VERSUS

Principal Commissioner of Customs (Preventive), Kolkata

.....Respondent

(Customs House, 3rd Floor, 15/1, Strand Road,
Kolkata-700001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)

Shri A.K.Singh, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOU DHARY, MEMBER(JUDICIAL)

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

FINAL ORDER NO.76874-76875/2019.

DATE OF HEARING : 25 November 2019
DATE OF DECISION : 12 December 2019

[ORDER PER: P.V.SUBBA RAO]:

Heard both sides and perused the records.

2. The appellants in these cases are importers of readymade garments from Bangladesh. After importing, they have filed Bills of Entry with the Customs authorities at the Petrapol Land Customs Station. The Bills of Entry were assessed and during examination it was found that the appellants had imported goods in excess of what were declared in the Bills of Entry and other documents. The goods imported from Bangladesh are exempted from payment of duty as per the South Asia Free Trade Agreement (SAFTA) by Notification No.99/2011-CUS dated 09.11.2011. The details of the goods which were declared and actually found in respect of M/s.Bishal Exports are as follows:-

Considering 1 US\$ = Rs.69.65					
Sl. No.	Description of Goods/CTH	Quantity in pcs	Declared Value/Pcs.	Enhanced value/Pcs.	Total Value in Rs.
01	Men's trousers Cotton [62034200]	7560	0.80 US\$	1.85 US\$	7560 X 1.85 X 69.65 = Rs.9,74,124.90
02	Trouser kids Cotton [62034200]	7120	0.50 US\$	0.95 US\$	7120 X 0.95 X 69.65 = Rs.4,71,112.60
03	Men's Short Cotton [62034200]	26060 [declared] + 3133 [excess]= 29,193	0.40 US\$	0.73 US\$	29,193x0.73 x 69.65= Rs.14,84,303.49
Grand Total		43,843 Pcs.	Rs.29,29,541 /- (Rounded off)		

3. Similarly the quantity of the goods declared and actually found in respect of M/s.Dutta Enterprises are as follows:-

Considering 1 US\$ = Rs.69.65					
Sl. No.	Description of Goods/CTH	Quantity in pcs	Declared Value/Pcs.	Enhanced value/Pcs.	Total Value in Rs.
01	Men's T Shirt Cotton [61099090]	4559 [declared] + 6240 [excess] = 10799	0.30 US \$	0.82 US \$	8855.18 US\$ = Rs.69.65 X 8855.18 = Rs.6,16,763.29
02	Men's Trouser [62034990]	9165	0.50 US\$	1.85 US\$	46955.25 US \$ = Rs. 69.65 X 16955.25 = Rs.8,99,540.89
03	Short Pant (Mens) [62034990]	15728 [declared] + 1964 [excess] = 17692	0.25 US\$	0.73 US\$	12915.16 US \$ = Rs. 69.65 X 12915.16 = Rs.8,99,540.89
04	Jacket (Mens) [62033990]	2428	0.60 US\$	2.60 US \$	6312.80 us \$ = Rs. 69.65 X 6312.80 = Rs.4,39,686.52
Grand Total		40,084 Pcs.	Rs.31,36,924 / - (Rounded off)		

4. After following due process, the learned adjudicating authority by the impugned orders, has held the entire goods imported by the aforesaid consignments were liable for confiscation and confiscated the same under Section 111 (e) and 111(l) of the Customs Act, 1962. He also gave the appellants an option to redeem the goods on payment of redemption fine under section 125 of the Customs Act. He demanded Customs duty on the entire amount of quantity of goods which were imported along with the appropriate interest. Further, he has imposed penalties under section 112 of the Customs Act. Further he also imposed a penalty upon the Customs broker for not performing his responsibilities under section 117 of the Customs Act, 1962.

5. Aggrieved by the impugned orders, the present appeals have been filed.

6. Learned Counsel for the appellants would argue that the goods which they have imported were covered by the SAFTA Certificate which

they have produced before the learned adjudicating authority. Only a few goods were found to be in excess of what was declared. For instance in respect of M/s.Bishal Exports (Customs Appeal No.77302 of 2019) what was declared was 7560 Trousers, 7120 Kids Trousers and 26060 Men's Shorts. In addition to what was declared, what was found during examination was an excess of 3133 Men's Shorts. Similarly in case of M/s.Dutta Enterprises what was declared in the Bill of Entry and documents was 45519 Men's T-Shirts, 9165 Men's Trousers and 15,728 Men's Shorts and 2428 men's jackets. In addition what was declared, during examination Customs has found there were excess T-Shirts 6240 pieces and shorts 1964 pieces. It is only these excess pieces which were not covered by the SAFTA Certificate which would entitle them to the benefit of exemption Notification. It is only these excess pieces, which have not been declared in the Bills of Entry and other documents.

7. However, the learned adjudicating authority has ordered confiscation of the entire consignment including those goods which have been correctly declared in their Bills of Entry. Further, he has demanded and confirmed Customs duty on the entire consignment completely denying the benefit of exemption even with respect to those goods which are covered by the SAFTA certificate which they have produced.

8. He would submit that these facts are not in dispute. In fact, these are recorded in the impugned orders themselves. He would therefore argue that if at all any action has to be taken it can be taken only in respect of the excess goods. On the remaining goods which conformed to the SAFTA certificate, they are entitled to the benefit of exemption Notification. Such goods which are covered by their declarations are also not liable for confiscation and no redemption fine can be imposed

on those goods. Similarly penalties, if any imposed have to be reckoned only on such quantity of goods as are in excess.

9. He would further argue that the excess quantity which has been discovered during examination by the Customs is a small fraction of the total quantity imported amounting for less than 10% in terms of the total number of pieces. As the excess quantity is very small, the same may also be condoned and the entire confiscation proceedings as well as confirmation of demands may be set aside.

10. In view of the above, he would pray for setting aside the impugned order and allowing their appeals.

11. Per contra, learned Authorized Representative for the department supports the impugned order.

12. We have considered the arguments of both sides and perused the records.

13. It is not in dispute and is evident from the records as well as the impugned order that the appellant had mis-declared the quantity of goods and had imported goods in excess of what was declared in the Bills of Entry and the other documents. Country of origin certificate from Bangladesh (SAFTA certificate) which would entitle them to import goods under an exemption also covered such quantity of the goods as was declared in their Bills of Entry. What is in violation of the Customs Act is only the excess quantity of the goods which have been imported by them without declaring in any of the documents. These goods are also not covered by the SAFTA certificate. As per section 111 of the Customs Act, 1962 several types of goods brought in the place outside India are liable for confiscation. Clause (I) of this section reads as follows:-

“Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this act, or in the case of baggage in the declaration made under section 77.”

Clause (e) of section 111 reads as follows:-

“Any dutiable or prohibited goods found concealed in any manner in any conveyance.”

14. Learned adjudicating authority has found that the goods in question do not conform to the declarations made in the entry made under the Customs Act, i.e. the Bill of Entry and hence held the goods liable for confiscation under section 111(e) and under section 111(l) of the Customs Act, 1962.

15. A plain reading of section 111 (e) and (l) shows that these apply to such goods only which have been concealed and have not been declared and not the entire quantity of goods. In fact section 111(l) is very categorical that it applies to goods found in excess of what have been declared. Therefore, we find that excess goods are liable for confiscation and not the entire consignment imported by the appellant. We therefore find that only the following goods are liable for confiscation:-

(1) Customs Appeal No.77302 of 2019 of M/s.Bishal Exports – 3133 pieces of men's shorts.

(2) Customs Appeal No.77314 of 2019 of M/s.Dutta Enterprises – 6240 pieces of men's T-Shirts and 1964 pieces of men's shorts.

16. We find that the confiscation of the remaining goods is not supported by law and accordingly needs to be set aside and we do so.

17. We also find that the denial of the exemption Notification for the entire quantity of goods when the bulk of the goods are already covered by the SAFTA certificate is not supported by any legal provision. Therefore, the demands need to be set aside to that extent and we do so. The amount of redemption fine imposed by the impugned order as well as the penalties imposed upon the appellants need to be proportionately reduced.

18. In view of the above, we allow the appeals partly upholding the confiscation of the excess quantity of goods found in the consignment over and above what was declared and duty on such quantity of pieces. The remaining part of the demand and the confiscation of the remaining goods is set aside. Consequently the redemption fine as well as penalty upon the appellants needs to be reduced in proportion to the value of the excess goods to the total value of goods.

Appeals are partly allowed and the matters are remanded to the original authority for the limited purpose of calculation of the amount of duty, fine and penalty as above.

(Order pronounced in the open Court on 12 December 2019.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(P.V.SUBBA RAO)
MEMBER (TECHNICAL)