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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75374 of 2020

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/AKR/390/2020 dated 09.07.2020 passed by passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata
(15, Strand Road, Customs House
Kolkata – 700 001.) **...Appellant**

VERSUS

M/s. R.R. Enterprises **.....Respondent**
(H. No.New No.C-48, Khasra No.1420
3rd Floor, Ramesh Nagar,
Delhi – 110 015.)

APPEARANCE

Shri M.P. Toppo, Authorized Representative for the Appellant-Revenue (s)
Shri Mainak Bose & Shakeel Md. Akhter, both Advocates for the Respondents (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 75658/2020

DATE OF HEARING : 13 October 2020
DATE OF DECISION: 13 October 2020 .

Per: P.ANJANI KUMAR:

This is a Revenue appeal; Brief facts of the case are that M/s. R.R. Enterprises, the respondents have imported Run Flat Tyres from Dubai, UAE and filed two Bills of Entry No. 5986859 and 5987532 both dated 07.12.2019. Upon examination of the goods, it was found to be branded radial car tyres and accordingly the said goods were seized by the Custom Authorities. Immediately after the examination of the goods, the respondent contacted the foreign exporter, who admitted that due to *bona fide* error a wrong consignment has been exported to the respondent. Accordingly, the respondent made a representation before the authority concerned for re-exportation of the said goods. Additional Commissioner of Customs (Port), vide Order-in-Original dated 01.06.2020, held that the mis-declaration happened without the knowledge of the importer; goods are liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. He imposed redemption fine of Rs. 10,00,000/- - under Section 125 and penalty of Rs 16,00,000/- under Section 112(a) (i) ibid. The respondent was also given an option to re-export the said goods. On an appeal filed by the respondent, Commissioner (Appeals), vide order dated 09.07.2020, set aside the redemption fine and penalty imposed.

2. Learned Authorised Representative appearing for the department reiterates the findings of the Order in Original and submits that wrongdoing on the part of the foreign exporter cannot be treated as *bona fide* act on the part of the importer; onus lies upon the importer to prove that it is the *bona fide* act and no mala *fide* intention existed. Such conclusions are contrary to the findings of the Additional Commissioner of Customs (Port) in para 23 of the said Order-in-Original dated 01.06.2020; it is pertinent to note that no cross appeal has been filed by the appellant against the said order. He submits that the order passed by Commissioner (Appeals) be set aside and OIO be restored.

3. Learned counsel for the respondents submits that the issue has been decided by the Tribunal and various courts in favour of the respondent. He relies upon the decision of the Hon'ble Supreme Court in Siemens Limited Vs. Collector of Customs and Others reported in 1999 (113) ELT 776 SC and files a compilation of relied upon decisions. He submits that the order passed by Commissioner (Appeals) needs no intervention.

4. Heard both sides through video conferencing and perused the appeal records.

5. On going through the impugned order, it appears that learned Commissioner (A) finds from the facts of the case that the appellant has already submitted documentary evidence before the lower adjudicating authority that there has been an error on the part of the overseas supplier in loading the consignments ordered by the importer. On this basis, learned Commissioner (A) has found that the bonafides of the respondents herein have been established and therefore, no penalty and redemption fine can be imposed in view of ratio of the Tribunal's decision in the case of Impex vs. CC, ICD, TKD, New Delhi: 2016 (332) ELT 835 (Tri. - Del.) which in turn relied upon the following:

(i) Seimens Public Communication Networks Ltd. vs. CC (Airport), Calcutta: 2001 (137) ELT 623 (Tri.-Kolkata)
(ii) Guru Ispat Ltd. vs. CC (Port), Calcutta: 2003 (151) ELT 384 (Tri.Kolkata)
(iii) HCL Coment Systems & Services Ltd. vs. CC, New Delhi: 2003 (158) ELT 349 (Tri.-Del.)

Ongoing through the Order-in-Original, we also find that the lower authority has concluded that though there was mis-declaration of brand and quality of goods imported, there was nothing on record to show that there was a malafide intention on the part of the importers. In fact, immediately after the fact of mis-declaration came to light, the importer conveyed the same to the foreign supplier who has instantly admitted mistake on their part and they were ready to take back the goods. Under such circumstances, we find that the learned Commissioner (A) has rightly held that there was no malafide intention on the part of the importer and as such, imposition of penalty and redemption fine was not warranted.

6. Coming to the issue of imposing redemption fine and permission to re-export simultaneously, learned Commissioner (A) has followed the Tribunal's judgment in the cases of Guru Ispat Ltd. vs. CC (supra) maintained by Hon'ble Supreme Court: 2003 (157) ELT A87 (SC) and Kedia Overseas Ltd. vs. CC, Vishakapatnam: 2006 (205) ELT 576 (Tri.-Bang.). We find that learned Commissioner (A) held that as there was no malafide intention on the part of the importer and re-export being permitted, imposition of redemption fine and penalty was not warranted. We find that once the goods are allowed to be redeemed on payment of fine in lieu of confiscation, it is not open to the adjudicating authority to impose further conditions on the goods. Putting such a condition, would cause double jeopardy to the appellant. In the fact of absence of malafide intentions being established conclusively, and in the absence of no evidence to the contrary, redemption fine is not imposable on the impugned goods.

7. In view of the above, no case has been made out by the Revenue for interfering with the impugned order. Therefore, we find no merit in the appeal filed by Revenue and hence, the same is set aside.

(Operative part of the order was pronounced in the Open Court.)

SD/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

PAK/RV