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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.77180 of 2019

(Arising out of Order-in-Original No.09/CUS/CC(P)/WB/2019-20 dated 05.07.2019 passed by Principal Commissioner of Customs (Preventive), West Bengal.)

Shri Dilip Sarkar
Proprietor of M/s Shree Ashutosh Exports,
(Vill: Thangapara, P.O.:- Jalalpur, P.S.: Gangarampur, Dist: Dakshin Dinajpur, West Bengal, Pin-7433124.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata **.....Respondent**
(3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.)

WITH

Customs Appeal No.77178 of 2019

(Arising out of Order-in-Original No.09/CUS/CC(P)/WB/2019-20 dated 05.07.2019 passed by Principal Commissioner of Customs (Preventive), West Bengal.)

Shri Uttam Biswas
(S/o Shri Satish Chandra Biswas, Vill:-Kutibari, P.O.:- Motigaunj, Bongaon, Distt.: North 24 Parganas (WB), Pin-743235.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata **.....Respondent**
(3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700001.)

AND

Customs Appeal No.77179 of 2019

(Arising out of Order-in-Original No.09/CUS/CC(P)/WB/2019-20 dated 05.07.2019 passed by Principal Commissioner of Customs (Preventive), West Bengal.)

Shri Biswajit Mirdha,
Authorized Agent of M/s. Al Kabir Impex Services,
(Simultala B-4, Harimandir Chamrakhuti Road, Bongaon, Distt: North 24 Parganas, West Bengal, Pin-743235.)

...Appellant

VERSUS

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

APPEARANCE

Shri Debaditya Banerjee, Advocate for the Appellant (s)
Shri A.K.Singh, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75068-75070/2022

DATE OF HEARING : 8 October 2021
DATE OF DECISION : 04 February 2022

P.K.CHOUDHARY :

The Appellant Shri Dilip Sarkar, Proprietor of M/s. Shree Ashutosh Exports is the importer of Cotton Handloom Tant Sarees and Cotton Handloom Lungies. After importing he has filed Bill of Entry with the Customs authorities at the Petrapole Land Customs Station. The Bill of Entry was assessed and during examination it was found that the Appellant had imported goods in excess of what was declared in the Bill of Entry and other documents. The goods imported from Bangladesh are exempted from payment of duty as per South Asia Free Trade Agreement (SAFTA) by Notification No.40/2017 dated 30.06.2017. The details of the goods which were declared and actually found in respect of M/s.Shree Ashutosh Exports are as under:-

(considering the 1 US $ = Rs.70/-)

Sl. No.	Description of Goods/CTH	Quantity in Pcs.	Declared value/Pcs.	Total value in Rupees (Assessed)
1.	Cotton Handloom Sarees	8,580(Declared) 9,075(excess)	US$ 3/Pc.	37,07,550/-
2.	Cottom Handloom Lungies	4,000(Declared) 2,366(excess)	US$ 1.5/Pc.	6,75,949/-

2. After following due process, the Ld.Adjudicating authority by the impugned order, has held the entire goods imported by the aforesaid consignment 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, 1962. He demanded Customs duty on the entire quantity of goods which were imported. Further he has imposed penalties under Section 112 of the Customs Act, 1962 on the importer Shri Dilip Sarkar, Proprietor of M/s.Shree Ashutosh Exports. He also imposed penalty of Rs.1,00,000/- on the Authorized Agent of the Customs Broker Shri Biswajit Mirdha under Section 117 of the Customs Act and confiscated the carrier vehicle owned by Shri Uttam Biswas and gave the option to redeem the vehicle on payment of redemption fine of Rs.4.00 Lakhs and further imposed a penalty of Rs.1,00,000/- under Section 112(b) on the truck owner. All the three persons are in Appeal before the Tribunal.

Customs Appeal No.77180 of 2019 – Shri Dilip Sarkar

3. The Ld.Advocate for the Appellants submitted that the goods which were imported were covered by the SAFTA Certificate, which they have produced before the Ld.Adjudicating authority. Only a few goods were found to be in excess of what was declared. Cottom Handloom Sarees were declared as 8580 pieces and Cotton Handloom Lungies were declared as 4000 pieces. During examination, the excess quantity found was 9075 pieces for Sarees and 2366 pieces for Lungies. It is only these excess pieces which were not covered by the SAFTA which would entitle 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.

4. However, the Ld.Adjudicating authority has ordered confiscation of the entire consignments including those goods which have been correctly declared in the Bill 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. The Ld.Advocate further submits that these facts are not in dispute. In fact, these are recorded in the impugned order. He further argues 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. The Ld.Advocate vehemently argues that CBIC has exempted the goods i.e. Handloom products in this case from the whole of duty. Hence the duty in both the cases of declaration or mis-declaration is not leviable. He further submitted that the excess goods were not concealed and accordingly the same may be condoned and the entire confiscation proceedings as well as confirmation of demands may be set aside. Accordingly, he prayed for setting aside of the impugned order and allowing the Appeals.

Customs Appeal No.77179 of 2019 – Shri Biswajit Mirdha

5. Ld.Advocate further submits that LD.Adjudicating authority though held that the Customs Broker had knowledge of loading of the excess quantity of goods for the subject consignment, but the Customs Broker did not inform the same to the Customs authority at any point of time. Moreover, the Ld.Adjudicating authority observed in the Order-in-Original that from the statement of the Customs Broker, it is apparent that he failed to perfom his duty properly as envisaged in Regulation 11 of the Customs Brokers Licensing Regulations, 2013 and is thus liable for penal action under Section 117 of the Customs Act and imposed a penalty of Rs.1.00 Lakh. It is the case of the Appellant that the importer had informed only upon clearance of the goods and there was no occasion that he could intimate regarding the excess quantity of the goods loaded in the vehicle. From the statement reproduced in the Order-in-Original, it is apparent that the Customs Broker had filed Bill of Entry as per the documents and instructions given by the importer and the importer had also admitted to have communicated to the Customs Broker after out of charge is given.

Customs Appeal No.77178 of 2019 – Shri Uttam Biswas

6. The Ld.Advocate in regard to confiscation of the seized vehicle and imposition of penalty upon the vehicle owner, submits that the Ld.Adjudicating authority has held him liable to penalty under Section 112(b) of the Customs Act on the pretext that the owner/per in charge of conveyance has to prove that the act of smuggling was done without his knowledge or connivance. From the facts revealed by the owner of the vehicle, it could be perceived that he has let out his vehicle to M/s.New India Transport Agency, who had undertaken the job of clearance of the goods from the importer. Since the owner of the vehicle had no personal knowledge, he is not liable to be penalized.

7. The Ld.Authorized Representative for the Department justifies the impugned order.

8. Heard both sides through video conferencing and perused the Appeal records.

9. It is not in dispute and is evident from the records as well as the impugned order that the Appellant Shri Dilip Sarkar, Proprietor of M/s.Shree Ashutosh Exports had mis-declared the quantity of goods and had imported in excess of what was declared in the Bill of Entry and other documents. Country of origin Certificate from Bangladesh (SAFTA Certificate) which would entitle to import goods under an exemption also cover such quantity of the goods as was declared in the Bill of Entry. What is in violation of the Customs Act is only the excess quantity of the goods which have been imported by the importer without declaring it 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 (e) and Clause (l) of the Section reads as under:-

SECTION 111. **……………………**

....

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(l) 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;

10. The Ld.Adjudicating authority has found that the goods in question do not conform to the declaration 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 111(l) of the Customs Act, 1962.

11. A plain reading of Customs 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 the Section 111(l) is very categorical that it applies to goods found in excess of what has been declared. Therefore, I find that the excess goods are liable for confiscation and not the entire consignment imported by the Appellant. I find that the confiscation of the remaining goods is not as per the law and accordingly needs to be set aside and I do so.

12. I also find that the denial of the exemption certificate 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 I 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.

13. In view of the above I partly allow the Appeal of Shri Dilip Sarkar 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, 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 said Appellant needs to be reduced in proportion to the value of the excess goods to the total value of goods. The Appeal of Shri Dilip Sarkar is accordingly remanded to the

Ld.Adjudicating authority for the limited purpose of computation of Customs Duty, Redemption Fine and proportionate Penalty.

14. Regarding imposition of penalty on the Authorized Representative of the Customs Broker, I find force in the submission of the Ld.Advocate. There is no evidence on record that the Customs Broker was aware of the alleged irregularity. As there is no material available on record against him, the imposition of penalty on Shri Biswajit Mirdha is not justified and accordingly the same is set aside.

15. For the vehicle being confiscated and penalty imposed upon the owner Shri Uttam Biswas, I find that it is an admitted fact that the seized vehicle had been utilized for the purpose of importation of the mis-declared goods and it is amply clear that the loading of the goods has been done in presence of the transporter, although the owner of the vehicle was not present. The owner had simply let out his vehicle to M/s. New Transport Agency, as reflected in his statement, however, no investigation has been caused with regard to the involvement of the said transporter or the driver of the vehicle. From the statement of the owner of the vehicle, it is abundantly clear that although his vehicle has been used for carrying of mis-declared goods, however, he had no personal knowledge in regard to loading of the goods. Accordingly, the penalty imposed upon the owner of the vehicle under Section 112(b) is set aside. The redemption fine of Rs.4.00 Lakhs imposed for redemption of the vehicle is reduced to Rs.1.50 Lakhs (Rupees One Lakh Fifty Thousand only).

All the three Appeals are disposed of as follows:-

(i) Customs Appeal No.77180 of 2019 is allowed by way of remand to the Ld. Adjudicating authority.

(ii) Customs Appeal No.77178 of 2019 is partly allowed.

(iii) Customs Appeal No.77179 of 2019 is allowed.

(Order pronounced in the open court on 04 February 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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