IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No. 76314 of 2016

Arising out of Order-in-Original No.KOL/CUS/PORT/27/2014 dt. 31.03.2014 passed by Commissioner of Customs (Port), Kolkata.

M/s. Eagle International
(Proprietor- Kuldeep Kumar Sharma, B-10A, Sai Kunj,
New Palam Vihar, Phase-3
Gurgaon-122001) **Appellant**

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, 2nd Floor,
Kolkata, West Bengal-700001)

Respondent

APPERANCE :

Shri Anurag Lakhotia, Adv. & Shri Jeevesh Mehta, Advocate for the Appellant
Shri M. P. Toppo, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 75425/2022

Date of Hearing : 27.07.2022
Date of Decision : 27.07.2022

PER SANJIV SRIVASTAVA :

This appeal has been filed by the appellant against Order-in-Original No. KOL/CUS/PORT/27/2014 dt. 31.03.2014 passed by Commissioner of Customs (Port), Kolkata. The impugned Order held as follows:-

> I reject the declared value of Rs.7,04,153.60 of the goods covered under Bill of Entry no. 8440612 dated 08.11.2012 under the Rule 12(1) of CVR, 2007 as discussed above, and re-determine the same at Rs.1,19,31,741.40 under Rule 4 and 5 of CVR,2007 read with Section 14 of the Custom Act, 1962 as detailed in Para 43.
>
> (ii) I confiscate the imposed goods covered under Bill of Entry no.8440612 dated 08.11.2012 having assessable value of Rs.1,19,31,741.40 under section 111(m) of the Customs Act, 1962. However, I give an option to the impoter under Section 125 of the Customs Act '1962 to redeem the goods on payment of Redemption fine of Rs.20 lakhs/- (Rupees twenty lakhs only).

(iii) I confirm the differential duty amounting to Rs.29,02,556/- (rupees twenty nine lakh, two thousand, five hundred and fifty six only) under section 28(8) of the Customs Act, 1962, arising out of re-determination of the value of the imported goods along with applicable interest under section 28AA of the Customs Act, 1962.

(iv) I impose a penalty of Rs.10 lakhs/- (Rupees ten lakhs only) on Shri Kuldeep Sharma, proprietor of M/s Eagle International under section 112 (A) of the Customs Act, 1962.

(v) I also impose a penalty of Rs.50 lakhs/- (Rupees 50 lakhs only) on Shri Kuldeep Sharma, Proprietor of M/s Eagle International under Section 114AA of the Customs Act, 1962.

(Vi) I also impose a penalty of Rs.3 lakhs/- (Rupees three lakhs only) on M/s Jaiswal Import Cargo Services Ltd., Kolkata-700001, CHA, under section 112(b) of the Customs Act, 1962 for their intentional non-compliance of the provision of the CHALR, 2004 and for not making true and correct declaration while filing of bill of entry about part number, make, model etc., to mislead the department from proper assessment and levy of proper duty on the goods.

1.2 It has been confirmed by the Court Master that no appeal has been filed by CHA, M/s. Jaiswal Import Cargo Services Ltd. Accordingly, this appeal has been taken up for consideration.

2. Heard both sides.

3. In Para 41, the Commissioner has recorded as follows:-

> **41. Record of the personal hearing-** Noticee No.1, Shri Kuldeep Sharma was given opportunity for personal hearing on 21.10.2013. But he did not appear for personal hearing on designated date. Another opportunity for personal hearing was given to him on 05.11.2013. Again he did not appear for personal hearing. Once again opportunity for personal hearing was given to him on 05.12.2013 but he again did not turn up for personal hearing.

3.1 This paragraph clearly shows that appellant was given opportunity for hearing was extended by Commissioner to the appellant to appear before him. But the same could not be availed by him for the reasons as stated by Counsel that address has changed and CHA had never informed him about the fixation of date of hearing.

3.2 Without going further into merits of the case, in our view, the ends of justice will be met if order in respect of the present appellant is set aside and matter remanded back to the Commissioner for decision on the notice issued to this appellant after allowing him opportunities of hearing him before passing the order.

4. Accordingly, the appeal is partly allowed and matter remanded back to the Original Authority for considering the issue a fresh after hearing the appellants. On the request of Counsel tentatively we direct the Commissioner to hear the appellant on 29 August 2022. In case of any difficulty, Commissioner may fix any other date convenient to him and hear the appellant on that date. Appellant should also fully cooperate with the Adjudicating Authority by attending the hearings on date and time fixed by him.

5. As matter is substantially old, Commissioner should re-adjudicate this matter within three months from the date of receipt of this order.

(Dictated and pronounced in the open Court.)

Sd/-
(Sanjiv Srivastava)
Member (Technical)

Sd/-
(P. Dinesha)
Member (Judicial)

Pooja