

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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76959 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/409/2019 Dated 06.06.2019 passed by Principal Commissioner of Customs (Appeals), Kolkata.

Sri Kalpataru Power Transmission

(Plot No. 101, Part III, GIDC Estate, Sector-28, Ghandhinagar, Gujarat, 382028)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Customs House, 2nd Floor, Kolkata-700001)

Respondent

APPEARANCE :

Mr. Shridev J. Vyas, Advocate for the Appellant

Mr. Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75726/2023

Date of Hearing : 16 June 2023

Date of Decision : 16 June 2023

PER R. MURALIDHAR

The Appellant had imported Winch Machine. In the Bill of Entry, they have given the description as Winch Machine, Motorized, 2.5T with Honda Engine 13 HP. They have mentioned the Winch Machine, Motorized 2.5T as per the commercial bill raised by the overseas importer.

2. In respect of the HP, they had given the Order for 13 HP but changed it into 5.5 HP as can be seen from the Purchase order dated 30/12/2014 and changes made on 31/12/2014. The Customs Department has sent the details to the Chartered Engineer for his comments. He has vide his letter dated 12/07/2020 stated that the winch is of 3 Tons and Engine Capacity is 5.5 HP. However, he has clearly held at Para 4.02 of his letter that the value appears to be reasonable and in fact appears to be on the higher side as adopted by the importer. The Adjudicating Authority after due process, confiscated the goods valued at Rs.38,53,251/- giving an option to redeem the same by paying Redemption Fine of Rs.1,70,000/- . He also imposed penalty of Rs. 5,000/-. On appeal, the Commissioner

Customs Appeal No. 76959 of 2019

(Appeals) dismissed the same. Being aggrieved by the impugned OIA, the Appellant is before the Tribunal.

3. The Learned Advocate appearing on behalf of the Appellant, takes us through the documentary evidence and submits that it was only typographical error at the time of filing of this order. This error has not resulted in any Revenue loss as can be seen from the noting of the Chartered Engineer at Para 4.02 of the Certificate issued by him on 27/03/2015. He states that in spite of noting the same even in the OIO, the Adjudicating Authority has gone ahead and confiscated the goods and given the option to redeem the same on payment of Rs.1,70,000/-. He has also imposed penalty of Rs.5,000/-. The Learned Advocate submits that there is absolutely no Revenue loss and imported goods are neither prohibited nor restricted. He prays that the present Appeal may be allowed.

4. The Learned AR reiterates the submissions of the Lower Authorities.

5. Heard both sides and perused the documents.

6. Admittedly the Appellant has mentioned tonnage as 2.5 T whereas it is 3T and the Horse Power declared is 13 whereas actually it is 5.5 HP. However, as recorded by the Chartered Engineer at Para 4.02 of his letter, this has not resulted in any lower valuation adopted by the Appellant at the time of clearances of the imported goods. As matter of fact, the value adopted by the Appellant is on the higher side.

7. Considering these facts, it is clear that apart from the typographical mistake committed in the Bill of Entry about goods imported, there is no other allegation in the proceedings initiated by the Department. Therefore, it is clear that the Lower Authorities have erred in confiscating the goods and giving the option to pay the Redemption Fine to the Appellant.

8. Accordingly, I set aside the impugned OIA and allow the Appeal granting consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja