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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75802 of 2016

(Arising out of Order-in-Original No.KOL/CUS/PORT/10/2008 A(Gr.-3)/Apprg. dated 09.02.2016 passed by Commissioner of Customs (Port), Kolkata.)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, Kolkata-700001.)

...Appellant

VERSUS

M/s. Shri Krishna Enterprises

.....Respondent

(3, Old Jail Road, Amritsar, Punjab-143001.)

APPEARANCE

Shri Tariq Suleman, Authorized Representative for the Revenue
NONE for the Respondent

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76318/2023

DATE OF HEARING : 8 August 2023
DATE OF DECISION : 8 August 2023

Per : ASHOK JINDAL :

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent imported old and used worn clothing, completely fumigated which were assessed after value enhancement, confiscation and imposition of redemption fine and penalty.

2.1 The declared value was enhanced from US$ 0.22 per kg to US$ 0.60 per kg (CIF) in Bill of Entry No.422130 dated 24.07.2008 and US$ 0.23 per kg to US$ 0.60 per kg (CIF) in Bill of Entry No.428418 dated 27.07.2008 and penalty was also imposed on the ground that the old and used worn clothing articles are classifiable under Tariff Item No.63090000 of the First Schedule of the Act and is restricted item for import as per Para 2.17 of Foreign Trade Policy 2009-2014, read with ITC HS Classification of import and export items 2009-2014. Import of goods under Tariff Item No.63090000 is restricted and their import is allowed only against the valid specific license.

2.2 The Adjudicating Authority vide Order-in-Original dated 09.02.2016 upheld the goods as old and used garments classifiable under tariff item 63090000 of the 1st Schedule of the Customs Tariff Act, 1975 and the quilt under tariff item 94049019 attracting duty @ 10% Basic + 14.42% CV duty + 3% Education cess on Customs Duty + 4% Special CV duty. He also ordered to re-determine the value of the goods @ USD 0.60 per kg CIF for the entire consignment and confiscated the goods under both section 111(d) and section 111(m) of the Customs Act, 1962. However, redemption option under section 125 of the Customs Act, 1975 was not imposed on the importer as the goods were completely destroyed in fire, and order for symbolic confiscation was passed. But, he imposed penalty of Rs.1,00,000/- on the importing firm through its partners under section 112 (a) and section 112(b). While deciding on the quantum of the redemption fine and personal penalty, the adjudicating authority had taken into account the detention charges, the demurrage charges and the damage already incurred on the impugned goods as well as the Final Order of this Tribunal in the matter of M/s. S.S. Impex dated 19.09.2014 under reference Order No.FO/A/75563/2014 where redemption fine @ 19.5% and penalty @ 7.8% were re-fixed in the similar circumstances.

2.3 Against the said order, the Revenue is before us.

3. Heard the Ld.AR for the department and perused the records.

4. We find that in the impugned case the goods have been lost in fire during warehousing under detention and are not available. In that circumstances the adjudicating authority has rightly refrained from imposing redemption fine on the respondent and also considering the facts and circumstances of the case imposed penalty of Rs.1.00 Lakh

which shall be sufficient to meet the end of justice in the facts and circumstances of the case.

5. In that circumstances, we do not find any infirmity in the impugned order. The same is upheld and the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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