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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76012 of 2016

(Arising out of Order-in-Original No. KOL/CUS/PORT/22/2016/Gr.-3/Apprg. dated 11.03.2016 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Port) **: Appellant**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. D.D. International **: Respondent**
SD-345, Tower Apartment, Pitampura,
Delhi – 110 088

APPEARANCE:

Shri Tariq Sulaiman, Authorized Representative for the Appellant/Dept.

None for the Respondent

CORAM:

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

FINAL ORDER NO. 75554 / 2024

DATE OF HEARING / DECISION: 13.03.2024

Order : [Per Shri K. Anpazhakan]

The importer, M/s. D.D. International, Delhi – 110 088 (the Respondent) has filed a Bill-of-Entry No. 426136 dated 18.08.2008 for clearance of worn clothing (old and used garments) classifiable under Customs Tariff Item No. 6309 90 00 of the First Schedule of the Customs Tariff Act, 1975.

2. The goods were examined and after examination, a Show Cause Notice dated 29.09.2011 was issued by the D.R.I. wherein the impugned goods

were proposed to be considered as 'other than old and used garments' and the value was proposed to be re-determined at Rs.22,27,068.68/- as against the declared value of Rs.5,12,912.59/- on the basis of wholesale market price. Accordingly, the Notice demanded Rs.90,97,345/- out of which Rs.82,320/- was already paid by the appellant.

3. The Notice was adjudicated by the Ld. Commissioner of Customs (Port) vide Order-in-Original dated 11.03.2016, wherein the Ld. Commissioner has upheld the goods as 'old and used garments' classifying the same under Customs Tariff Heading 6309. The declared value was enhanced from US$ 0.55 per kg to US$ 0.60 per kg (CIF) and redemption fine and penalty were 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.

4. Aggrieved against the said order, the Department has filed this appeal before this Tribunal.

5. In their grounds-of-appeal, the Revenue has *inter alia* contended as under: -

i. Most of the articles found showed no signs of appreciable wear. The Ld. Commissioner has failed to appreciate the correct description of the articles.

ii. The Ld. Commissioner has also erred in observing that the scientific method of examination was not adopted by the D.R.I. while trying to arrive at a conclusion regarding the actual classification of the goods and in rejecting the examination findings entirely.

iii. The Ld. Commissioner has erred in not appreciating the fact that it was not at all feasible to burst open all the bales to fulfil the criteria of 100% examination. Accordingly, they contended that the Ld. Commissioner has erred in determining the correct classification of the goods in question.

iv. The Ld. Commissioner has erred in determining the valuation which was proposed under Rule 9 of the Customs Valuation Rules.

5.1 Accordingly, the Revenue prayed for setting aside the impugned order.

6. The Respondent prayed for rejecting the department's appeal.

7. Heard both parties and perused the appeal documents.

8. We observe that the Revenue has filed this appeal for determination of correct classification, valuation and for enhancement of redemption fine and penalty.

8.1 In the present case, the Respondent has imported old and used garments classifiable under

Customs Tariff Item No. 6309 90 00 of the First Schedule of the Customs Tariff Act, 1975. We observe that the Ld. Commissioner has given an elaborate finding in the impugned order and upheld the classification of the goods as goods as 'old and used garments' classifying the same under Customs Tariff Heading 6309. We find that there is no evidence available on record to reclassify the goods as 'other than old and used garments', as claimed by the Revenue. Accordingly, we uphold the classification of the goods determined by the adjudicating authority in the impugned order.

8.2 Regarding valuation of the goods, Revenue has proposed that valuation is to be done as per Rule 9 of the Customs Valuation Rules. We observe that the goods were old and used garments, for which the general practice of valuation adopted during the relevant period was at the rate of US$ 0.60 per kg(CIF). The adjudicating authority has already enhanced the value from US$ 0.55 to US$ 0.60 per kg(CIF). Accordingly, we do not find any infirmity in the value re determined by the adjudicating authority and hence uphold the same.

9. Regarding Redemption fine and penalty, we find that the Adjudicating Authority has imposed redemption fine of Rs.1,14,000/- under Section 125 of the Customs Act, 1962 and penalty of Rs.46,000/- under Section 112(a) of the Customs Act, 1962. In some of the cases, where goods are not available, no redemption fine is imposed.

9.1 We find that this issue came up before this Tribunal in the case of *Venus Traders Vs. Commissioner of Customs (Import), Mumbai reported* *in 2019 (365) E.L.T. 958 (Tri.-Mumbai),* wherein this Tribunal has observed as under :

> *"4. We find that proceedings initiated against most of the imports commenced even before the filing of bills of entry. In these circumstances, invoking of Section 111(m) which applies to*
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> *'111(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of Section 54;'*
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> *does not appear to be in conformity with law. Confiscation of goods is empowered when material particulars are withheld or incorrectly recorded in the declaration which, for the purpose of Section 111 of Customs Act, 1962, is the bill of entry. Therefore, whatever would be the finding on the description or value, Section 111(m) is not liable to be invoked in the absence of a declaration.*
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> *5. Confiscation under Section 111(d) has been invoked for import of 'old and serviceable garments' without an import licence as prescribed under Chapter 2 of the Foreign Trade Policy. Want of such licence is not disputed by the appellants. Consequently, confiscation under Section 111(d) of Customs Act, 1962 in the impugned order cannot be faulted. Release of confiscated goods to the importer is contingent upon fine in lieu imposed under Section 125 of Customs Act, 1962. The redemption fine is not, in terms of the statute, permitted to exceed the market price of the goods and the undertaking of a survey is not improper. However, such a survey, more than a decade after the import and, that too, after remand was ordered by the Tribunal, does not appear to the intent of the decision of the Tribunal. The remand order is specific in directing that the margin of profit, ascertained for computation of the fine, should be made known to the appellant. It is, therefore, the manner in which the original authority had, in the first instance, ascertained the margin of profit that was required to be supplied to the appellants. The original authority has patently failed to do so and has tried to rectify the deficiency of such ascertainment by a process that is not only bereft of validity but also inconsistent with the remand order. The Tribunal, in its remand order, had allowed determination of value of misdeclared goods. That part of the remand order appears impossible to comply with ex post facto in the light of the finding that*

'4. From the examination report (only one consignment was subjected to 100% examination on first check basis), which was already on record it appeared that imports in these cases were of a mixed lot consisting of used garments and also 40% to 50% mutilated single cut garments.

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20. Before proceeding further it is pertinent here to state that the exact description and quantity of goods, container wise, cannot be determined at this stage since no 100% examination of all containers was done at the time of clearance of goods. At any event all the importers had agreed during the personal hearing conducted by the then Commissioner of Customs (I), that the impugned goods were either old and used garments other than rags or they were not mutilated as per the norms laid down in this regard. It is on this agreement for the nature/description of goods, that we have to proceed further in this case. As regards the margin of profit, a market survey was done whose salient features are as follows :'

in the impugned order.

6. Though the appellants question the margin of profit and the validity of market survey, there is no serious resistance to the ascertained value.

7. Considering the various issues and submissions made and the failure of the original authority to comply with the direction in remand to disclose the margin of profit that prompted the fine and penalty, the matter would normally have to be remitted back by another remand order. However, the paucity of evidence and the negligible scope for ascertainment at this stage deters us from doing so. In the light of the admitted failure to comply with the licensing requirements, we uphold the confiscation of the goods under Section 111(d) of Customs Act, 1962. However, it is our opinion that the ends of justice would be served by reducing the redemption fine to 10% of the ascertained value and penalty to 5%."

9.2 Following the above cited decision of this Tribunal, we hold that the redemption fine and penalty imposed on the respondents by the adjudicating authority is sufficient to meet the end of justice. Therefore, the redemption fine and penalty confirmed by the adjudicating authority are upheld.

10. Consequently, we do not find any infirmity in the impugned order and the same is upheld.

11. The appeal filed by the Revenue is thus dismissed.

(Operative part of the order was pronounced in open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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