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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75435 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/63/2017 dated 29.11.2017 passed by Commissioner of Customs (Port), Kolkata.)

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

...Appellant

VERSUS

M/s. Maa Traders

.....Respondent

(Landmark Golden, Plaza Nx, Shop No.4, Burdwan Road, Siliguri-734001, W.B.)

APPEARANCE

Shri Tariq Sulaiman, Authorized Representative for the Revenue
NONE for the Respondent (s)

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76944/2024

DATE OF HEARING : 03.09.2024
DATE OF DECISION : 03.09.2024

Per : RAJEEV TANDON :

The present Appeal has been filed by the Revenue on a limited question of invocation of penalty under Section 114A of the Customs Act, 1962 consequent upon the demand for differential duty having been ascertained in the said order having become final.

2. None is present for the Respondent. However, as the Appeal is nearly six years old and the limited question involving imposition of penalty under section 114A of the Customs Act in addition to what has

been imposed in the Order-in-Original under section 112(a) is placed for our consideration, the Appeal is taken up for final disposal.

3. We note from records that the department has confirmed the classification of imported goods as Polyester Woven Fabrics under the heading 5407 5490 as against the declared description as Polyester bed sheet falling under 6304 1910. While arriving at the aforesaid decision, the learned adjudicating authority had also given the importer, an option to re-export the said goods in terms of the request made by the respondent at the time of import. The impugned Order-in-Original confirms thus a demand of differential duty of Rs.1,13,17,966/- along with interest besides imposing a penalty of Rs.3.00 Lakh on the importer under section 112A of the Customs Act.

4. The fact that the statute vests in a public authority powers to impose penalty, it *ipso facto* would not mean that the said penalty is to be necessarily imposed, irrespective of the facts and circumstances of the case. Imposition of penalty by any means has to be properly analyzed and judiciously thought upon, before resorting to such action more so as it is in the nature of a punitive action besides entailing fiscal costs on the person concerned.

5. In the present case, it is noted that the learned adjudicating authority has allowed the option of re-export of the imported goods, as per the request made by the importer. The said re-export permission is contingent upon the respondent making payment of penalty of Rs.3.00 Lakhs as imposed under section 112A of the impugned order. In the circumstances, when the goods are being allowed re-export and penalty

imposed for whatever mis-declaration as ascertained by the adjudicating authority, the fact that no goods were cleared for home consumption would not call upon payment of any duty as may have been determined by the learned adjudicating authority. That being the case, we fail to understand as to how could a question of imposition of penalty under section 114A would arise in the matter. There is no categorical assertion in the appeal papers filed by the department stating that the imported goods were not re-exported and were allowed clearance for home consumption. Thus, when no duty would be leviable question of piggy back riding for imposition of penalty under section 114A merely as a consequence of determination of duty in terms of section 28 of the act ibid would not lie. We thus feel that the exercise initiated by the Revenue by way of filing of this appeal is completely futile and shorn of any merits. We therefore dismiss the appeal filed by the Revenue. Before parting we would like to urge the Revenue to be more pragmatic and careful while considering such frivolous litigation. Under the circumstances the instant appeal is nothing more than an abuse of the power to file appeal vested in the department.

(Operative part of the order was pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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