

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

REGIONAL BENCH – COURT NO.1

Customs Miscellaneous Application (COD) No.75979 of 2018
Customs Miscellaneous Application (COD) No.75981 of 2018
Customs Miscellaneous Application (COD) No.75985 of 2018
Customs Miscellaneous Application (COD) No.75987 of 2018

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Customs Stay Petition No.75980 of 2018
Customs Stay Petition No.75982 of 2018
Customs Stay Petition No.75986 of 2018
Customs Stay Petition No.75988 of 2018

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Customs Appeal No.76872 of 2018
Customs Appeal No.76873 of 2018
Customs Appeal No.76875 of 2018
Customs Appeal No.76876 of 2018

(Arising out of Order-in-Appeal No.Kol/Cus(Port)/AA/1752-1757/2017 dated 08.11.2017 passed by Commissioner (Appeals) of Customs, Kolkata)

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

Appellant

VERSUS

M/s Ess Ess Overseas
(C-174, First Floor, Prashant Vihar, Delhi-110085)

Respondent

APPEARANCE :

Shri Subrata Debnath, Authorized Representative for the Appellant
None for the Respondent

CORAM:

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

FINAL ORDER NO.77153-77156/2024
SP/Misc. Order No.75511-75518/2024

DATE OF HEARING : 09 .10.2024
DATE OF DECISION : 09.10.2024

Per Ashok Jindal :

The reason for delay in filing the appeal before the Tribunal is explained satisfactorily. Accordingly, we condone the delay in filing the

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appeals before the Tribunal. The applications for condonation of delay are allowed.

2. The Revenue has also filed applications for staying the operation of Orders-in-Appeal Nos.Kol/Cus(Port)/AA/1752-1757/2017 dated 08.11.2017 passed by Commissioner (Appeals) of Customs, Kolkata.

3. Prima-facie, on-going through the impugned order, we find that the order of the Id. Commissioner (Appeals) is not, ex-facie, illegal or without jurisdiction. The Revenue's Stay Petitions being filed in a routine and mechanical manner and devoid of merit, are rejected.

4. The Revenue is also in appeals against the impugned order. Since the issue lies in a narrow compass, accordingly, with the consent of the Id.A.R. for the Revenue, the appeals are taken up for final disposal.

5. 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.

6. The declared value was enhanced from US\$ 1.10 per kg to US\$ 1.316 per kg 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.

7. The Adjudicating Authority has imposed redemption fine and penalty at the rate of 30% & 10% of the assessed value respectively.

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The respondent filed an appeal before the Id.Commissioner, who reduced the redemption fine and penalty to 10% & 5% respectively.

8. Against the said order, the Revenue is before us.
9. Heard the parties and perused the records.
10. 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) ELT 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

'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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54;'

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.

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*

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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 :'

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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%."*

11. Following the above cited decision of this Tribunal, we hold that the redemption fine and penalty imposed on the respondent to the tune of 10% & 5% respectively on the assessed value is sufficient. Therefore, the redemption fine and penalty confirmed by the Id.Commissioner (Appeals) are sufficient to meet the end of justice.

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

13. The appeals filed by the Revenue are dismissed.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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