IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/172/10

(Arising out of Order-in-Original F.No. S/6-B-135/08 EXP dated 2.6.2009 passed by Commissioner of Customs (EP), Mumbai)

Chintoo Creations **Appellant**

Vs.

Commissioner of Customs (EP), Mumbai **Respondent**

Appearance:

Shri Chirag Shetty, Advocate, for appellant
Shri M.K. Mall, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 13.3.2018
Date of Decision: 22.3.2018

ORDER NO. **A/85698 / 2018**

Per: Ramesh Nair

By the impugned order, the learned Commissioner ordered for confiscation of export goods, imposed a redemption fine of Rs.1,31,614/- and imposed a penalty of Rs.65,807/- on the ground that the appellant has overvalued the export goods with an intention to claim the fraudulent drawback. The adjudicating authority mainly relied upon the market enquiry for arriving at the overvaluation.

2. Shri Chirag Shetty, learned counsel appearing on behalf of the appellant, submits that the appellant was not provided the market enquiry report. Therefore, the enhancement of the value of the export goods was done arbitrarily. He submits that the drawback amount claimed by the appellant is lower than the value of the export goods declared by the appellant. He also submits that the entire remittance against the export sale of the goods was received by the appellant which shows that there is no overvaluation of the export goods. Therefore, the DEPB claim is legal and correct. He further submits that the export goods were not confiscated nor released provisionally under execution of bond and/or bank guarantee. Therefore, no confiscation of the goods can be made. Consequently the imposition of redemption fine and penalty is not justified. He placed reliance on the following judgments:-

(i) *Tex-Age vs. CC, Nhava Sheva – 2008 (221) ELT 395 (Tri.-Mumbai)*;

(ii) *CC, Mumbai vs. Tex-Age – 2016 (340) ELT 3 (SC)*.

3. Shri M.K. Mall, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. The case of the

Revenue is that the appellant has overvalued the readymade garments cleared for export with intention to avail the excess drawback claim. The entire case was made out on the basis of market enquiry. However, the market enquiry report was not provided to the appellant. Therefore, the entire proceeding is arbitrary and in clear violation of the principles of natural justice. Since the market enquiry report is not on record, it cannot be found out whether the goods in respect of which market enquiry was conducted is identical goods to the export goods. Therefore, in absence of any such details, it was not correct on the part of the adjudicating authority to come to a conclusion that the appellant has done the overvaluation of the export goods. In the interest of justice, we give an opportunity to the Revenue as well as to the appellant to justify their respective stand. Accordingly, the adjudicating authority is directed to provide the market enquiry report to the appellant and the appellant should be given an opportunity to make their submission on such report. Thereafter the adjudicating authority shall pass a fresh order with regard to the issue of overvaluation of the export goods. As regards the redemption fine imposed by the adjudicating authority, we find that the goods were neither seized nor released provisionally on execution of bond and/or bank guarantee. Therefore, the goods were not available for confiscation. In such case, neither confiscation should have been ordered nor redemption fine be imposed. Therefore, we set aside the confiscation of the goods and redemption fine. As regards the penalty imposed, the same may be reconsidered after the decision on overvaluation of the export goods as observed above.

5. As per our above discussion, the appeal is disposed of by way of remand in the above terms to the adjudicating authority.

(Pronounced in court on 22.3.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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