IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: C/87362 & 87365/2017

[Arising out of Order-in-Appeal No: MUM-CUSTM-SMP-190 to 193/2016-17 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

ARJ Exim India
Manoj Kumar …***Appellants***

versus

Commissioner of Customs (Port – Import)
Chennai/Mumbai ***…Respondent***

Appearance:

Shri Akhil K Maggu, Advocate for appellants

Shri C. Singh, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 22/03/2018
Date of decision: 22/03/2018

ORDER NO: A/86117-86118/2018

These appeals are directed against Order-in-Appeal No: MUM-CUSTM-SMP-190 to 193/2016-17 passed by the Commissioner of Customs (Appeals), Mumbai – I.

2. Heard both the sides and perused the records.

3. On perusal of the records, it transpires that the issue relates to redemption fine on confiscation of TV sets imported and in lieu of confiscation redemption fine is imposed and penalties imposed on the firm under the provisions of Section 112(a) of Customs Act, 1962 and penalty on the individual under section 114AA of the Customs Act, 1962.

4. After considering the submissions made by the Learned Counsel, I find that there is no dispute as to the facts that the TV sets imported were found to be old and used cathode ray tube, and are allowed to be imported into India with specific licence or permission. It is undisputed that M/s ARJ Exim (India) has no permission or licence from Ministry of Environment for import of such goods. It is also the claim made by the proprietor of the firm before the authorities that they were not aware that such permission is required for importing TV sets with old and used cathode ray tube. During the proceedings before the lower authorities also M/s ARJ Exim (India) sought for re-export of the goods to the country of origin which were permitted by the adjudicating authority. The adjudicating authority has held that the goods are liable for confiscation under Section 111(d) and (m) read with Foreign Trade (Development and Regulation) Act, 1992 and the rules made thereunder and Hazardous

Waste Management & Handling Rules, 2008. I find that there is no dispute as to the fact that the goods are covered under Hazardous Waste Management & Handling Rules, 2008 and having been imported without specific licence from the authorities they are liable for confiscation. Both the lower authorities have held that the goods are liable for confiscation, permitted to be re-exported but on payment of redemption fine. To that extent, I find that there is no infirmity in the order of the lower authorities.

5. As regards penalty imposed on the firm ARJ Exim (India), it needs to be upheld as the goods which were imported are held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 and ARJ Exim (India) having filed bill of entry is liable to be visited with penalty under Section 112(a) of the Customs Act, 1962. Penalty imposed by the adjudicating authority is in consonance with the standards laid down by the Tribunal.

6. Accordingly, I find no reason to interfere with such an order and penalty imposed on ARJ Exim (India) is upheld and the appeal filed by them is rejected.

7. As regards penalty of ₹ 1 lakh imposed on the individual Shri Manoj Kumar under Section 114AA of the Customs Act, 1962, I find that the adjudicating authority has not recorded any findings in order to come to such a conclusion that Shri Manoj Kumar had knowingly/

intentionally mis-declared the goods with respect to the description. The lower authorities have recorded that the bill of entry that is filed, indicates mis-declaration with respect to their description and the TV sets were with old and used cathode ray tube were noticed by the authorities only an inspection and examination; in the statement recorded of Shri Manoj Kumar indicates that he was not aware that the TV sets were used and old cathode tubes. In the absence of any evidence to show that Shri Manoj Kumar was aware that the TV sets imported were fitted with old and used cathode ray tubes, I find that the penalty imposed under Section 114AA of the Customs Act, 1962 is unwarranted and he is liable to be set aside and the appeal filed Shri Manoj Kumar is allowed.

8. Appeals are disposed of as indicated herein above.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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