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

APPEAL NO: C/752/2011

Arising out of: Order-in-Original No. 51/2011dated 05/09/2011

Passed by: Commissioner of Customs (Export)

J.S. Designer Ltd

versus

Commissioner of Customs (Export), Nhava sheva

Appellant– Represented by:
None

Respondent – Represented by:

Shri M.K. Mall,
Assistant Commissioner (A.R.)

Date of hearing : 06/08/2018
Date of pronouncement: 18/09/2018

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Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

ORDER NO: A/87407 / 2018

Per: C J Mathew

Appeal has been filed against original-in-original no. 51/2011 dated 5th September 2011 of Commissioner of Customs (Export) JNCH, Nhava Sheva which has scaled down the drawback eligibility and confiscated the goods exported under shipping bills no. 3796638/ 24.05.2011, 3778281/ 23.052011 and 3796530/ 24.05.2011, valued at approximately Rs.86,00,000, while allowing it to be redeemed on payment of fine of Rs. 10,00,000 besides imposing penalty of Rs.

2,00,000 under section 114 of Customs Act, 1962.

2. None appeared for the appellant. There is no dispute by the appellant on the reduced rate of drawback allowed on the exports. We have heard Learned Authorised Representative who reiterates the impugned order and submits that the misdeclaration, with intent to avail higher drawback, would have gone unnoticed had action not been initiated by the competent authority.

3. On the perusal of records, we find that the denial of higher drawback has been ordered on the basis of a finding that the description of the export goods as 'girls dress/ blouse' was not entirely accurate and that the bulk of the goods should have been described as 'baby's garments' with eligible drawback rate consequently reduced from 9.5% to Rs.24 per piece. We take note that the re-classification is a consequence of application of the definition of 'baby's garments' in the explanatory notes of the chapter dealing with 'textiles and textiles articles' in the Harmonised System of Nomenclature of the World Customs Organisation to the effect that these are of 'young child aged between new born and 24 months with body height normally not exceeding 86 centimeters or 34 inches.'

4. The distinction between the two descriptions is highly technical and appears to have been deliberately designed for usage in policy formulation by government. It is not a common description deployed

in trade parlance. The misdescription cannot, in the absence of other evidence, be determined to have been with deliberate intent.

5. It is also seen that the redemption fine and penalties have been computed on the basis of the value of the goods which, in face of the drawback sought for the export goods, is excessive and, considering that Rs.2,22,927 of the amount sought was disallowed, is highly unreasonable.

6. In view of the above facts and circumstances, we find that the confiscation of the goods does not stand the test of reason or of law. Consequently, we set aside the confiscation and penalty and allow the appeal to that extent.

(Pronounced in Court on …………………….)

(S K Mohanty)
Member (Judicial)

(C J Mathew)
Member (Technical)

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