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

APPEAL NOS: C/27 to 32/2010

[Arising out of Order-in-Original No: 146/2009/CAC/CC/RBT dated 30th September 2009 passed by the Commissioner of Central Excise Customs (EP), Mumbai.]

A M Overeas
Amin Zakaria Memon
Salim Abdulla Chakkiwala
Akhtar Abdulla Chakkiwala
Yunus Abdulla Chakkiwala
Imtiyaz Abdulla Chakiwala … ***Appellants***

versus

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

Appearance:

Shri Raj Vyas, Advocate for appellants

Ms PV Sekhar, Joint Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 30/08/2018
Date of decision: 04/10/2018

ORDER NO: A/87526-87531/2018

Per: C J Mathew

These appeals have been filed by various entities that were imposed with penalties in the proceedings initiated against M/s A M Overeas and the said individuals. Briefly, facts are that certain Surat based commercial entities controlled by certain individuals had been exporting man-made fabrics under rebate/DEPB scheme which was held liable for confiscation under section 113(1) of Customs Act, 1962 for mis-declaration of value and the individuals liable to penalty under section 114 of Customs Act, 1962. Accordingly, polyester dyed and printed fabrics of 143290 L Meters valued at ₹ 68,34,530/- exported *vide* shipping bill no. 5389013/28.03.2005 and 539005/05.04.2005 were confiscated but offered for redemption on payment of fine of ₹ 25 lakhs. An amount of ₹ 49,86,755.25 held to be sale proceeds of smuggled goods were also confiscated under section 121 of Customs Act, 1962 but offered for redemption on payment of fine of ₹ 20 lakhs under section 125 of the Customs Act, 1962. Penalty against various individuals had arisen on the finding that they were involved in the act of mis-declaration with intent to avail the benefits of scrips issued under the 'duty entitlement passbook scheme' of the Foreign Trade Policy.

2. The primary contention of the appellants is that they were not, in any way, concerned with the exports which was held against them solely on the ground that the statement of various individuals, recorded during the course of investigation, made clear the complicity in procurement and export of cheaper goods. According to Learned

Counsel for appellant, the Tribunal, in *Shiv Kripa Ispat Pvt Ltd v. Commissioner of Central Excise & Customs, Nashik [2009 (235) ELT 623 (Tri.-LB)]*, has held that the confiscation of the goods when goods are not available have the authority of law. Furthermore, reliance is placed on the decision of Tribunal in *Hem Chand Gupta & Sons v. Commissioner of Customs (ICD), New Delhi [2016 (330) ELT 161 (Tri.Del.)]* which relied upon the decision of the Larger Bench that redemption fine is not imposable in cases where the goods are not available. Relying upon the decision of the Hon'ble High Court of Delhi in *Basudev Garg v. Commissioner of Customs [2013 (294) ELT 353 (Del.)]*, it is contended that the restriction was sufficient to render a statement invalid.

3. Learned Authorised Representative contends that the statements were sufficient evidence on the role of the appellants in the export and that a catena of decisions pertaining to statements such as *Surjeet Sing Chhabra v. Union of India [1997 (89) ELT 646 (SC)], Assistant Collector of Customs, Madras-1 v. Govindasamy Ragupathy [1998 (98) ELT 50 (Mad.)], KI Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin [1997(90) ELT 241 (SC)], Commissioner of Central Excise, Mumbai v. Kalvert Foods India Pvt Ltd [2011(270) ELT 643 (SC)]* were *K P Abdul Majeed v. Commissioner of Customs, Cochin [2014 (299) ELT 108 (Tri.-Bang.)]* sufficient to establish the correctness of the reliance on the statements in the impugned order. It

is also submitted by the Learned Counsel that Hon'ble High Court of Madras in *Visteon Automotive Systems India Ltd v. CESTAT, Chennai [2018 (9) GSTL 142 (Mad.)]* had held that the goods did not have to be available for imposition of fine.

4. Notwithstanding the rival submissions, we find that in the show cause notice it is alleged that the export goods, declared at ₹ 68,34,530/-, were not of commensurate with quality and value, it is bereft of allegation of mis-declaration. The presumption of over-invoicing has not been sustained in the impugned order. For entertaining mis-declaration of value, rejection of the declared value deducible from various circumstantial evidence, is making one pillar. A single pillar is unable to support a superstructure much beyond the top of its surface area; the stability of a structure is possible only with the support of additional pillars. In all matters pertaining to valuation, it is, therefore, required that rejection of declared value should necessarily be followed by determination of an assessable value that has the approval of rules framed for the purpose. Neither does the show cause notice propose nor does the impugned order consummate the valuation exercise. In the absence of re-determination of value, goods cannot be said to have been mis-declared warranting imposition of penalties under section 114 on various individuals, whatever their linkage with the goods may be.

5. In view of the lack of finding on assessable value, and consequential lack of scope for invoking of section 114 of Customs Act, 1962, the impugned order does not sustain and is set aside.

6. Accordingly, the appeals are allowed.

(Pronounced in Court on 04/10/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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