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

Appeal No. C/1048/09

(Arising out of Order-in-Original No. 18/2009 dated 22.07.2009 passed by the Commissioner of Customs (Export), JNCH, Nhava Sheva).

M/s Nishant Infin Pvt. Ltd.	Appellant

Vs.

Commissioner of Customs (Export), Nhava Sheva	Respondent

Appearance:

Shri V.M. Doiphode, Advocate	for Appellant
Shri Trupti Chavan, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 30.01.2019

Date of Decision: 30.01.2019

ORDER NO. **A/85306 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 18/2009 dated 22.07.2009 passed by the Commissioner of Customs (Export), JNCH, Nhava Sheva.

2. Briefly stated the facts of the case are that the appellant filed Bill of Entry No. 906785 on 21.5.2009 declaring the imported product as "hot rolled stainless steel sheet TP-304"

weighing 24100 Kgs valued at Rs.22,64,005/-. On examination of the goods on 26.5.2009, it was came to the knowledge of the Department that the imported goods "cold rolled stainless steel sheets" was attracting anti dumping duty of Rs.16,95,876/-. Since the importer had mis-declared the imported goods as "hot rolled stainless steel sheets" in order to avoid anti dumping duty, it was brought to the notice of the importer, who waived show-cause notice and requested for personal hearing. Before the adjudicating authority the appellant had submitted that the shipment was prior to the date of Notification No. 38/2009-Cus dated 22.04.2009 imposing anti dumping duty on cold rolled stainless steel coils, hence he prayed for a lenient view in the matter. On adjudication, the imported goods were directed for confiscation with an option to redeem the same on payment of fine of Rs.5,75,000/- and penalty of Rs.2,30,000/-. Also, the importer's request for re-export of the goods was allowed by the adjudicating authority. Hence the present appeal.

3. At the outset, learned Advocate for the appellant Shri V.M. Doiphode submits that even though the goods were allowed for re-export by the adjudicating authority, the same were cleared in the local market. He submits that there was no mis-declaration on their part inasmuch as the overseas supplier has wrongly dispatched the goods. Later, on being pointed out by the appellant, the overseas supplier had agreed to re-export of the goods. It is his contention that there was no intention to evade payment of anti dumping duty by mis-declaring the description and quantity of the goods.

4. Per contra, learned AR for the Revenue submits that there is no dispute to the fact that the imported goods were ms-declared and the same was noticed by the Department only after 100% examination of the consignment. Later, even though the appellant produced documents indicating mistake on the part of the overseas supplier, however, the fact remains that there was mis-declaration. Accordingly, confiscation and penalty directed by the adjudicating authority is proper and legal.

5. Heard both sides and perused the records.

6. I find that short question involved in the present appeal is whether the goods imported declaring the same as Hot Rolled Stainless Steel but later on 100% examination found to be cold rolled stainless steel, liable to confiscation under Section 111(m) of the Customs Act, 1962 and penalty as directed by the adjudicating authority. The learned Advocate clarified that even though re-export of the goods were allowed by the adjudicating authority, however, the same was not re-exported but cleared for home consumption. It is his contention that even though initially the imported goods was declared as hot rolled stainless steel, however, the same was not due to their mistake, but it was the mistake of the overseas supplier. He has submitted that in the past they have been continuously importing hot rolled stainless steel coil from the same party. Further, I find that in support of his contention there was a mistake on part of the overseas supplier M/s Spark Alloys (FZE), UAE, a letter dated 28.5.2009 of the said supplier has been placed on record. Revenue's contention, on the other hand, is that even though the product received was not in conformity with the Bill of Entry filed by the

appellant declaring the product as Hot rolled stainless steel sheet, the same was brought to the notice of the Department only on 28.5.2009 stating that it was a mistake of the overseas supplier. Analyzing the evidence on record and submissions advanced, I am of the view that there was a mis-description of the goods by the appellant, but it is not coming forth from the record that intentionally they have mis-declared the goods to avoid the anti dumping duty. Section 111(m) of the Customs Act, 1962 reads as follows: -

> *"SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation : —*
>
> *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];"*

Applying the said provisions to the facts and circumstances and the evidences on record, I do not find discrepancy in directing confiscation of the goods and imposition of penalty. However, in the interest of justice, keeping in view the circumstances of the case, the quantum of fine and penalty appears to be too harsh and disproportionate. Consequently, the fine is reduced to Rs.2.00 lakhs and penalty to Rs.50,000/-.

7. The impugned order is modified to the above extent and appeal is partly allowed.

(Operative portion of the order pronounced in the Court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha