CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 182 of 2011

(Arising out of Order-in-Appeal No. 127/Mumbai-III/2010 dated 20.12.2010 passed by the Commissioner of Customs (Appeals), CSI Airport, Mumbai).

M/s DHL Express (India) Pvt. Ltd. **.... Appellant**
S-86, IBI House, Chimtpada, Andheri-Kurla Road,
Mumbai - 400059

Versus

Commissioner of Customs (Airport), **.... Respondent**
CSI Airport, Avas Corporate Point, 5th Floor,
Makwana Lane, Marol, Andheri, Mumbai

Appearance:

None for the Appellant

Ms. Trupti Chavan, AC, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86266 / 2019

Date of Hearing: 18.07.2019

Date of Decision: 18.07.2019

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. 127/Mumbai-III/2010 dated 20.12.2010 passed by the Commissioner of Customs (Appeals), CSI Airport, Mumbai.

3. Briefly stated the facts of the case are that the appellant filed Form V Bill of Entry in respect of Airway Bill No. 5553124916 dated 18.06.2009 declaring the imported goods as CPU Board valued at Rs.2,58,961/- imported by one M/s Ispat Industries Ltd., Dolvi, Maharashtra. The said consignment was detained for filing regular Bill of Entry. Consequently, the importer had filed a regular Bill of Entry No. 19015 dated 30.6.2009 providing true description of the goods and declared the assessable value as Rs.2,58,961/-. Later, the assessable value was enhanced to Rs.2,76,089/- by the assessing authority. Consequently, the adjudicating authority directed confiscation of the imported goods with an option to redeem the same on payment of fine of Rs.1.00 lakh and imposed penalty of Rs.25,000/- on the appellant M/s DHL Express (India) Pvt. Ltd. under section 112(a) of the Customs Act, 1962. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. At the outset, learned AR for the Revenue has submitted that even though the value of the imported goods was more than Rs.2.00 lakhs, the appellant instead of filing regular Bill of Entry chose to file Form V Bill of Entry even though the imported goods were old and second hand goods. Therefore, they have not adhered to the Regulation 13 of the Courier Import and Export (Clearance) Regulations, 1998. She submits that therefore imposition of penalty on the appellant is sustainable. In support, she has referred the judgment of the Tribunal in the appellant's own case reported as *DHL Express (I) Pvt. Ltd. Vs. Commissioner of Customs, CSI Airport, Mumbai – 2016 (339) ELT 577 (Tri-Mum).*

5. I have carefully considered the grounds of appeal as well as submissions made by the learned AR for the Revenue. In the grounds of appeal, the appellant has made an attempt to make out a case that imposition of penalty on them is arbitrary and harsh, as they did not have any intention for evasion of duty on account of revisions of assessable value. Also, referring to the meaning of old and second hand machinery, they were of the view that no restriction is provided in the policy and it is freely importable. The issue raised by the appellant has been considered by this Tribunal in the appellant's own case, taking note of the Regulation 13 of Courier Import and Export (Clearance) Regulations, 1998, has observed as follows: -

> *"4. I have gone through the rival submissions. I find that the Regulation 13 of the Courier Imports and Export (Clearance) Regulations, 1998 prescribed an obligation to authorized couriers shall exercise due diligence to ascertain the correctness and completeness of any information which he submits to the proper officer with reference to any work related to the clearance of import goods or of export goods. It is noticed that the case was detected when the import document revealed that the weight of the said consignment was abnormal for the declared goods and the said consignment was for this reason taken up for examination. It is felt that when Customs could detect the mis-declaration simply by examining the weight of the consignment with respect to declaration made, it could have been possible for Courier Agency exercising 'due diligence' to detect the same."*

5. I do not find any reason to deviate from the above finding delivered in similar facts and circumstances of the case. Consequently, the impugned order is upheld and the appeal being devoid of merit, accordingly dismissed.

(Dictated and pronounced in open court)

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

Sinha