CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 1

Customs Appeal No: 972 of 2010

[Arising out of Order-in-Original No: 25/2010 dated 12th October 2010 passed by the Commissioner of Customs (Export),Nhava Sheva.]

Sundesha Textile Exim Co … ***Appellant***
Unit No.4, Soham co-op Society, Plot No. 58
Sector 8A, Airoli, Navi Mumbai - 400 708

versus

Commissioner of Customs (Export) ***…Respondent***
JNCH, Post Uren, Dist: Raigad, Sheva – 400 707

APPEARANCE:

None for the appellant

Shri R Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 86419 / 2019

DATE OF HEARING: 20/02/2019
DATE OF DECISION: 20/08/2019

PER: C J MATHEW

In this appeal of M/s Sundesha Textile Exim Co against order-in-original no. 25/2010 dated 12th October 2010 of Commissioner of

Customs (Export), Nhava Sheva, the issue in dispute pertains to the rejection of the declared value of goods imported *vide* bill of entry no. 722074/19.12.2008 and the confiscation thereof, with offer of redemption on payment of fine of ₹ 20,00,000/- subject to clearance for home consumption, besides imposition of penalty of ₹ 10,00,000/- under section 112 of Customs Act, 1962.

2. We have heard Learned Authorised Representative. None appeared for appellant.

3. We find that the value of goods, invoiced at US $ 23,370/- (₹11,74,342.50) and declared to contain 46,740 meters of ‘polyester viscose knitted fabric’ imported from China, was re-assessed in accordance with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to ₹13,04,694.52 with duty liability of ₹1,95,286.20. It was also held by the adjudicating authority that the composition of goods was found to be 7177.49 meters of ‘knitted fabric’ and 38926 meters of ‘woven fabric’ which, though the appellant herein claimed to have arisen from an error in shipment intended for South Africa and clarified to be so by the Chinese supplier, sufficed for re-assessment, confiscation and penalty under the Customs Act, 1962.

4. The appeal contends that the adjudicating authority lacked jurisdiction to initiate proceedings as the assessing officers were under

the supervision of Commissioner of Customs (Import), Nhava Sheva.

5. It is the submission of the Learned Authorised Representative that duty liability having been discharged by furnishing of ‘scrip’ issued under the ‘Vishesh Utpad Yojana’ scheme, the jurisdiction of Commissioner of Customs (Export), Nhava Sheva was unquestionable. It is also seen that notification no. 15/2002-Cus (NT) dated 7th March 2002, furnished by Learned Authorised Representative, accords jurisdiction as ‘officer of customs’ of Nhava Sheva to Commissioner of Customs (Export) and subordinate officers. Accordingly, we find no error in exercise of jurisdiction by the adjudicating authority.

6. However, we take note that, in ordering the re-determination of value, the adjudicating authority has also included the goods, *viz.* ‘polyester viscose knitted fabric’, that were in conformity with the declaration in the bill of entry, even though of lesser quantity, which eliminates scope of action under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as these were not misdeclared. It is also seen that the adjudicating authority, while ordering redemption, also imposed the condition that the goods must be cleared for home consumption. In the light of the claim of the appellant, even if an afterthought on which we desist from rendering a finding at this stage, insistence on clearance for home

consumption does not appear to be appropriate. Once the goods are offered for redemption, these cease to be vested with the Central Government and the imposition of conditions, which precludes re-export, is not sanctioned by law.

7. For the above two reasons, we set aside the impugned order and remand the matter back to the adjudicating authority to decide the show cause notice afresh in accordance with the provisions of law.

(Order pronounced in the open court on 20/08/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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