CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86887 of 2013

(Arising out of Order-in-Appeal No. 225 (Import Noting)/2013(JNCH)/IMP-174 dated 18th March 2013 passed by the Commissioner of Customs (Appeals), JNCH, Mumbai-III.)

M/s Vallabh Wool Industries ....Appellant
Plot No. B-373 Chandigarh Road,
Ludhiana – 141 008

VERSUS

Commissioner of Customs (Export), ...Respondent
Nhava Sheva
Jawaharlal Nehru Customs House,
Post - Uran, Dist.- Raigad,
Maharashtra – 400 707

APPERANCE:

Shri Anil Balani, Advocate for the Appellant
Ms. Trupti Chavan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87188/2019

Date of Hearing: 29.07.2019
Date of Decision: 28.11.2019

Upholding the Order-in-Original that imposed redemption fine of Rs. 10,00,000/- in lieu of confiscation under Section 111(f) and penalty of Rs. 5,00,000/- under Section 112(a) of the Customs Act, 1962 is assailed by the appellant in this appeal.

2. Factual backdrop of the case in brief is that IGM No. 20705/2008 dated 25.10.2008 was filed at JNCH figuring 100% Polyester Filament Yarn Raw White with importer name M/s Vallabh Wool Industries, Ludhiana but the said goods remained as unclaimed for almost two years. Earlier Alert Circular dated 03.11.2008 (RUD-1) was issued by Central Intelligence Unit (CIU) of JNCH that some importers including M/s Vallabh Wool Industries (Appellant) were suspected to have been importing undervalued and mis-declared fabrics/yarn. On 18th June 2010, shipping line M/s Oasis Shipping Pvt. Ltd. filed a request for amendment of IGM No. 20705/2008 to change its description from 100% "Polyester Filament Yarn Raw White" to "Nylon Viscose Blended Yarn" and also to change the name of notified Party (importer) from M/s Vallabh Wool Industries to M/s Diamond Mink Blankets Ltd. in respect of goods covered under bills of lading No. SXNHC7137 dated 13.10.2008 that corresponds IGM no. 20705. CIU started examining the reason for seeking change of consignee's name and description of the goods to find out if there was any fraudulent act so as to give effect to the amendment. During such investigation, it found that appellant-importer had cleared several consignments of similar nature imported from China previously and due to such Alert Circular had stopped the practice. Detail investigation was carried out, show-cause notice was issued to the appellant, matter was adjudicated upon and confiscation order under Section 111(f) with option for redemption on payment of redemption fine of Rs. 10,00,000/- in terms of Section 125 of the

Customs Act, 1962 with penalty of Rs. 5,00,000/- was imposed under Section 112(a) of the Customs Act, 1962. Appellant unsuccessfully challenged the same before the Commissioner (Appeals) and approach the Tribunal ultimately for relief.

3. During course of hearing of the appeal, learned Counsel for the appellant Shri Anil Balani submitted that owing to mis-declaration made by the exporter, appellant had neither released the import documents from the bank upon payment nor filed bills of entry for release of goods but penalty has been imposed on it. Prematurely since cause of action would have arisen after filing the bills of entry for clearance of goods. He further submitted, with reference to judicial decisions report in *2018 (359) ELT 593 (Tri.-Del.)* in the case *of R.S. Impex Vs. Commissioner of Customs, New Delhi, reported in 2015 (330) ELT 651 (Tri.- Del.)* in the case *Maiden Trading Co. Pvt. Ltd. Vs. Commissioner of Customs ICD, TKD, New Delhi* and other case laws to substantiate his stand that bill of lading is no substitute of bill of entry to substantiate the charge of mis-declaration of importer consignment only on the ground that bill of lading was in the name of the appellant for which he was the importer and therefore, the order passed by the Commissioner (Appeals) is required to be set aside.

4. Learned Authorised Representative for the respondent-department Ms. Trupti Chavan, in response to such submissions, argued in support of the reasoning and rationality of the order

passed by the Commissioner (Appeals) and pointed out that the consignment was lying unclaimed for 18 months in the Customs Custody after the Alert was issued and that appellant had mis-declared goods on previous occasions, during clearance of imported fabrics, for which order passed by the Commissioner (Appeals) needs no interference by the Tribunal.

5. Perused the case record, It is observed that after alert was issued by the CIU on 03.11.2008, the goods in question was lying abandoned in the Customs custody up to 18th June, 2010 till the request for amendment was made by the Shipping Line. Except the statement of the proprietor of the appellant firm and Managing Director of the intended importer M/s Diamond Mink Blankets Ltd. recorded under Section 108 of the Customs Act, other documentary evidence on record is available to substantiate that appellant was earlier engaged in mis-declaration or undervalued imported goods and not a single reference like bill of entry number is made to that effect that would provide any detail concerning involvement of appellant in previous occasions. In respect of the consignment under dispute proprietor Mr. Hemraj Jain of appellant firm stated that discrepancy (in the description) of the product came to its knowledge during interactions with shipper while enquiring about the documents for which appellant refused to receive the goods and not honoured the imported documents received by the bank and verbally over phone informed the matter to the exporter, after which it had no knowledge about the developments concerning the imported goods.

It appears to be a self-exculpatory statement given under Section 108 of the Customs Act, but no materials evidence on record has been placed by the respondent-department that would substantiate involvement of the appellant firm in the alleged transaction except that of the reply of the appellant regarding his source of acquirement of knowledge of discrepancy in the item supplied to the appellant firm. However, suspicion however strong cannot take the place of proof to established guilt of the appellant. Further the ground taken in the Order-in-Original and Order-in-Appeal with reference to sub-Section (iii) of Section 30 of the Customs Act, 1962 is of no use to impose penalty on the appellant in view of the fact that import manifest or import report, even if considered as incorrect and done with fraudulent intention since was not established to have been done by the appellant, amendment may only be refused on that ground that would have bearing on the exporter or the intended purchaser and not on the appellant.

6. In view of the position of law and facts on record as dismissed above, it can be held that penalty imposed on the appellant is unsustainable and the same is required to be set aside. Since appellant had not placed any claim over the imported goods, no finding is required to be given on the confiscation order and its redemption upon payment of fine at this stage which is not under challenge in the forum by the claimants. Hence the order.

ORDER

7. The appeal is partly allowed to the extent of setting aside the penalty of Rs. 5,00,000/- imposed on M/s Vallabh Wool Industries. The order passed by the Commissioner of Customs (Appeals), JNCH, Mumbai-III vide Order-in-Appeal No. 225 (Import Noting)/2013(JNCH)/IMP-174 dated 18th March 2013 is modified accordingly.

(Order pronounced in the open court on 28.11.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad