CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 88156 of 2013

[Arising out of Order-in-Appeal No: 417(Gr.VII-D)/2013/JNCH/EXP-104 dated 28th May 2013 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

Apollo Tyres Ltd … ***Appellant***
3 Village Limda, Tal: Waghodia, Baroda
Gujarat – 391 760

versus

Commissioner of Customs (Export) ***…Respondent***
JNCH, Nhava Sheva, Tal: Uran, Dist: Raigad
Maharashtra – 400 707

APPEARANCE:

Shri Rakesh Sawant, Advocate for the applicant appellant

Shri Ramesh 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/87208 / 2019

DATE OF HEARING: 30/10/2019
DATE OF DECISION: 30/10/2019

PER: C J MATHEW

M/s Apollo Tyres Ltd, having filed bill of entry no. 6689896/30.04.2012 for import of 'resin (dures 31399)', sought clearance without payment of duty against licence no. 05/10263022 dated 27th April 2010 under the 'Advance Authorization Scheme' of the Foreign Trade Policy. According to Learned Counsel for appellant, the custom house agent had, inadvertently, omitted to declare 3.75 MTs of 'Kolophonium C' and subsequently, *vide* their letter dated 4th May, 2012, sought amendment of the bill of entry as provided for in section 149 of Customs Act, 1962. It would appear that, based on examination of the cargo, the declared goods, as well as the undeclared goods, were held liable to confiscation under section 111(i) and 111(m) of the Customs Act, 1962 with option for redemption on payment of fine of ₹ 3,50,000/- besides penalty of ₹ 1,50,000/- being imposed under section 112 of Customs Act, 1962. Furthermore, the entire consignment was denied the benefit of duty exemption under the 'Advance Authorization Scheme'. In order-in-appeal no. 417(Gr.VII-D)/2013/JNCH/EXP-104 dated 28th May 2013, Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II upheld the order of the original authority. Aggrieved by this, the appellant is before us.

2. It is seen that, instead of considering the request for amendment to include the goods covered by the second invoice for the consignment, proceedings were initiated and, that too, in the absence of show cause notice.

3. Learned Counsel for the appellant submits that the duty liability

has already been discharged without any further claim for the privileges of the scheme and that, in the circumstances of proper and timely reporting, the confiscation and penalty should not have been burdened on them.

4. We have heard Learned Authorised Representative who submits that the claim of the appellant does not merit acceptance as the presence of two different goods was known at the time of import.

5. We note that the application for amendment of bill of entry has not been acted upon and is, as yet, pending before the competent authority. In those circumstances, there is no justification for initiation of proceedings against the importer.

6. From the records, we are unable to ascertain if any further investigation to establish intent to mis-declaration the goods was evidenced. Had the incompleteness of the declaration been complemented by a similar mis-declaration in the bill of lading, there could have been some support to a premise of commission of an offence. We do not find any evidence to that effect. In the circumstance of a mis-match between the bill of lading and the actual clearance of the goods, proceedings under section 116 of Customs Act, 1962 would have arisen. It is, therefore, obvious, that any intended mis-declaration of quantity would have succeeded only with a corresponding mis-declaration in the bill of lading. Such is not on record herein.

7. In the circumstances, it would appear that the mis-declaration of the goods covered by only one of the invoices is inadvertent and not deliberate. It would have been appropriate for the competent authority to dispose off the application for amendment of the bill of entry. With the clearance of goods after exclusion from the scheme, the duty charged upon the goods is no longer in dispute. Amendment is implicit on such clearance and only the *bona fides* of the application for amendment could have been doubted. Our findings hold otherwise.

8. In these circumstances, we find no reason to sustain the confiscation of goods and imposition of penalty. Accordingly, the impugned order is modified to the extent of setting these aside and relieving the importer of the burden of redemption fine and penalty under Customs Act, 1962

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

**/as*