**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,**
**WEST ZONAL BENCH : MUMBAI**

**Customs Appeal Nos.90044 & 90047 of 2018**

(Arising out of Order-in-Original Nos.COA/22/2018-19 dated 26.09.2018 & COA/21/2018-19 dated 26.09.2018 both passed by Commr. of Customs (General), Mumbai)

**M/s DVS Industries Pvt. Ltd.**
41, DVS Industries Pvt. Ltd.

**Appellant**

*VERSUS*

**Commr. of Customs (General)**
New Customs House, Ballard Estate, Mumbai-400001

**Respondent**

**APPERANCE :**

Shri N.D.George, Advocate for the appellant
Shri R.N.Deshpande, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/85681-85682/2020**

DATE OF HEARING : 21.02.2020
DATE OF PRONOUNCEMENT : 28.07.2020

**PER P.K.CHOUDHARY :**

1. The Appellant, being a steamer agent, had imported 75 containers under the EPCG scheme in terms of Exemption Notification No. 104/94 dated 16$^{th}$ March 1994. Under the said notification, a steamer agent is permitted to import containers, free of duty on execution of Bond/Undertaking, on the condition that such containers will be exported within a period of six months from the date of import. In the event, the steamer agent is constrained and is unable to export the containers within six months, such steamer agent may apply for extension of time showing sufficient and genuine cause.

2. The Appellant had executed a Bond of Rs.14,40,000/- in terms of the said Notification and in respect of 36 containers imported under IGM No. 22001 dated 14th September 2006 and a Bond of Rs.15,60,000/- in respect of 39 containers imported under IGM No. 22423 dated 06th November 2006. Therefore, the said 36 containers were to be exported by 13th March 2007 and the said 39 containers were to be exported by 05th May 2007, as per the conditions of the notification. The Appellant failed to export the said containers within the stipulated time period and applied for extension of time only vide letters dated 28th June 2007, 11th July 2007 and 16th July 2007, which were much later than the last date for re-export for both consignments, as per the exemption notification.
3. The extension request of the Appellant was denied and accordingly, Show Cause Notices dated 12th October 2007 were issued to the Appellant proposing confiscation of the containers under Section 111(o) of the Customs Act, 1962. The Show Cause Notices also proposed demand of duties of Rs.15,69,149/- in respect of 36 containers and Rs.16,99,920/- in respect of 39 containers along with penalty under Section 112 of the Customs Act and interest under Section 28AA of the Customs Act. The Appellant filed a reply to the Show Cause Notice stating that due to delay in the construction of the factory building, non-availability of power, the project was delayed and resulted in the deterioration of the containers and the machinery. It was further mentioned that the containers were unfit for export and a Survey Report dated 31st October 2007 was submitted in this regard.
4. After considering the submissions of the Appellant, in respect of the 36 containers, the Adjudicating Authority considered the depreciated value of the containers as Rs.28,24,034/- and accordingly, demanded a duty of Rs.9,50,316/- along with interest. The confiscation of the said containers was also confirmed with the option of redemption at Rs.2,00,000/- under Section 125(2) of the Customs Act. Penalty of Rs.1,50,000/- was also imposed under Section 112 of the Customs Act. In respect of the 39 containers, the

Adjudicating Authority considered the depreciated value of the containers as Rs.30,79,820/- and accordingly, demanded a duty of Rs.10,36,390/- along with interest. The confiscation of the said containers was also confirmed with the option of redemption at Rs.2,20,000/- under Section 125(2) of the Customs Act. Penalty of Rs.1,60,000/- was also imposed under Section 112 of the Customs Act.

5. Thereafter, the Appellant filed an appeal before this Tribunal. This Tribunal, vide order dated 02nd August 2017, remanded the matter to the Adjudicating Authority for determination of the value of the containers. Accordingly, the matter was re-adjudicated and the impugned orders dated 27th August 2018 came to be passed.
6. In respect of the 36 containers, the Adjudicating Authority valued the containers at Rs.46,63,008/- under Section 111(o) of the Customs Act and order confiscation of the containers with the option of redemption on payment of fine of Rs.3,50,000/- under Section 125 of the Customs Act. The Adjudicating Authority appropriated an amount of Rs.2,00,000/- paid by the Appellant vide challan dated 22nd January 2008 against the said redemption fine. The Adjudicating Authority confirmed the demand of Rs.15,69,149/- under Section 28 of the Customs Act along with interest. An amount of Rs.9,50,316/- paid by the Appellant was appropriated towards the said demand. Penalty of Rs. 2,50,000/- was imposed under Section 112 of the Customs Act and an amount of Rs.1,50,000/- paid by the Appellant was appropriated towards the said penalty.
7. In respect of the 39 containers, the Adjudicating Authority valued the containers at Rs.50,51,619/- under Section 111(o) of the Customs Act and order confiscation of the containers with the option of redemption on payment of fine of Rs.3,60,000/- under Section 125 of the Customs Act. The Adjudicating Authority appropriated an amount of Rs.2,20,000/- paid by the Appellant vide challan dated 22nd January 2008 against the said redemption fine. The Adjudicating Authority confirmed the demand of Rs.16,99,920/- under Section 28 of the Customs Act along with interest. An amount

of Rs.10,36,390/- paid by the Appellant was appropriated towards the said demand. Penalty of Rs.2,60,000/- was imposed under Section 112 of the Customs Act and an amount of Rs.1,60,000/- paid by the Appellant was appropriated towards the said penalty.

8. Aggrieved by the impugned order, the Appellant has filed the present appeals before this Tribunal.

9. Heard both sides and perused the appeal records.

10. I find that it is undisputed that the Appellant had imported 75 containers and had availed the benefit of exemption Notification No. 104/94 dated 16th March 1994. Under the said notification, the Appellant was required to re-export the containers within six months. The Appellant, admittedly, failed to re-export the containers within the stipulated time period and also failed to exercise the liberty to file for extension of time, granted to him under the said notification. I am of the view that exemption notifications require strict interpretation and therefore, the Appellant is in gross violation of the conditions of the exemption notification.

11. On perusal of the Survey Report, I find that the containers have been declared unfit for export and the depreciated value has been calculated at Rs. 11.70 lakhs. The first adjudicating authority had valued the containers at Rs.28,24,034/- (36 containers) and Rs.30,79,820/- (39 containers) and accordingly, duties of Rs.9,50,316/- and Rs.10,36,390/- respectively had been demanded. Much time has elapsed since this valuation was confirmed by the first adjudicating authority. As far as the liability for confiscation of the said containers is concerned, I find that the adjudicating authority has confiscated the containers under the provisions of Section 111(o) of the Customs Act, 1962, which is clearly applicable in this case, as the provision contemplates confiscation of goods which are exempted subject to fulfilment of condition, if unfulfilled, goods are liable for confiscation. I find that in this case the condition of Notification was to re-export the containers within a period of six months or within the extended time of extension as may be granted

by proper officer. It is a matter of record that the Appellant failed to seek extension of time for re-export of the said containers.

12. In the facts and circumstances of the case, I find that the impugned orders have arrived at the value of the containers without any application of mind. I, therefore, pass the following order:

i) I uphold the valuation of the 36 containers at Rs.28,24,034/-, as arrived at by the First Adjudicating Authority and accordingly, uphold the demand of duty of Rs.9,50,316/- along with interest. The Appellant has already paid the duty amount of Rs.9,50,316/- vide challan No. 244 dated 22nd January 2008, which has been appropriated in the impugned order.

ii) Further, I uphold the order of confiscation of the 36 containers and reduce the redemption fine to Rs.2,00,000/-. The Appellant had already paid redemption fine of Rs.2,00,000/- vide challan No. 1117 dated 22nd January 2008, which has been appropriated in the impugned order. I am of the considered view that in the interest of justice, the penalty imposed under Section 112 of the Customs Act be reduced to Rs.1,50,000/-. The Appellant has already paid the penalty amount of Rs.1,50,000/- vide challan No. 1118 dated 22nd January 2008, which has been appropriated in the impugned order.

iii) I uphold the valuation of the 39 containers at Rs.30,79,820/-, as arrived at by the First Adjudicating Authority and accordingly, uphold the demand of duty of Rs.10,36,390/- along with interest. The Appellant has already paid the duty amount of Rs.10,36,390/- vide challan No. 245 dated 22nd January 2008, which has been appropriated in the impugned order.

iv) Further, I uphold the order of confiscation of the 39 containers and reduce the redemption fine to Rs.2,20,000/-. The Appellant had already paid redemption fine of Rs.2,20,000/- vide challan No. 1119 dated 22nd January 2008, which has been appropriated in the impugned order. I am of the considered view that in the interest of justice, the penalty imposed under Section 112 of the Customs Act be reduced to Rs.1,60,000/-. The Appellant has already paid the penalty amount of Rs.1,60,000/- vide challan No. 1120 dated 22nd January 2008, which has been appropriated in the impugned order.

The appeals are disposed in the above terms.

(Pronounced in the open court on 28.07.2020)

Sd/
**(P. K. Choudhary)**
**Member (Judicial)**

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