CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 533 of 2008

[Arising out of Order-in-Original Appeal No: 36/04/CAC/CC/AH dated 30th March 2004 passed by the Commissioner of Customs (Import), Mumbai.]

K S International
F-14/5, 2nd Floor, Sector – 15, Rohini
New Delhi – 110 085 …***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai – 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 534 of 2008

[Arising out of Order-in-Original Appeal No: 36/04/CAC/CC/AH dated 30th March 2004 passed by the Commissioner of Customs (Import), Mumbai–.]

Kulwant Singh
K S International
F-14/5, 2nd Floor, Sector – 15, Rohini,
New Delhi – 110085 …***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai – 400001 ***…Respondent***

APPEARANCE:

Shri Ashok Kumar Singh with Shri Pravin Singh, Advocates for the appellants

Shri KM Mall, Assistant Commissioner (AR) with Shri Bhushan Kamble, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87552-87553 / 2019

DATE OF HEARING:	22/01/2019
DATE OF DECISION:	22/01/2019

PER: C J MATHEW

This appeal arises from order-in-original no. 36/04/CAC/CC/AH dated 30th March 2004 of Commissioner of Customs (I), Mumbai pertaining to two consignments of 'ferrite magnet' of 40,000 kgs (645500 pieces) each, classified in sub-heading no. 850519 of First Schedule to Customs Tariff Act, 1975, were imported against bill of entry no. 12938/30.12.1999 and no. 103827/18.1.2000 with declared value of ₹ 7,38,108 and ₹8,46,784 respectively that were held to be of Chinese origin and liable to anti-dumping duty of ₹ 10,33.600 as per notification no. 103/99-Cus dated 6th August 1999. The importer, M/s KS International, was ordered to pay fine of ₹ 5,00,000 in lieu of confiscation of imported goods that were held as liable to be under section 111(d) and 111(m) of Customs Act, 1962, besides being imposed with penalty of ₹2,00.000 under section 112 (a) of Customs Act, 1962 while Shri Kulwant Singh, the proprietor, was imposed with penalty of ₹ 1,00,000 under section 112 (a) of Customs Act, 1962. Both these appeals are disposed of in this common proceeding.

2. Learned Counsel for the appellants contends that the proceedings were initiated against them only on unsubstantiated information that the goods had originated from Shanghai. It is further claimed that the goods were ‘ferrite core’ *i.e.*, ‘uncharged ferrite magnet’ on which anti-dumping duty is not leviable in view of the specificity of the product covered by notification no. 103/99-Cus dated 6th August 1999 and, drawing attention to notification no. 123/2001 dated 12th December 2001, based on final findings of the authority, which incorporated ‘unmagnetised hard ferrite ring’ for the first time, its applicability on date of import was contested. Learned Counsel also submitted that an identical dispute had been decided by the Tribunal in *Goodwill Electronics & Anr v. Commissioner of Customs, Mumbai [2003 (59) KLT 799 (CESTAT- Mum]*. Challenging the direction to remit fine in lieu of confiscation, Learned Counsel relies upon the decision of the Hon’ble High Court of Bombay in *Commissioner of Customs (Import), Mumbai v. Finesse Creations Inc [2009 (248) ELT 122 (Bom)]*.

3. Learned Authorised Representative contends that, notwithstanding the submissions, the appellant had misdeclared the country of origin as clearly admitted by the proprietor-appellant in his statement before the investigating officers. According to him, the confiscation and penalty were proper in law.

4. We find that the show cause notice had responded to the claim of the appellant herein that the impugned goods were not magnets with the contention that

> *'21…… These magnets are imported in a de-magnetised condition for the purpose of transport and storage. The loudspeaker manufacturers etc., input the process of magnetisation at the final stage where this item is used….',*

and, thereby, it would appear that the impugned goods, while comprising of the core, was, as yet, not magnetised. It is seen that such de-magnetisation is essential for transportation and it is probably this logistical arrangement that, once overlooked by the competent authority for recommending anti-dumping measures, was rectified by appropriate inclusion in the final notification. Nonetheless, the non-applicability of the items covered by notification no. 103/99-Cus dated 6th August 1999 on the date of import is not in question. The decision of the Tribunal in *re Goodwill Electronics & Anr*, is squarely applicable in the present dispute. Accordingly, we set aside the impugned order and allow the appeals.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*