CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 559 OF 2009

[Arising out of Order-in-Original No: 82/09/CC(I) JNCH dated 22nd April 2009 passed by the Commissioner of Customs (Import), Jawaharlal Nehru Custom House, Nhava Sheva.]

Ahuja Yarn Agency
441 Hazuri Road, Near Madhopuri Chowk
Ludhiana – 141 008 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Tal: Uran
Nhava Sheva ***…Respondent***

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

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

CORAM:

HON'BLE DR D M MISRA, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/85881 / 2020

DATE OF HEARING: 05/11/2020
DATE OF DECISION: 05/11/2020

PER: C J MATHEW

In this appeal of M/s Ahuja Yarn Agency, against order-in-original no. 82/09/CC(I) JNCH dated 22nd April 2009 of Commissioner of Customs (Import), Jawaharlal Nehru Custom House, Nhava Sheva which has determined fine of ₹ 5,00,000 for redemption of goods confiscated under section 111(m) of Customs Act,1962 and imposed penalty of ₹ 2,00,000 under section 112(a) of Customs Act, 1962, it is claimed that the adjudicating authority has invoked the provision for confiscation without any valid ground to do so.

2. Narrating the facts leading to the impugned order, Learned Counsel for appellant contends that, on import of ‘polyester filament yarn’, the importer had filed bill of entry no. 74985/14.09.2006 classifying the goods, declared to be valued at ₹ 27,05,623.86, as corresponding to tariff item no. 5402 3300 of First Schedule to Customs Tariff Act, 1975 which, upon examination, was found to be ‘chenile yarn’ classifiable under heading no. 5606 of First Schedule to Customs Tariff Act, 1975 and, though having no implication either on valuation of the goods or on rate of duty, was proceeded against for confiscation and imposition of penalty.

3. According to Learned Counsel, they had not claimed any privilege, including concessional rate of duty under notification no. 21/2002-Cus dated 1st March 2002, arising from the declared classification that would attribute any wrongful intent on the part of the appellant in opting for a heading in chapter 54 of First Schedule to Customs Act, 1962. It is contended that the adjudicating authority had

inveigled an allegation of mis-declaration of value in the impugned order even though there is no evidence on record or any finding of such undervaluation. Contending that none of the statements recorded in the investigation were inculpatory, attention was drawn to the decision of the Tribunal in *Lewek Altair Shipping Pvt Ltd v. Commissioner of Customs [2019 (366) ELT 318 (Tri)]*, and affirmed by the Hon'ble Supreme Court, holding that mere mention of wrong tariff or claiming benefit of ineligible exemption notification did not warrant confiscation of goods.

4. Learned Authorized Representative urged that the confiscation and penalty be upheld as the appellant was a regular importer and that the investigations had established that the intent of misclassification was availment of ineligible exemption which they were unable to bring to fruition owing to intelligence alerts.

5. We find that value had not been re-determined under section 14 of Customs Act, 1962 despite the goods having been re-classified under chapter 56 of First Schedule to Customs Act, 1962. However, in the statement recorded by the investigating officer, the importer had admitted to error in description and tariff item, corresponding to the description of the goods, in the bill of entry. The argument of Learned Counsel that the revised description, as 'polyester feather yarn', is the same as 'polyester filament yarn' in the original declaration is,

therefore, not tenable and may have been an arguable submission if the revised classification was also disputed in this appeal. Learned Counsel has not disputed the consequent revision in the tariff item which has since attained finality by not being challenged. Section 111(m) of Customs Act, 1962 is liable to be invoked for misdeclaration of value and any other particular in bills of entry and, not restricted to material particular having bearing on differential duty, cannot be interpreted in so liberal a manner, as proposed by Learned Counsel, in the light of these facts and circumstances before us.

6. In *re Lewek Altair Shipping Pvt Ltd*, the Tribunal, having restored the declared classification, set aside the confiscation as well as penalty. In that decision, with the exclusion of penal consequence resting on such facts, any incidental observation, pertaining to provisions of law that had not been the basis for granting relief, is in the nature of *obiter* which is no precedent. Therefore, the invoking of empowerment to confiscate in the impugned order cannot be faulted as also the imposition of penalty which follows therefrom.

7. However, as pointed out by Learned Counsel, there is no finding that goods were undervalued. The fine determined for redemption and the penalty imposed appear disproportionate. Therefore, while upholding the confiscation of impugned goods under section 111(m) of Customs Act, 1962, we are of the opinion that the ends of justice will

be served by restricting the fine to ₹ 50,000 and penalty under section 112(a) of Customs Act, 1962 to ₹ 50,000. Appeal is allowed to the extent of this modification.

(Pronounced in open court)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*