CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 273 of 2009

(Arising out of Order-in-Original No. 49/08-09 CC(I)JNCH dated 09.03.2009 passed by Commissioner of Customs (Import), Nhava Sheva)

Usman H. Solanki **Appellant**
Room No.20, Bldg. No.51/57,
Supariwala Market, Masjid Bunder (W),
Mumbai 400 009.

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dt. Raigad,
Sheva 400 707.

AND

Customs Appeal No. 274 of 2009

(Arising out of Order-in-Original No. 49/08-09 CC(I)JNCH dated 09.03.2009 passed by Commissioner of Customs (Import), Nhava Sheva)

Zaheer Abbas Khan **Appellant**
Manj International at Bhagti Niwas Compund,
Room No.155, Halav Pool,
Pipe Road, Kurla (W),
Mumbai 400 070.

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dt. Raigad,
Sheva 400 707.

Appearance:

Shri Neerav R. Mainkar, Advocate, for the Appellant
Shri Bhushan Kamble, Assistant Commissioner (Authorised Representative) for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/**85896-85897/2020**

Date of Hearing: 28.01.2020
Date of Decision: 28.01.2020

PER: SANJIV SRIVASTAVA

These appeals are directed against Order in Original No 49/04-09 CC (I) JNCH dated 09.03.2009 of the Commissioner Customs (Import) Nhava Sheva. By the impugned order Commissioner has held as follows:

(i) "I reject the transaction value of Rs. 4,42,097.20 for items Nos. 1 to 19 covered by B/E No. 630523 dated 30-09-2008 in terms of rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

(ii) The value of the items No. 1 to 19 covered by B/E No. 630523 dt 30-09-2008 is ascertained to Rs.16,27,973.15 in terms of the rule 3(4),4,5,6, and 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 and 17(4) of the Customs Act, 1962 and leviable duty to Rs.4,86,931.32.

(iii) The goods imported vide B/E No. 630523 dated 30-09-2008 imported by Shri Usman H Solanki using the IEC of M/s. Manj International valued at Rs. 16,27,973.15 are confiscated under Section 111(d) & 111(m) of the Customs Act, 1962 read with Section 7 & 11 of Foreign Trade (Development & Regulations) Act, 1992, read with rule 12 and 14 of Foreign Trade (Regulations) Rules 1993, read with para 2.12 of the Foreign Trade Policy 2004-2009. However goods can be redeemed on payment of a fine of Rs 4,07,000/ (Rupees : Four lakhs and seven thousand only) within 30 days of the receipt of this order.

(iv) The goods imported in the past seven Bills of Entry were illegally imported by Shri Usman H Solanki using IEC of M/s. Manj International valued at Rs.32,22,247/- 'though physically and readily not available , are confiscated under section 111(d) & 111(m) of the Customs Act, 1962, read with Section 7 & 11 of Foreign Trade (Development & Regulations) Act, 1992 , read with rule 12 and 14 of Foreign Trade (Regulations) Rules 1993, read with para 2.12 of the Foreign Trade Policy 2004-2009. However the goods can be redeemed on payment of a fine of Rs

8,00,000/- (Rupees: Eight lakhs only) within 30 days of the receipt of this order

(v) Penalty of Rs.2,50,000/- (Rupees : Two lakhs and fifty thousand only) under Section 112(a) is imposed on M/s Manj International

(vi) Penalty of Rs.2,50,000/- (Rupees : Two lakhs and fifty thousand only) under Section 112(a) is imposed on Shri Zaheer Abbas Khan

(vii) Penalty of Rs 2,50,000/-(Rupees: Two lakhs and fifty thousand only) under Section 112(b) is imposed on Shri Usman H Solanki

(viii) Penalty of Rs. 2,50,000/-(Rupees: Two lakhs and fifty thousand only) under Section 114 AA is imposed on Shri Zaheer Abbas Khan

(ix) Penalty of Rs 2,50,000/-(Rupees: Two lakhs and fifty thousand only) under Section 114 AA is imposed on Shri Usman H Solanki."

2.1 On the receipt of intelligence that certain unscrupulous importer were illegally importing various items in name of dummy IEC holders, by undervaluing/ mis-declaring the same, investigations were initiated by Rummaging and Intelligence division of Mumbai Preventive Commissionerate. Initial investigations revealed that one such dummy IEC No 0307084728 obtained in name of M/s Manj International was being used. It was also ascertained that one consignment covered by B/E No 630523 dated 30.09.2008 was awaiting clearance from JNCH port.

2.2 Office premises of M/s Manj International was searched by the officers on 3.10.2008 and the statements of the owner of premises Shri Zaheer Abbas Mohammed Khan was recorded. Thereafter statement of Shri Usman Hasan Solanki was recorded on 08.10.2008. Another statement of Shri Zaheer Abbas Mohammed Khan was recorded on 10.101.2008.

2.3 The consignments covered by the B/E No 630523 dated 30.09.2008 was examined and inventorized under a panchnama dated 20.10.2008. On examination the goods were found to be as per the declaration made in the import documents. Since the goods were unbranded Chinese Origin Consumer Goods and did not bear specifications like Model No, MRP and make etc., the assessable value of the same could not have been ascertained on the basis of the NIDB data, based on contemporaneous imports. Thus the value was ascertained by the way of market survey. The prices were ascertained from three different shop owners namely

i. M/s Ashirwad Electronics Corner, Zillion Gali, Opp BMC Bldg 2, Near Nishica World Magic, Sabu Siddique Road Mumbai 400001.
ii. M/s A M Collection Amanah Shopping Centre, Shop No 161-C, Saboo Siddique Masafirkhana Road Mumbai-400001.
iii. M/s A S O Collection Amanah Shopping Centre, Shop No 161-B, Saboo Siddique Masafirkhana Road Mumbai-400001.

2.4 The highest of prices ascertained by market survey conducted in the presence of Shri R D Singh the representative of CHA and Shri Zaheer Abbas Mohammed Khan was taken for determination of the assessable value as per the deductive method.

S No	Description	Unit	No	1-Rs	2-Rs	3-Rs	Assessable value	
							Ascertained	Declared
1	Rice Light 160 Bulbs	Pc	3900	55	55	50	92572.40	53422.69
2	Rice Light 120 Bulbs	Pc	1800	50	48	55	42725.72	18532.24
3	Rice Light 100 Bulbs	Pc	1700	32	33	34	24944.91	14573.04
4	Rice Light 64 Bulbs	Pc	6000	30	32	19	82862.01	18293.63

5	Rice Light 16 Bulbs	Pc	6250	28	30	30	80919.93	8561.33
6	Rope Light 8 Mtrs	Roll	1000	250	255	255	110051.11	42861.88
7	Toy Small Bulbs	Doz	700	360	362	365	126446.95	11135.25
8	Pen 4 pc set	Doz	500	485	485	485	104656.45	10605.00
9	Small picnic table	Pc	250	450	445	450	48551.91	22093.75
10	Children 3 leg stool	Doz	40	960	955	970	16745.03	3181.50
11	Car Screen 7”	Pc	200	2800	2750	2750	241680.88	61862.50
12	Small Fridge (12 ltrs)	Pc	10	3200	3500	3150	27126.58	22093.75
13	Mini Plastic Torch	Doz	1000	360	365	355	150446.06	15907.50
14	Small Fruit Basket	Doz	258	360	360	355	40084.49	4104.14
15	Head Massager	Doz	412	960	950	960	183086.20	54615.75
16	Small Mat	Doz	209	720	710	720	64943.00	16623.34
17	Small Scissors	Doz	750	360	360	360	116524.71	7953.75
18	Garden Swing	Pc	10	175	170	180	776.83	441.80
19	Vaccum Cleaner	Pc	250	650	645	675	72827.90	55234.38
	Total						**1627973.15**	**442097.20**

2.5 On the basis of the ascertained assessable value total duty payable on the said consignment was determined as Rs

4,86,931.32/- as against that computed on the basis of declared value of Rs 87,910/-. Statement of Shri Zaheer Abbas Mohammed Khan was again recorded on 02.01.2009 wherein he admitted the prices ascertained during the market survey and stated that he was ready to pay the duty, redemption fine and personal penalty as deemed fit by the department.

2.6 Further investigations revealed that in past by adopting similar modus operandi, seven import consignment of similar goods from China had been cleared in the name of M/s Manz International. The total declared value of the consignment cleared in the past was ascertained as Rs 32,22,246.86/-

2.7 A show cause notice dated 10.02.2009 was issued under Section 124 of the Customs Act, 1962 to the appellants asking them to show cause why the goods imported against the B/E no 630523 dated 30.09.2008 and against seven bill of entries in past, should not be confiscated under Section 111(d) and 111(m) of the Customs Act, 1962, read with section 7 & 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 2 (c), 12 & 14 of the Foreign Trade (Development and Regulation) Rules, 1993, and para 2.12 of the Foreign Trade Policy, 2004-2009, and penalties should not be imposed on them.

2.8 The show cause notice was adjudicated by the Commissioner as per the impugned order. Aggrieved by the order Appellants have preferred this appeal before CESTAT.

3.1 We have heard Shri Neerav R Mainkar, Advocate for the appellants and Shri Bhushan Kamble, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the Appellants learned counsel submits that-

a. Permitting the use of IEC for bringing goods of other is not a violation of Customs Act, 1962 as have been held in following decisions-

- R Mohandas [2016 (336) ELT 399 (Ker)]
- Gopal Agarwal [2015 (326) ELT 593 (T-Del)]

b. In case of Shiva Kripa Ispat Pvt Ltd {2009 (235) ELT 623 (T-LB)], S B & T International Ltd [2016 (335) ELT 83 (T-Mum)]that goods cannot be confiscated and redemption fine imposed if they are not available for confiscation.

c. In case of J D Orgochem Ltd [2008 (226) ELT 9 (SC)], it has been held that burden of proof to show that the declared transaction value is misdeclared lies on the revenue, even if the declared transaction value is not binding on the revenue. Revenue should discharge the said burden by producing the contemporaneous evidence.

d. Penalty could not have been imposed both on the proprietor and proprietorship concern as have been held by the tribunal in case of Tapi Textiles Pvt Ltd [2016 (339) ELT 83 (T-Mum)] and Saccha Saudha Pedhi {2015 (328) ELT 609 (T-Mum)]

3.3 Arguing for the revenue learned authorized representative submitted as follow:

a. Importer has agreed with the prices ascertained during the market survey he also stated that he is ready to pay the duty, redemption fine and personal penalty.

b. The adjudicating authority has rightly rejected the transaction value in terms of Rule 12 of the Customs Valuation Rule, 2007 and re-determined the value in terms of Valuation Rule 7 & 9 of the Customs Valuation Rules, 2007.

c. Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 which state that no person shall make any import or export, except under an Import-Export Code number granted by Director General or the officer authorized by the Director General in this behalf in accordance with the procedure specified in this behalf by Director General;

d. Section 11 of Foreign Trade (Development and Regulation) Act 1992, which states that no import or export shall be made by any person except in accordance with the provisions of this Act, and

e. Section 12 of the Foreign Trade (Regulation) Rules 1993 provides inter alia that on imposition on any customs port of any goods the importer shall in the Bills of Entry or any other document prescribed by the rules made under the Act, 1962, state the Importer Exporter Code number allotted to him by the competent authority. Hence goods are liable for confiscation under Section 111 (d) and Section 111 (m) as it is established that goods are under invoiced and

f. Para 2.12 of Foreign Trade Policy 2004-2009 states that no import or export shall be made by any person without an IEC number unless specifically exempted. Therefore the goods so imported become prohibited goods as defined in section 2(33) of the Customs Act, 1962 read with above mentioned sections of FTDR & FTP and hence the said goods are liable for confiscation under Section 111 (d) and also under Section 111 (m) of Customs Act, 1962, as it is established that goods are under invoiced.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments on appeal.

4.2 The case under consideration is in respect of the imports made-

- Making use of the IEC of some other person,
- Undervaluation of the goods

4.3 Commissioner has recorded the role of the two appellants in the present case in his order stating as follows:

"5.1 Shri Zaheer Abbas Khan who is the proprietor of the firm M/s Manj International has obtained impugned IEC no 0307084728 in the name of the firm. Though he was the proprietor of the firm he was not aware of the branch address of the firm as mentioned in the IEC .He has accepted in his statement that he received Rs.3000/- from Shri Usman H Solanki for signing a power of attorney of M/s. Manj International in favour of Shri Usman H Solanki for clearance or imported goods from various ports in India under the said, firm and other related works. Further he was to receive around Rs 30000/- from Shri Usman H Solanki after the final clearance of the said imported goods. He did not have any idea about the

source fund, placement of the order and the number of imports so far made under the IEC no. 0307084728. No income tax return is filed in the name of the firm, M/S Manj International. The goods covered by Bill of entry no. 630523 dated 30.09.2008 were imported by Shri Usman H Solanki, that the IEC was obtained as per the sày of Shri Usman H Solanki, the real importer who has invested all the money, that he does not know anything regarding supplier, mode of communication, mode of payment and sources of fund, that Shri Usman H Solanki has used his IEC.

5.2 ' IEC no:0307084728 of Shri Zaheer Abbas Khan was processed through DGFT, Mumbai by Shri Usman Hasan Solanki and the said IEC was obtained in the name of the firm M/s. Manj International . That under this firm Shri Usman Hasan Solanki had in the past imported six consignments from China and all the past imports were all in credit basis .M/s. Manj International has a bank account no with Union Bank of India, but there is no transactions so far from this account, no payment has been made to the consigner. That approximately an amount of Rs.50,000/ is earned in each consignment, however no Income Tax return is filed in the name of M/s. Manj International.

5.3 The present consignment of M/s. Manj International vide Bill of entry no.630523 dated 30-09-2008 was examined and inventorised under a panchnama dated 20.10.2008. The goods are unbranded Chinese Origin Consumer Goods and do not carry specification like Model No., MRP, Make, etc, making it difficult to ascertain their value from NIDB, based on the contemporaneous import. ***Secondly, as per the statement of the IEC holder Shri Zaheer Abbas Mohammed Khan, Shri Usman H Solanki has invested all the money, that he does not know any thing regarding supplier, mode of communication, mode of payment and sources of fund, that Shri Usman H Solanki has used his IEC. Therefore in order to ascertain the correct assessable value a team of officers of N.S.P.U along with the representative of the C.H.A and Shri Zaheer Abbas Mohammed Khan, the IEC holder, conducted market***

enquiry in respect of the said goods. The price at which the goods are sold in wholesale market as per market enquiry has been accepted by IEC holder Shri Zaheer Abbas Khan.

5.4 On analyzing the above facts in light of applicable provisions of Customs Act, "Rules regulations for the above it is evident that the;

a) In view of para 3.6 & 4.2 above, the declared value becomes liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

b) Since the value of the goods cannot be determined under the provisions of Rule 3(1) of the Rules ibid, in terms of Rule 3(4), the value should be determined: by proceeding sequentially through Rules 4 to 7 of the Rules ibid.

c) Since, no contemporary import of the identical goods or similar goods having same brand have been noticed, hence case does not test to the ratio of the Rule 4 & 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

d) Since, the similar goods were available in the Local Market, the impugned goods are liable to be valued following DEDUCTIVE METHOD under Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as envisaged in rule 6 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

e) It is prima facie indicated that M/s. MANJ INTERNATIONAL has grossly under invoiced the goods to evade customs duty. The proprietor of M/s. Manj International, ***Shri Zaheer Abbas Khan in his statement dated 02.01.2009 recorded under section 108 of Customs Act, 1962 has stated that he agrees with the authenticity of the market survey, genuineness of the value of the goods ascertained. He also stated that he is ready to pay the differential duty, redemption fine and personal penalty as deemed fit by the department****.*

f) The IEC holder Shri Zaheer Abbas Khan is not even aware who the overseas supplier, what were the goods imported, how the duty has been paid, whether the Sales Tax, VAT or Income Tax etc. will be paid on the entire transactions or not, how the goods will be sold in the market and to whom, and above all how the remittance will be sent to the Overseas Supplier.

g) Though the goods are freely importable in India, as per the exim policy in force as on date the goods imported is an unauthorized under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Rules made there under since the IEC was misused for import of the goods and hence the goods are liable for action under section 11(u) & 11(v) of Customs Act, 1962 hence liable for confiscation under section 111(d) & 111(m) of Customs Act, 1962.

5.8 The goods imported vide Bill of entry no.630523 dated 30.09.2008 are Unbranded Chinese origin consumer goods and they do not carry specification like Model No, MRP. and Make etc, it is difficult to ascertain their value from NIDB; based on the contemporaneous import. Moreover as per statement of Shri Zaheer Abbas Khan the proprietor of M/s. Manj International, that the real importer is Shri Usman H. Solanki who has used the IEC and due to his inability to produce any copy of contract with the overseas supplier, manufacturer invoice and any other document, the transactional value of Rs. 442097.20 for items Nos.1 to 19 covered by the Bill of entry should be rejected in terms of the rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule 2007.

5.9 The value of the items No. 1 to 19 covered by B/E No.630523 dated 30.09.2008 should be ascertained and assessed as per inferences made in para 3.6-4.2 in terms of rule 3(4),4,5,6 and 7 of the Customs Valuation(Determination of Value of Imported Goods) Rules, 2007, read with section 14 and 17(4) of the Customs Act, 1962 and the duty levied accordingly."

4.4 The above findings of Commissioner are in line with the order of Tribunal in the case of Sacha Saudha Pedhi [2015 (328) ELT 609 (T-Mum)], wherein tribunal has state as follows:

*“**9.** From the above factual position that is based on confessionary statements of Shri Bhumish Shah and Shri Ashok Raghuveer Goyal and also the documents recovered from Shri Bhumish Shah which was accepted by him, it is clear that the appellant M/s. Saccha Soudha Pedhi has undervalued the goods and evaded differential duty. As regard the stand taken by Shri Ashok Raghuveer Goyal at the time of cross examination that he is not authorized person, it is observed that the statement of Shri Ashok Raghuveer Goyal was recorded on 20 March 2001, whereas cross examination was conducted on 27-1-2006, that is after more than 5 years which is clearly afterthought. Shri Ashok Raghuveer Goyal was not prevented from retracting his statement immediately after recording his statement, therefore all his averments made during cross examination is clearly afterthought and statement given by him on 20 March 2001 hold good and the same was legally and correctly relied upon by ld. Adjudicating Authority. Moreover, he has provided various documents related to this case and categorically admitted undervaluation. He has in pursuance of his interrogation has also deposited Rs. 10 lakhs toward duty. From the statement it is clear that he was actively involved in all the activities of the appellant M/s. Saccha Soudha Pedhi therefore reliance of his confessionary statement cannot be disputed at all. Similarly as regard anything contrary to the statement of Shri Bhumish Shah submitted by him during cross examination after 5 years is also clearly afterthought and the same cannot be taken into account for the purpose of the defence of the appellant. Apart from admission of Shri Bhumish Shah and Shri Ashok Raghuveer Goyal in their statements and documentary evidence recovered from Shri Bhumish Shah the price of the goods indicated in the public ledger clearly suggests that the appellant has grossly undervalued the spices imported by them. As regards appellant’s plea in appeal that there is no reliance on price of*

contemporaneous import, we are of the view that once the witnesses admitted the undervaluation and accepted the actual price contained in the fax messages of foreign supplier, then the said admitted price become the transaction value. In such case there is no need to resort to price of contemporaneous import. In view of the above factual position and discussion thereupon we hold that the valuation of the goods determined by the ld. Adjudicating Authority is legal and correct and consequently the differential demand of custom duty on such value and corresponding interest and penalties imposed under Section 114(a) of Customs Act, 1962 is also upheld."

4.5 In view of the above we uphold the manner of determination of value as adopted by the Commissioner in case of these goods which are unbranded, without any MRP or any specifications affixed on them. Further we also note that Importer IEC holder has in his statement admitted that the goods have been undervalued and has accepted the value as determined by the department using the deductive method. He was party to the market enquiries and surveys and also has admitted its authenticity and correctness. In our view in present case revenue has successfully discharged the burden to show that the declared transaction value was not the actual transaction value as per the Section 14 of the Customs Act, 1962. Thus the decision of Hon'ble Supreme Court in case of J D Orgochem Ltd [2008 (226) ELT 9 (SC)], would not help the case of appellants.

4.6 In the decision of tribunal referred by us in para 4.4 tribunal has categorically laid down after analyzing the ratio of various earlier decisions that *"We are of the considered view that the confiscation is not sustainable for the reason that the goods were not available physically for confiscation. Confiscation of goods can only be made of physically available goods, if the same is seized and either lying under seizure or if provisionally released. In the present case goods are not available for redemption hence confiscation and redemption fine is bad in law."* In case of Shiv Kripa Ispat Pvt Ltd [2009 (235) ELT 623 (T-

LB)], a larger bench of tribunal has relying on the decisions of Hon'ble Punjab and Haryana High Court in case of Raja Impex Pvt Ltd [2008 (229) ELT 185 (P&H)], expressed the same view. In view of the decisions as above we uphold the confiscation and redemption fine imposed in respect of the consignment covered by the B/E No 630523 dated 30-09-2008. However we are not in position to uphold the order of the Commissioner confiscating the goods covered by the past seven Bill of entries. Hence the redemption fine imposed in respect of these goods confiscated which Commissioner himself records are not available for confiscation is set aside.

4.7 Now coming to issue of the penalty imposed. For imposing the penalties on the appellants Commissioner has recorded as follows:

"6. The goods imported under B/E no. 630523 dated 30-09-2008 are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962, read with section 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 2(c), 12 & 14 of the Foreign Trade (Regulation) Rules 1993, and Para 2.12 of the Foreign Trade Policy: 2004 2009.

6.1 The goods imported in the past under Seven Bills of Entry as detailed in Annexure of the SCN are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 read with Sections 7 & 11 of the Foreign Trade (Development and Regulation) Act, 1992 Rule 2(C), 12 & 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.12 of the Foreign Trade Policy, 2004.2009.

6.2 Shri Usman H Solanki imported the said consignments without having a valid IEC NO. He has done all activities related to import of the said consignments but did not use/have any IEC allotted to him. He filed Bills of Entry using the IEC of M/s. Manj International knowingly and intentionally that it did not belong to him in violation of Section 46(4) of the Customs Act, 1962, section 7 & 11 of Foreign Trade (Development & Regulations) Act, 1992, read with rule 12 and 14 of Foreign Trade (Regulations) Rules 1993, read with para 2.12 of the Foreign Trade Policy 2004-2009 *rendering subject goods liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962. Hence, he is liable for penal action under section 112(b) and 114 AA of the Customs Act,1962 for his present and past seven imports.*

6.3 Shri Zaheer Abbas Khan proprietor of M/s. Manj International knowingly allowed Shri Usman H Solanki to use the IEC of M/s. Manj International for monetary consideration. He was not at all associated with the import of said consignments but allowed Shri Usman 'H Solanki to file Bills of Entry using IEC of M/s. Manj International in violation of section 46(4) of the Customs Act, 1962, section 7 & 11 of Foreign Trade (Development & Regulations) Act, 1992, read with rule 12 and 14 of Foreign Trade (Regulations) Rules 1993, read with para 2.12 of the Foreign Trade Policy 2004-2009 rendering subject goods liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962. Hence, he is liable for penal action under section 112 (b) and 114AA of the Customs Act, 1962, for his present and past seven imports.

6.3 Shri Zaheer Abbas Khan proprietor of M/s. Manj International knowingly allowed Shri Usman H Solanki to use the IEC of M/s. Manj International for monetary consideration. He was not at all associated with the import of said consignments but allowed Shri Usman H Solanki to file Bills of Entry using IEC of M/s. Manj International in violation of Section 46(4) of the Customs Act, 1962, section 7 & 11 of Foreign Trade (Development & Regulations) Act, 1992, read with rule 12 and 14 of Foreign Trade (Regulations) Rules 1993, read with para 2.12 of the Foreign Trade Policy 2004-2009 rendering subject goods liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962. Hence he is liable for penal action under section 112(b) and 114 AA of the Customs Act, 1962 for the present and past seven imports under the name of M/s. Manj International

6.4 M/s. Manj International IEC no. 0307084728 has grossly under invoiced the goods to evade customs duty. The proprietor of M/s. Manj International Shri Zaheer Abbas khan in his *statement dated 02.01.2009 has stated that he agrees with the authenticity of the market survey, genuineness of the value of the goods ascertained, he also stated that he is ready to pay the duty, redemption fine and personal penalty as deemed fit by the department. The IEC holder is not even aware who is the overseas supplier, what where the goods imported, how the duty has been paid, whether the Sales Tax, VAT or Income Tax etc. will be paid on the entire transactions or not, how the goods will be sold in the market and to whom and above all how the remittance will be sent to the Overseas supplier and still allowed his IEC to be used by Shri Usman H Solanki for monetary consideration. Though the goods are freely importable in India, as per the EXIM policy in force as on date, the subletting of IEC is in contravention to the provision of Foreign Trade (Development and Regulation) Act, 1992 and Rules need their under since the IEC was misused for import of the goods and hence the goods are liable for confiscation under the provision of Section 111 of the Customs Act, 1962 and hence M/s. Manj International under Section 112(b) of the Customs Act, 1962 for its present and past seven imports for their acts of commission and omission which have rendered the said goods liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962."*

4.8 From the findings as noted above and recorded by the Commissioner we are in agreement with the observations made by the Commissioner to the effect that for various act of omission and commission leading to the Confiscation of the goods the penalties are imposable on the appellants. However since we have not upheld the order of confiscation in respect of the goods imported by the Appellants in past seven consignments hence in our view the penalties imposed on the appellants is not appropriate. We also take note of the fact that penalties have been simultaneously imposed by the Commissioner under Section 112(b) of the Customs Act, 1962 on M/s Manj International and its proprietor Shri Zaheer Abbas Khan, which is contrary to the established law as per the decisions rendered in the case of Tapi Textiles Pvt Ltd [2016

(339) ELT 83 (T-Mum)] and Saccha Saudha Pedhi [2015 (328) ELT 609 (T-Mum)].

4.9 We also note that it was Shri Zaheer Abbas Khan, who had obtained the IEC in the name of his firm and has permitted the use of the same by Shri Usman H Solanki for the purpose of monetary gain, a fact which has been admitted by the appellants.

4.10 In view of the fact as above we reduce the penalties imposed on the appellants as follows:

i. Penalty Under Section 112(b) imposed on Shri Zaheer Abbas Khan is reduced from Rs 2,50,000/- to Rs 1,50,000/-, and the penalty imposed on his firm M/s Manj International is set aside.
ii. Penalty Under Section 112(b) imposed on Shri Usman H Solanki is reduced from Rs 2,50,000/- to Rs 1,00,000/-.
iii. Penalty Under Section 114AA imposed on Shri Zaheer Abbas Khan is reduced from Rs 2,50,000/- to Rs 1,50,000/-.
iv. Penalty Under Section 114AA imposed on Shri Usman H Solanki is reduced from Rs 2,50,000/- to Rs 1,00,000/-.

5.0 In view of the above the appeal filed are partially allowed modifying the impugned order as indicated in para 4.6 and 4.10. Apart from the above modifications the impugned order is upheld.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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