CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 1162 of 2012

(Arising out of Order-in-Appeal No.775/MCH/JC/Gr.VII D/2012 dated 11.09.2012 passed by Commissioner of Customs (Appeals), Mumbai)

Shri Yatin Audiovision **.....Appellant**
6-B, Mukund Nagar,
Chaziabad – 201 001.

VERSUS

Commissioner of Customs (Export Promotion), Mumbai **.....Respondent**
New Custom House, Ballard Estate,
Mumbai – 400 001.

Appearance:

Shri Anil Balani, Advocate for the Appellant
Shri Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/87664/2019

Date of Hearing : 11.11.2019
Date of Decision : 11.11.2019

PER : S.K. MOHANTY

Brief facts of the case are that the appellant herein had imported Dry Battery Cells and filed Bill of Entry for assessment before the jurisdictional customs authorities; on request made by the appellant, the said goods were released provisionally on payment of differential duty and execution of bank guarantee with PD Bond;

the goods were intercepted by DIU, R & I Wing and examined under panchanama in the presence of the officers of department and the representative of the CHA; the samples were drawn and market enquiry report was obtained by the department, which was accepted by the representative of the appellant. On the basis of enquiry, the department initiated show cause proceedings against the appellant, which culminated into the adjudication order dated 15.09.2010, wherein the declared RSP value of the imported goods was rejected and re-assessed at Rs.22,89,600/-. The said order had confiscated the seized goods under Section 111(m) of the Customs Act, 1962 and imposed redemption fine of Rs.2,00,000/- in lieu of such confiscation. Besides, the order also imposed penalty of Rs. 50,000/- on the appellant under Section 112(a) *ibid*. An amount of Rs.1,65,870/- deposited by the appellant was appropriated in the said order against the differential duty liability. Feeling aggrieved with the order dated 15.09.2010, the appellant had filed appeal before the Ld. Commissioner (Appeals), which was disposed of vide order-in-appeal dated 11.09.2012 (for short, referred to as "the impugned order") in dismissing the appeal filed by the appellant. Against such impugned order, the appellant has preferred the present appeal before the Tribunal.

2. The Ld. Advocate appearing for the appellant has filed the written submission, contending *inter alia* that even if the RSP is enhanced, the provisions of Section 111(m) *ibid* cannot be invoked inasmuch as the term 'value' mentioned in the said section does not cover RSP under the Customs Tariff Act. He also submitted that the description of goods and CIF value were correctly declared by the appellant and as such, the imported goods were not liable for confiscation. In this context, he has relied upon the decision of this Tribunal in the case of *Commissioner of Cus., S.T. & EX., Cochin Vs. Abdul Syed Peer Mohamed* – 2014 (307) E.L.T. 540 (Tri.- Bang.). With regard to imposition of penalty under Section 112(a) *ibid,* the Ld. Advocate submitted that since the goods were not liable for confiscation, the said statutory provisions cannot be invoked for

imposition of penalty. He has relied upon the decisions of this Tribunal in the case of *Commissioner of Customs, New Delhi Vs. V.J. Traders* – 2019 (366) E.L.T. 909 (Tri.-Del.) and *ABB Ltd. Vs. Commissioner of Customs, Bangalore* – 2011 (272) E.L.T. 706 (Tri.-Bang.), to justify the stand of non-imposition of penalty on the appellant.

3. On the other hand, the Ld. AR appearing for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. We find that the issue of rejection of declared RSP Value of the imported goods and re-determination of the same by the department have not been specifically contested by the appellant. This fact is evident from both the original as well as the impugned order that the appellant had accepted the market enquiry report and paid the differential duty. Further, the Ld. Advocate appearing for the appellant also did not raise any objection with regard to rejection of the declared RSP value at this stage. Thus, the present appeal filed by the appellant is only confined for determination of the issue, whether the subject goods can be confiscated under Section 111(m) *ibid* and imposition of penalty under Section 112 (a) *ibid* are justified or not.

6. As per the provisions of Section 111(m) *ibid*, the improperly imported goods are liable for confiscation, in the eventuality, when the goods are not corresponding in respect of value or in any other particular with the entry made under the Act. In this case, it is not the case of Revenue that the appellant had mis-declared the description or the value of the imported goods in the Bill of Entry filed by it. Further, the provisions of Section 111(m) *ibid* deal with the value to be declared for determination of the Basic Custom Duty (BCD) and not for the Additional Custom Duty (CVD) inasmuch as computation of the CVD amount is required to be done on the basis

of determination of the amount of BCD. In this case, since the issue relates to levy of CVD on the imported goods, the provisions of Section 111(m) *ibid* shall not be applicable for confiscation of the subject goods.

7. Section 112(a) *ibid* deals with the situation of imposition of penalty for improper importation of the goods. The said statutory provision mandates that where the goods are liable to confiscation under Section 111 *ibid,* then the issue of imposition of penalty can be considered. In this case, since the goods were not liable for confiscation under Section 111(m) *ibid,* the question of imposition of penalty under Section 112 (a) *ibid*, does not arise. We find that the decisions relied upon by the appellant are squarely applicable to the facts of the present case in respect of non-imposition of redemption fine and penalty on the appellant.

8. In view of above, we do not find any merits in the impugned order, insofar as it has upheld imposition of fine and penalty in the adjudication order. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Operative portion of the Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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