CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Customs Appeal No. 86783 of 2019

(Arising out of Order-in-Appeal No. 61 DEEC Monitoring Cell/2019(JNCH) Appeal-I dated 29.03.2019 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

M/s. Mehta Tubes Ltd. **Appellant**
Char Rasta, Nanapondha,
Taluka Kaprada,
Dist. Valsad 396 126.

Vs.

Commissioner of Customs, Nhava Sheva-IV **Respondent**
JNPT, Custom House, Nhava Sheva, Raigad 400 707.

Appearance:

Shri Karan Sarawagi, Advocate, for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 02.05.2022
Date of Decision: 02.05.2022

FINAL ORDER NO. A/85510/2022

This appeal is directed against order in appeal No 61/DEEC Monitoring Cell/2019/JNCH/Appeal – I dated 29.03.2019 of the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai II. By the impugned order, the following has been held:

"12. In view of the foregoing, I uphold the order in original No 754/2017-18/ADC/NS IV/CAC/JNCH dated 26.02.2018, subject to following modifications:

a) The amount of redemption fine of Rs 10,00,000/- imposed vide the aforementioned Order in Original is reduced to Rs 3,00,000/- (Rupees Three Lakhs only)
b) The order of confiscation under Section 111 (m) of the Customs Act, 1962 and imposition of penalty under Section 112 of the Customs Act, 1962 are upheld.

13. In view of above, Order in Original No 754/2017-18/ADC/NS IV/CAC/JNCH dated 26.02.2018 is upheld and the *appeal No 47/2016 filed by M/s Mehta Tubes Ltd. Is disposed off."*

1.2 By the order in original, adjudicating authority has held as follows:

1. I Confiscate the goods valued at Rs. 1,13,10,064/- imported vide Bill of Entry no. 5150361 dated 9.2.2018, under Sec. 111(m) of the Customs Act, 1962. However, I give an option to redeem the same on payment of Fine of Rs. 10,00,000/- (Rupees Ten Lakhs only) under Sec. 125 of the Customs Act, 1962
2. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the importer under Section 112(a) of the Customs Act, 1962.
3. The goods to be cleared after debiting the proper advance authorisation license which allows import of Copper Scrap Cobra Grade.

2.1 Appellant filed Bill of Entry No. 5150361/9.2.2018 for import of "Copper Scrap Cobra Grade" under Notification No. 18/2015 against Advance License No. 0310816198 dated 6.10.2017, issued by Addl. DGFT, Mumbai.

2.2 During the time of examination, it was observed that the goods declared as Copper Scrap Cobra Grade did not get covered under the said Advance licence, as the license showed the description as "Copper Scrap ISRI grade Birch/Berry No. 1". As the goods declared in the bill of entry and the advance license did not match, it appeared that license benefit could not be given to the goods pertaining to the Bill of Entry.

2.3 The importer informed that that they were actual users of the goods and will be manufacturing Copper Billet/Ingots from the scrap, and the end products are manufactured from any grade of copper scrap. They also submitted that they have a separate Advance Authorization License of a particular grade i.e. Copper Scrap Cobra Grade and they may be allowed to use that license in the said bill of entry instead of the earlier one which showed different grade of copper scrap.

2.4 The matter for improper declaration made on Bill of Entry in respect of Advance License No. 0310816198 dated 6.10.2017 was adjudicated by the original authority as per the order in original referred in para 1.2 above.

2.5 On appeal, Commissioner (Appeals) has vide the impugned order modified the order in original as indicated in para 1, above.

2.6 Aggrieved, appellant have filed this appeal.

3.1 I have heard Shri Karan Sarawagi, Advocate for the appellant and Shri Bhushan Kamble, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits:-

- Facts are not in dispute they have at the time of filing the bill of entry indicated the Advance License No. 0310816198 dated 6.10.2017, which did not indicated item imported;
- There was no mis-declaration made on the bill of Entry in respect of the goods imported. The goods imported were correctly described on the Bill of Entry. They at the time of filing the Bill of Entry were having another Advance Licence which indicated the imported goods. Adjudicating authority has agreed to the submissions made and allowed them to debit from that advance authorization licence which allowed the import of impugned goods.
- However for the act of the improper declaration made in respect of advance authorization licence, original authority held goods liable for confiscation under Section 111 (m) of the Customs Act, confiscated the goods and allowed them to be redeemed on payment of redemption fine of Rs 10,00,000/-. Commissioner (Appeal) has upheld the order of confiscation but reduced the redemption fine to Rs 3,00,000/-
- Original Authority also imposed a penalty of Rs 1,00,000/- under Section 112 (a)
- The orders of authority below are contrary to the decision of the Apex Court in case of northern Plastics Ltd [1998 (101) ELT 549 (SC)] and tribunal in case of Sirthai Superware India Ltd. [2020 (371) ELT 324 (T-Mum)]
- Following the ratio of the above decisions appeals be allowed.

3.3 Arguing for the revenue learned authorized representative re-iterated the findings of original authority.

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

4.2 Original authority has in his order observed as follows:

"I find that it is the responsibility of the importer to claim clearance against advance authorisation only when the imported goods are allowed against the same authorisation. They should have submitted the proper advance authorisation which they were having, at the time of filing of the said bill of entry. However, failing to do so, it is implied that they claimed clearance against advance authorisation which was not covering the imported goods. Therefore, I hold that subject goods valued at Rs. 1,13,10,064/- are liable for confiscation under Sec. 111(m) of the Customs Act, 1962 and the importer is liable for penal action under Sec. 112(a) of the Customs Act, 1962. However, since the importer was having advance authorisation license no. 0310814445/ 4.7.2017, which allowed import of Copper Scrap Cobra grade, I am inclined to take a lenient view."

4.3 Upholding the order of original authority, Commissioner (Appeal) observed as follows:

"9. It is not disputed that the goods imported are "copper scrap cobra grade" and clearance has been claimed under Advance Authorization No. 0310816198 dated 06.10.2017. It has also come on record that at the time of import, Authorization dated 06.10.2017 did not cover the goods imported, though the endorsement covering the goods was made after import of the goods. However, the appellant had another authorization No. 0310814445 dated 04.07.2017, which covered the goods and which had been permitted by the OA for debit in respect of goods in question.

10. It is a matter of fact that Cobra Grade was endorsed on the Authorization dated 06.10.2017 on 12.02.2018 after the import of the goods and the same description was endorsed on Authorization dated 04.07.2017 on 18.01.2018. It is further a fact that the authorization dated 04.07.2017 has been permitted by the OA. for debiting against the goods imported vide the aforesaid Bill of Entry. It is also a fact that the appellant was in *possession of the authorization dated 04.07.2017, which was subsequently endorsed. Accordingly it can be construed that the wrong mentioning of advance Licence No. was inadvertent and no malafide intent can be ruled in.*

11. However, the fact remains that the particulars in the Bill of Entry were mis-declared. The onus of giving the correct declaration to Customs squarely lies on the importer. In the instant case, the Advance Licence mentioned in the Bill of Entry did not cover the goods under question. These omissions and commission as well as mis-declaration of the licence the Bill of Entry on the part of the importer undoubtedly renders the goods liable to confiscation. Accordingly, I hold that the OA has rightly exercised his discretion in confiscating the goods. However, I find that the appellant was in possession of the Authorization dated 04.07.2017, which covered the goods in question, before the import of the goods itself, which rules out deliberate mis-declaration and malafide intent on their part. Further, I also find that there is no revenue loss pointed out in the impugned order at this stage. Accordingly, I form a considered opinion that ends of justice would be met if the quantum of redemption fine is reduced to Rs. 3,00,000/-. As far as imposition of penalty is concerned, I find that since mis-declaration is confirmed, the quantum of penalty imposed by the OA does not require any interference."

4.4 Sections 111(m) of the Customs Act, 1962 which have been invoked by the authorities for holding that the goods are liable for confiscation read as follows :-

"(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of Section 54;"

I do not find any error invoking this section as the goods declared were contrary to the entries in the Advance Authorization Licence produced for clearance of the said goods, seeking their clearance at the time of filing the Bill of Entry. The decisions relied upon by the appellant do not support the case of appellant to effect that both the decisions referred in respect of the assessment to be made by the authorities for determining the classification of the goods or the admissibility of any exemption notification.

4.5 In view of above I do not find any difficulty in holding that the goods were liable for confiscation as per this section and appellants were liable to penalty. However I am of the view that both redemption fine and penalties imposed as per the impugned order are excessive , specifically when Commissioner (Appeal) concluded that *"the wrong mentioning of advance Licence No. was inadvertent and no malafide intent can be ruled in."* In view of the specific finding wrong mention of advance License No was inadvertent, Commissioner (Appeals) should have limited the fines and penalty amount as token amount. In my view the ends of justice will be met if the redemption fine is reduced to Rs 20,000/- and penalty under Section 112 (a) reduced to Rs 5,000/-

5.1 In view of the discussions as above, appeal is partially allowed to the extent of reducing the redemption fine to Rs 20,000/- and penalty under Section 112 (a) to Rs 5,000/-.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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