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

Customs Appeal No. 86997 of 2019

(Arising out of Order-in-Appeal No. 50 (Gr.VIIH)/2019(JNCH)Appeal-I dated 28.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s. J.G. Impex Pvt. Ltd. **Appellant**
3791/4, Gali Lohewali,
Chawli Bazar, Delhi 11 006.

Vs.

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

Appearance:

Shri Prashant Patankar, Consultant, for the Appellant
Shri Manoj Das, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 06.05.2022
Date of Decision: 06.05.2022

FINAL ORDER NO. A/85479/2022

This appeal is directed against the order in appeal No 50 (Gr.VIIH)/2019(JNCH)Appeal-I dated 28.03.2019 of the Commissioner of Customs (Appeals), Mumbai-II. Vide the impugned order, following has been held:

"7. In view of the above, the Order-in-Original No. 76/2017-18/ADC/NS-II/CAC/JNCH dated 25.04.2018 passed by the Additional Commissioner of Customs, Gr. /H, NO-I, Sheva is upheld as far as the appellant is concerned with the following modifications:

i) The duty @ 28.1% (20% BCD, 10% SWS, 5%GST) shall be levied as per revised invoice submitted by the appellant for goods composed of Polyester on the CIF value USD 16,328.28.

ii) The Redemption Fine of Rs. 3,00,000/- imposed at para 9 (ii) of the order-in-original is reduced to Rs. 1,50,000/- (Rupees One

Lakh Fifty Thousand only) in terms of Section 125 of the Customs Act, 1962."

1.2 Vide order in original referred above, Additional Commissioner has held as follows:

"9. In view of above discussion and findings, I pass the following order:

(C) ORDER

i. *I reject the declared duty @ 16.55 (10% BCD + 10% SWS + 5% GST) come to Rs 3,03,760.40/- and classification under CTH 58063190 of the goods covered under Bill of Entry No 5426071 dated 03.03.2018. I re-determine the duty @ 28.15 (20% BCD + 10% SWS + 5% GST) comes to Rs 5,15,751/-. I order the Bill of Entry to be re-assessed as per the re-determined classification and duty.*

ii. *I confiscate subject/ offending goods Tape Ribbons Strips for labels (for industrial use) imported vide Bill of Entry (B/E) No 5426071 dated 03.03.2018 under Section 111 (m) of the Customs Act 1962. However, as the goods are not restricted/ prohibited, I give an option to the importer to release the goods on payment of redemption fine of Rs. 3,00,000/- (Rupees Three Lakhs only) under Section 125 of the Customs Act, 1962.*

iii. *I impose penalty of Rs 60,000/- (Rupees Sixty Thousand only) on the importer M/s J G Impex Pvt Ltd. (IEC No. 0494012528) under Section 112 (a) of the Customs Act, 1962.*

iv. *I impose penalty of Rs 3,00,000/- (Rupees Three Lakhs only)) on the importer M/s J G Impex Pvt Ltd. (IEC No. 0494012528) under Section 114AA of the Customs Act, 1962."*

2.1 The appellant filed Bill of Entry No. 5426071 dated 03.03.2018 for clearance of goods declared as 'Tape Ribbons Strips for labels (for industrial use) {of various sizes}. The goods were classified under tariff item i.e. 58063190 which covers goods composed of cotton. The value was declared as per the supplier invoice dated 08.02.2018 to be USD 27,767.20/-.

2.2 On examination, the goods were found to be of polyester and merit classification under the tariff item 58063200.The appellant accepted that the goods were composed of Polyester. Accordingly goods were classified under Tariff Item 58063200 as against the declared classification under Tariff Item 58063190. Hence the issue of classification has attained finality.

2.3 Since the goods were found to be off polyester appellant took up the matter with the supplier, who vide his letter dated 18.03.2018 admitted the mistake. Supplier vide his letter dated 03.04.2018 revised the invoice value from USD 27,767.20 to USD 16328.28. The appellant submitted the revised invoice to the Custom authorities wherein the CIF value was mentioned as USD 16328.28 for the goods composed of Polyester as found during examination.

2.4 The case was adjudicated by the Additional Commissioner as per the order referred in para 1.2. Aggrieved appellant filed the appeal before Commissioner (Appeals). Appeal has been disposed by the Commissioner (Appeals) as per the impugned order.

2.5 Aggrieved, appellants have filed this appeal.

3.1 I have heard Shri Prashant Patankar, Consultant for the appellant and Shri Manoj Das, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned consultant submits:

- They had filed the B/E as per the available documents with them, i.e. purchase order dated 03.01.2018, supplier Invoice dated 08.02.2018 and packing list. The classification of the goods was made as per the description of goods as per their purchase order and supplier invoice.
- On examination the custom authorities found the good to be made of polyester instead of cotton, and proposed to modify the classification and applicable rate of duty. To such modification appellant expressed no objection.
- As the price of the goods of cotton is much higher than those of the polyester they took up the matter with the supplier who agreed to the mistake committed by him in supplying the goods of polyester, by describing them to be of cotton. Supplier amended the invoice and also issued

the credit note to them for the excess amount paid by them as per the earlier invoice.

- They had produced the said revised invoice to the original authority, and sought the assessment to be made as per the revised invoice. The request was not considered by the Additional Commissioner, but was acceded to by the Commissioner (Appeals).
- On reassessment made as per the impugned order the total duty payable by them has been assessed to be lower than the duty paid by them earlier, hence there can be no intention to evade payment of duty on the behalf of appellants.
- Though Commissioner (Appeals) upheld for revising the assessment as per the revised invoice he has upheld the order of confiscation reducing the redemption fine from Rs 3,00,000/- to Rs. 1,50,000/- and the penalty.
- Since there is no short payment of duty, the order upholding confiscation and imposition of penalty cannot be justified.

3.3 Learned authorized representative re-iterates the findings recorded as per the impugned order.

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

4.2 Commissioner (Appeals) has by the impugned order observed as follows:

"6.3 I find that the discrepancy was found during the physical examination of the consignment. The appellant's submission that it was supplier's mistake is just an afterthought as the misdeclaration was detected only on examination by the Customs officer and there is difference in duty between the declared item and that actually imported. Had the Customs officer not examined the goods the discrepancy would have gone unnoticed. The appellant had self-assessed the goods. Further, re-classification of goods due to mis-declaration in increase of duty liability. The acts and omissions of the appellant rendered the confiscation as discussed above. They were aware that the goods composed classification under Tariff Item 58063200. The act of the appellants go to prove willfully misstated the

classification of goods by knowingly/deliberately filing the under heading Tariff Item 58063190 to evade payment of applicable Customs duty. claiming a particular classification which resulted in payment of less duty than was app rendered the goods liable to confiscation under section 111(m) of the Act when mis of material particulars was found. The appellant did not declare the complete description of goods. On combined reading of the description given in the Bill of Entry the declared Tariff Item makes it obvious that the goods declared are made of cotton whereas actually they are composed of polyester.

6.4 Here it was a case of mis-classification of the goods to evade payment of applicable duty. I do not agree with the appellant's submissions that claiming a particular classification the appellant cannot be held liable to confiscation under section 111(m) of the Acne mis-declaration of material particulars was found. I find that the appellant had in the bi Entry which was self-assessed declared the classification as 58063190. The cold description in the Bill of Entry without giving the complete composition of the goods would have enabled the appellant to wrongly claim Tariff Item 58063190 where lower duty was leviable. The appellant did not declare the nature, composition of the product but just mentioned as "Tape Ribbons Strips for labels (for industrial use) {of various sizes} which does not give any idea about the actual composition of the product. Section 111 (m) of the Customs Act, 1962, mandates that any goods brought from a place outside India and which do not correspond in respect of value or in any other particular with the entry made under this Act shall be liable to confiscation. I find that the appellants by not declaring the complete and correct particulars and description of the goods combined with wrong classification rendered the goods liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Thus I find no infirmity in the order of the OA holding the goods liable to confiscation in terms of Section 111(m) of the Customs Act, 1962. In view of the above suppression I find that the various case laws relied by the appellant in support of their contention that the goods do not merit confiscation in terms of Section 111(m) of Customs Act, 1962 do not come to their aid. Thus I find that while determining the Redemption Fine of Rs.

3,00,000/- on the appellant the Original Authority has taken into account the value of goods composed of cotton. Considering the facts and the circumstances of the case and the re-determined value of the goods, I find that ends of justice would be met if the redemption fine of Rs. 1,50,000/- is imposed on the appellant.

6.5 For the action of the appellant in misdeclaring the description of the goods which rendered the goods liable to confiscation, the appellant is rightly held liable to imposition of penalty under Section 112(a). The appellant by making false declaration, manipulated the description in the invoice by giving incomplete description of the goods to claim classification where lesser duty was payable to evade the payment of applicable duty. Hence they rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 imposed on the appellant by the OA is also not excessive in view circumstances of the case."

4.3 It is not the case of the revenue that appellant had intentionally misdeclared the goods. In fact he has declared the goods as per the purchase order, invoice and packing list of the supplier. This fact is also established by the fact that he had actually made the payments to the foreign supplier as per the purchase order and invoice treating the impugned goods to be made of Cotton. All these facts if taken into account would establish that appellant had not caused any fraudulent or false document to be filed before the Custom Authorities at the time of filing the Bill of Entry. It also point to the fact that there was certain errors were made by the foreign supplier by shipping the goods of polyester against the invoice declaring the same to be made of Cotton. Supplier did not deny the error made and admitted the same. Section 114AA of the Customs Act, 1962 read as follows:

"Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

Additional Commissioner has in para 6, of his order while justifying the imposition of penalty under Section 114AA, observed as follows:

"6. As per Section 114AA of the Customs Act, 1962, ….. In the present case, the importer has knowingly and intentionally self assessed the subject goods by mis-declaration of description in respect of brand of the goods to evade appropriate duties as the value of the branded goods are more than the unbranded goods. Therefore the importer appears liable for penalty under Section 114AA of the Customs Act, 1962."

The above findings are contrary to the assessment finalized determining the duty payable to be less than the duty assessed on Bill of entry originally filed by the Appellant. Commissioner (Appeals) has in his order directed assessment to be made as per the revised invoice which revises the value downwards. Further when the appellant had filed the B/E as per the documents which are true as per his information and knowledge penalty imposed cannot be justified as he has not '*knowingly and intentionally*', filed the documents which department claim to be erroneous. Hence I am of the view that penalty under section 114AA cannot be justified.

4.4 However I agree with the findings recorded by the Commissioner (Appeals) to the effect that certain incomplete descriptions were made in the bill of entry for which the goods became liable for confiscation under Section 111 and appellant liable for penalty under Section 112 (a). But without much justification for such errors which have been committed by the foreign supplier the redemption fine and penalties imposed in terms of Section 125 and section 112 (a) seem to be on higher side. I am accordingly of the view that the ends of justice will suffice if the Redemption fine is reduced from Rs 1,50,000/- to Rs 50, 000/- and penalty from Rs 60,000/- to Rs 30,000/-.

5.1 In view of the discussions as above the appeal is partly allowed to extent of:

i. setting aside the penalty imposed under Section 114AA of the Customs Act,1962.

ii. reducing the redemption fine from Rs 1,50,000/- to Rs 50,000/-.

iii. reducing the penalty under section 112 (a) from Rs 60,000/- to Rs 30,000/-.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

tvu