CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85863 OF 2021

[Arising out of Order-in-Appeal No: 375/GR-I/IA/2021(JNCH)/APPEALS dated 7th April 2021 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Gauri Impex
Flat No. A402, Goodwill Garden CHS, Plot No. 15/16
Sector 8, Khargar, Navi Mumbai - 410210 …***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist : Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri M S Murthy, Advocate for the appellant

Shri Bhushan Kamble, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINALORDER NO: A/85714 /2022

DATE OF HEARING: 18/02/2022
DATE OF DECISION: 12/08/2022

PER: C J MATHEW

The appellant herein, M/s Gauri Impex, is before us impugning order-in-appeal no.375/GR-I/IA/2021(JNCH)/APPEALS dated 7th April 2021 of Commissioner of Customs (Appeals), Mumbai – II which upheld the order of the original authority revising the duty liability on the impugned goods from ₹ 19,33,894 to ₹92,29,248 by application of rate pertaining to tariff item 2710 1949 of First Schedule to Customs Tariff Act, 1975 instead of that corresponding to tariff item 2710 1971 of First Schedule to Customs Tariff Act, 1975 claimed by them, the attendant confiscation of goods under section 111(d) and 111(m) of Customs Act, 1962 that were permitted to be redeemed on payment of fine of ₹80,00,000 and imposition of penalty of ₹ 20,00,000 and ₹7,00,000 respectively under section 112(i) and 112(ii) of Customs Act, 1962.

2. Learned Counsel for the appellant informed that, having placed order for ‘base oil grade-12’ on their supplier, M/s Global International Trade Link FZE, UAE, bill of entry no. 8636740/29.08.2020 was filed for clearance of 186.99 MTs and self-assessed to duty of ₹ 19,33,894 at the rate corresponding to the declared description by computation of basic customs duty at 5% and of ‘integrated tax’ at 18%. He narrated that consequent to receipt of report of test carried out by Dy Chief Chemist, Jawaharlal Nehru Custom House (JNCH) indicating the sample to conform to parameters typical of 'high flash high speed diesel', proceedings were initiated and culminated in the impugned order. According to him, the plea of the appellant that the supplier had erred in despatch of goods that was not ordered by them and that, even so, they had found an eligible buyer in India to whom it could be sold did not find favour with the original authority who had not only imposed harsh terms for

redemption but, by the elapse of two months from import, precluded the possibility of domestic clearance of the goods. It is contended by him that despite agitating these aspects before the first appellate authority, the adjudication order was upheld.

3. He submitted that the only option before the appellant was re-export and that the lower authorities had not been mindful of

> *'Provided that, without prejudice to the provisions of sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.'*

in section 125 of Customs Act, 1962. It was further contended that even the differential duty had been arrived at without application of the effective rates. He pleaded that the circumstances of mistaken supply, and, that too, during the pandemic, was not deserving of such harsh treatment.

4. Learned Authorized Representative submitted that the appellant does not contest the misdeclaration in description of the impugned goods and that the consequences of incorrect classification, as well as attempt to clear goods at lower duty, merited the treatment accorded in the impugned order.

5. It is not in dispute that the impugned goods are 'high flash high speed diesel' which is 'canalised' for import and did not conform to

declaration in the bill of entry; consequently, the application of the appropriate rate of duty cannot be cause of cavil. Though appellant did challenge the denial of effective rates of duty, that grievance is academic in the backdrop of intention to re-export which restricts the present proceedings to confiscability of the goods and imposition of penalty.

6. Interestingly, both the lower authorities proceeded on the foundation of goods having been established as other than claimed in the bill of entry to justify confiscation of the consignment with attendant consequences. In the process, the claim of the appellant that the supplier had, mistakenly, switched orders was not evaluated; probably, the waiver of show cause notice by the appellant prompted this sterile approach to adjudicatory, and appellate, obligations.

7. The impugned goods are permitted to be imported only by specified agencies; this is not a measure of protection but is mere extension of the scheme of petroleum product distribution in India. It, therefore, begs the question of wherewithal available to the appellant to undertake storage and marketing of diesel. It is also less than certain that potential customers could be persuaded to procure a commodity, that is considered to be adulteration-prone, from an unknown entity. It is also inconceivable that ‘diesel' should have the same price as ‘base oil’ and, while revising the classification, there was no attempt to ascertain the correctness of the assessable value.

We forbear from further comment on this want which appears more to have been the outcome of conclusion that any revision in assessable value would have made it impossible to clear the goods.

8. Nevertheless, the failure to ascertain the market value is in breach of section 125 of Customs Act, 1962. The fine demanded for redemption must be set aside on that count alone. Furthermore, in the light of the peculiarity of petroleum marketing and consumption in the country, private imports, even at much lower rates of duty and reduced pricing, commercially lack feasibility enough to give credence to the claim of the appellant that goods had been mistakenly despatched.

9. In these circumstances, we set aside the confiscation of goods under section 111 of Customs Act, 1962 as well the penalties imposed under section 112 of Customs Act, 1962. The customs authorities concerned are directed to assess and permit the goods to be exported upon compliance with procedure laid down in Customs Act, 1962.

(Order pronounced in the open court on 12/08/2022)

(ANIL CHOUDHARY)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*