CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 89623 of 2013

(on behalf of Appellant)

(Arising out of Order-in-Appeal No. 828(Gr.IV)/2013(JNCH)/IMP-626 dated 30.08.2013 passed by Commissioner of Customs (Appeals), JNCH)

M/s Oberoi Constructions Ltd. **.....Appellant**
Commerz 3rd Floor, International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon (E), Mumbai-400063.

VERSUS

Commissioner of Customs (Import), Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House, Post Uran, District-Raigad-400707.

<u>WITH</u>

Customs Appeal No. 89624 of 2013

(on behalf of Appellant)

(Arising out of Order-in-Appeal No. 828(Gr.IV)/2013(JNCH)/IMP-620 dated 29.08.2013 passed by Commissioner of Customs (Appeals), JNCH)

M/s Oberoi Realty Pvt. Ltd. **.....Appellant**
Commerz 3rd Floor, International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon (E), Mumbai-400063.

VERSUS

Commissioner of Customs (Import), Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House, Post Uran, District-Raigad-400707.

<u>Appearance:</u>

Shri N. D. George, Advocate for the Appellant
Shri S. K. Hattangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86181-86182/2022

Date of Hearing: 07.12.2022
Date of Decision: 07.12.2022

PER : S. K. MOHANTY

Brief facts of the case are that the appellants herein had imported "Aluminium Profile", classifying the same under CTH 76042990. The Bills of Entry were self assessed by the appellant and subsequently were re-assessed by the department, in changing the classification of the product to CTH 76109030. The re-assessment order dated 25.07.2012 was accepted by the appellants insofar as change in classification of the goods are concerned. However, the appellant has assailed the said re-assessment order, insofar as it had imposed redemption fine and penalties on them. On appeal against the assessment order dated 25.07.2012, the Learned Commissioner (Appeals) vide the impugned order dated 29.08.2013 and 30.08.2013 has upheld the adjudged demands confirmed on the appellants and rejected the appeal filed by them. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that there is no mis-declaration of goods and thus, the provisions of Section 111(m) of the Customs Act, 1962 cannot be attracted for confiscation of the imported goods and for payment of redemption fine and penalty under Section 125 and Section 112 (a) respectively *ibid*. To support such stand, Learned Advocate has relied upon the judgment of Hon'ble Supreme Court in the case of Northern Plastic Ltd. Vs Collector of Customs and Central Excise reported in 1998 (101) ELT 549 (S.C.).

3. On the other hand, the Learned AR appearing for Revenue reiterates the findings recorded in the impugned order and further submitted that since there is wrong classification of the goods claimed by the appellants in the Bills of Entry, imposition of redemption fine and penalty by the authorities below is proper and justified.

4. Heard both sides and perused the records.

5. The facts are not under dispute that the description of the goods namely 'Aluminium Profiles' indicated in the import documents was the same as declared by the appellants in Bills of entry filed before the authorities at the port of import. Insofar as change in classification of the product in question is concerned, the appellants *bonafidely* believed that the product should appropriately be classified under 76042990 and accordingly, filed the Bills of entry classifying the product under the said CTH. It is not the case of Revenue that the appellants had mis-declared the goods with an intent to evade payment of duty. Since, Section 111(m) *ibid* provides for confiscation of the goods in the eventuality of mis-declaration of the goods, which are absent in the present case, we are of the view that redemption fine and penalty cannot be imposed on the appellants. With regard to confiscation of goods, imposition of redemption fine and penalty, the Hon'ble Supreme Court in the case of Northern Plastic Limited *(supra)* have held that when the description of goods have been correctly furnished in the Bills of entry, the said statutory provisions do not apply for penalizing the importer-appellants.

6. In view of above, we do not find any merits in the impugned orders, insofar as imposition of redemption fine and penalty are concerned. Accordingly, the impugned orders to such extent are set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in the open court)

(C.J. Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

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