CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85326 of 2021

(Arising out of Order-in-Original No. 63/2020-21/CAC/CC (IMPORT-II)/MKK dated 22.01.2021 passed by the Commissioner of Customs (Import-II), Mumbai)

M/s Royale Impex **.... Appellant**
2-A Jagruti Apartments, Shivaji Chowk,
Kalwa, Thane, Maharashtra – 400605.

Versus

Commissioner of Customs, **.... Respondent**
Mumbai-Import-II
New Custom House, Ballard Estate, Mumbai-400001.

Appearance:

Shri V.M. Doiphode, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85901/2023

Date of Hearing: 04.05.2023
Date of Decision: 11.05.2023

Per: Anil G. Shakkarwar

Present appeal is directed against Order-in-Original dated 22.01.2021 which was passed by the original authority after the matter was remanded by this Tribunal through Final Order dated 04.07.2005.

2. Brief facts of the case are that the appellant imported rough marble slabs and filed Bills of Entry on 13.04.2000. The value declared by the appellant was US $ 310 (CIF) per metric ton

(PMT). During the relevant period, import of marble slab was allowed only against Special Import License provided CIF value PMT was US $ 450 or more. Since the appellant did not have a Special Import License, the matter was adjudicated through Order-in-Original dated 03.05.2000 through which the value was enhanced to US $ 450 PMT (CIF) for the purpose of assessment. The same was agreed by the appellant. The goods were confiscated and allowed to be redeemed on payment of fine of Rs. 1,91,000/- and penalty of Rs. 48,000/- was imposed on the appellant under Section 112(a) of the Customs Act, 1962. Aggrieved by the said order, Revenue filed appeal before the Tribunal praying for increasing the redemption fine and penalty. This Tribunal vide Final Order dated 30.05.2002 remanded the matter for fresh adjudication. Subsequently Order-in-Original dated 21.10.2004 was passed wherein redemption fine of Rs. 1,91,000/- was imposed and penalty of Rs. 3,10,000/- was imposed. Against the said order dated 21.10.2004, appellant preferred appeal before this Tribunal. This Tribunal disposed off the said appeal along with other similar appeals through Final Order dated 04.07.2005 by remanding the matter to the original authority to verify the factual position of margin of profit and to decide upon quantum of redemption fine and penalty after taking into account the appellant's submissions and calculations on the point of margin of profit. In compliance to the said Final Order dated 04.07.2005, Order-in-Original dated 22.01.2021 is passed. Through the said order dated 22.01.2021 the original authority did not interfere with the redemption fine of Rs. 1,91,000/- and imposed penalty of Rs.

3,10,000/-. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for the appellant. Learned Counsel for the appellant has submitted that this Tribunal has passed Final Order dated 04.07.2005 against Order-in-Original dated 21.10.2004 remanding the matter to the original authority. The original authority through order dated 21.10.2004 has imposed redemption fine of Rs. 1,91,000/- and penalty of Rs. 3,10,000/-. Even after remand, the order continued to be the same and the original authority has not specified as to why the order remains the same, if they have carried out the direction of this Tribunal passed in the order dated 04.07.2005 through which matter was remanded to verify margin of profit. He has further submitted that in Order-in-Original in para 10.11 gives a calculation sheet and the said calculation sheet indicates that the appellant had incurred a loss of Rs. 73,298/-, and that it means there was no profit and inspite of that the original authority continued to maintained the earlier order and that this establishes that the original authority has not carried out the direction of this Tribunal and therefore the said order is bad in law.

4. Heard the learned AR. He has supported the impugned order.

5. I have carefully gone through the records of the case and submissions made. I find that the details of calculation were provided to the original authority. However, the original authority has not taken into consideration the same. I also find that

appellant had made written submissions before the original authority which are recorded in para 9 of the impugned order. As stated in the impugned order, the appellant had submitted before the original authority that fine cannot be more than Rs. 1,91,000/- and penalty may be restricted to 5% of the assessable value. Taking the facts and circumstances into consideration, I modify the impugned order to the extent that I reduce the penalty from Rs. 3,10,000/- to Rs. 48,000/- under Section 112(a) of the Customs Act, 1962. I do not make any change in the redemption fine of Rs. 1,91,000/-. I also note that appellant has already paid redemption fine and penalty at the time of clearance of the goods.

6. In above terms, the impugned Order-in-Original is modified and appeal is partially allowed.

(Order pronounced in open court on 11.05.2023)

(Anil G. Shakkarwar)
Member (Technical)

Sinha