CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 87141 of 2019

(Arising out of Order-in-Appeal No. 971 (Gr.III)/2019 (JNCH)/Appeal-II dated 17.06.2019 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai II)

Kumar Impex **.....Appellant**
4/4503, Krishna Nagar
Karol Bagh, New Delhi

VERSUS

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

APPEARANCE:

Shri H.K. Hirani, Advocate for the appellant
Shri Ram Kumar, (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/85934/2023

DATE OF HEARING : 19.12.2022
DATE OF DECISION : 13.06.2023

Per: AJAY SHARMA

This appeal has been filed from the impugned Order dated 17.6.2019 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai II by which the learned Commissioner modified the order of Adjudicating Authority by setting aside the rejection of declared value of the imported goods and re-determination of the value of the said goods but upheld the appropriation of the amount paid as duty at the time of provisional assessment against the re-determined value alongwith redemption fine and penalties.

2. The appellant has imported *'PU coated fabric' (thickness 0.50 mm +/- 10%)* vide Bill of Entry dated 14.10.2016 and requested for first check. According to the department, upon checking certain discrepancies were found in the description of the imported goods and also in the thickness of the goods imported and accordingly inquiry was initiated During the pendency the appellant requested for provisionally release of the goods against and the same was allowed against PD Bond and 100% bank guarantee of differential duty, which was granted by the department and the goods were released. The *declared value* was rejected and process was initiated to re-determine the value in accordance with the *Customs Valuation Rules,2007* and accordingly a Show cause notice dated 25.1.2018 was issued proposing to reject the declared assessable value/transactional value and to re-determine the same and to finally assess the Bill of Entry under the same heading in which it was assessed provisionally and also to confiscate/impose redemption fine alongwith penalty under different provisions of Customs Act, 1962. The Adjudicating Authority vide Order-in-Original dated 13.12.2018 confirm the rejection of the declared value and re-determination of the value alongwith interest, penalty & redemption fine and also ordered for appropriation of the

amount deposited by the appellant during the proceedings on the basis of re-determined value. On Appeal filed by the appellant the learned Commissioner (Appeals) vide impugned order dated 17.6.2019 although set aside the rejection of transaction value and re-determination of value for the goods imported vide Bill of Entry dated 14.10.2016 but upheld the appropriation of Rs.11,03.907/- paid as duty by the appellant at the time of assessment against the re-determined customs duty and also upheld the redemption fine and penalties under various provisions of Customs Act, 1962.

3. Now the issue is whether redemption fine, penalties can be imposed and amount paid by appellant as duty at the time of assessment against the re-determined value can be appropriated when the rejection of declared value & re-determine of value has been set aside in appeal? During the course of hearing it has been brought to my notice that during the pendency of appeal herein, the Bill of Entry has been finalized as per declared value and learned counsel made a very relevant submission that when the Bill of Entry has been finally assessed at the declared value then the redemption fine and penalties cannot be imposed. Since this development has occurred after the passing of the impugned order and learned Commissioner (Appeals) has no occasion to deal with the same therefore, without going into the merits of the appeal, I deem it appropriate to remand the matter back to the learned Commissioner to be decided afresh on merits

after taking into consideration the development subsequent to the passing of the impugned order.

4. In view of the discussions made hereinabove, the impugned order is set aside and the matter is remanded to the learned Commissioner (Appeals) to be decided afresh after giving proper opportunity of hearing and of placing on record case laws/documents relied upon by the appellant in support of their submissions. The appeal is accordingly allowed by way of remand.

(Pronounced in open Court on 13.06.2023)

(Ajay Sharma)
Member (Judicial)

//SR