CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87983 of 2013

(Arising out of Order-in-Appeal No. 394 (GR.VII-H)/2013(JNCH)/EXP-88 dated 30.04.2013 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Asha International **.... Appellant**
Room No. 1, Vaikunthdham, Chaitanyua Nagar,
B/H Bhavani Industrial Estate, IIT, Powai.
Mumbai – 400 076

Versus

Commissioner of Customs (Exp.), Mumbai-II **.... Respondent**
JNCH, Nhava Sheva, Tal. Uran,
Dist. Raigad, Maharashtra – 400 707

Appearance:

Smt. Smita Ranpise, Advocate for the Appellant

Shri Ashwini Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86194/2023

Date of Hearing: 11.08.2023

Date of Decision: 11.08.2023

Per: S.K. Mohanty

Brief facts of the case are that M/s Asha International had imported the goods and declared the same as mixed items of Hair Accessories, Imitation Jewellery accessories etc. On examination of the goods, the Department found that there was excess weight in the imported consignment as against the declared weight in the Bills of Entry and also the declaration made about the composition of the imported goods as MS (Mild Steel) is also found incorrect, inasmuch as the goods were actually made of Brass as per PMI test report.

Thus, the Department initiated proceedings against the appellant and vide order dated 30.03.2012 had rejected the declared value and re-determined the same as Rs.54,04,846/-under Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; confiscated the goods under Sections 111(d), (m) and (i) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine of Rs. 08 lakhs. Besides, the said order also imposed penalty of Rs. 02 lakhs under Section 112(a) *ibid*. The original order dated 30.03.2012 was appealed against before the learned Commissioner (Appeals), which was disposed of by the impugned order dated 30.04.2013, in upholding confirmation of the adjudged demands and rejecting the appeal filed by the appellant. Against the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that due to mistake, the overseas supplier had supplied excess quantity of goods to the appellant, which has also been accepted by them vide letter dated 10.02.2012. Thus, she submitted that in absence of any specific allegation concerning fraud, collusion etc., the appellant should not be liable for payment of redemption fine and penalty imposed by the Department.

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order and further submitted that since there is mis-declaration with regard to description as well as content of the product, the provisions of Section 111 *ibid* are attracted for confiscation of goods, imposition of

redemption fine and penalty on the appellant. Thus, he prayed that there is no infirmity in the orders passed by the lower authorities in confirming the adjudged demands on the appellant.

4. Heard both sides and perused the case records.

5. We find that the overseas supplier M/s Landmark EXIM (HK) Co., Hong Kong vide letter dated 10.02.2012 has confirmed that due to oversight they had shipped more quantity of the subject goods to the appellant. On perusal of the case records, we find that the appellant had no intention in wrong filing of the Bills of Entry and based on the available records, they had complied with the requirement of filing Bills of Entry for the imported consignment. However, since the provisions regarding particulars required for assessment has not been declared correctly as found out in the examination conducted by the Department, they have not complied with the Customs law in proper perspective and thus, we are of the considered view that Section 111 *ibid* is attracted for confiscation of goods and for imposition of redemption fine. Therefore, we are in agreement with the order passed by the lower authority that the appellant is exposed to the penal consequences provided in the statute.

6. However, considering the peculiar facts of the case that on the basis of wrong documents submitted by the overseas entity, the appellant had filed the Bills of Entry, we are of the view that lenient approach can be adopted in reducing the quantum of redemption fine and penalty imposed on the appellant. Therefore, the impugned order

is modified to, the extent of reducing the redemption fine to Rs. 04 lakhs and penalty to Rs. 01 lakh respectively.

7. In the result, the appeal is partly allowed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha