CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87308 of 2013

(Arising out of Order-in-Appeal No. 153/MCH/JC/GR.IIB/2013 dated 01.03.2013 passed by the Commissioner of Customs (Appeals),Mumbai Zone-I)

M/s V.G. Enterprises **.... Appellant**
B-302, Dev Darshan Complex,
Plot No. 23, Sector-19, Kharghar,
Navi Mumbai – 410 210

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
New Custom House, Ballard Estate, Mumbai-400 001

Appearance:

Smt. Smita Ranpise, Advocate for the Appellant

Shri S.K. Hatangadi, 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/86195/2023

Date of Hearing: 11.08.2023
Date of Decision: 11.08.2023

Per: S.K. Mohanty

Brief facts of the case are that the appellant had imported goods (declared the goods as 'mixed goods') and filed the Bill of Entry bearing No. 6636237 dated 24.04.2010 for clearance of the said consignment. On examination of the goods, the Department had observed that as against the declared goods at Sl. No.15 "glass stones with metal catcher", the actual description of the goods was found to be "chattons in metal clasp". Accordingly, proceedings were initiated against the appellant, which culminated into the adjudication order dated 15.05.2012, wherein the original authority had confiscated the goods as per Sl. No.15 in the invoice/Bill of Entry under Section 111(m) of the Customs Act, 1962. The value in respect of the said goods was determined at Rs.17,55,776/-. The said order has given the option to the importer-appellant to redeem the goods on payment of redemption fine of 25% of the said determined value i.e., Rs.4,39,000/-. The adjudication order also rejected the declared value of Rs.12,84,475/- in respect of other goods and re-determined the value at Rs.32,69,765/-. Finally, the said order had confirmed customs duty amounting to Rs.17,71,621/- along with interest and also imposed penalty of Rs.4,77,865/- on the appellant. In appeal against the said adjudication order dated 15.5.2012, the learned Commissioner (Appeals) vide the impugned order dated 01.03.2013 has upheld confirmation of adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. We find that the learned Commissioner (Appeals) has rejected the appeal filed by the appellant solely on the ground that classification and valuation aspect has been accepted by the appellant during the course of adjudication proceedings and since no additional/ further evidences were submitted at the appellate stage, he has held that there is no case in favour of the appellant for dropping the adjudged demands confirmed in the original order. We find that the appellant has not specifically pleaded before the original authority that it should not be liable to pay the differential duty and the redemption fine. The records of the personal hearing dated 15.02.2012 as mentioned at paragraph 7 in the original order dated

15.05.2012, relevant for consideration of the present dispute, is extracted herein below: -

> *"7. Mr. V.G. Gupta made the request for the waiver of the show-cause notice and made the request for expeditious adjudication of the case. He was explained the above mentioned provisions of the Custom Act, 1962 and also informed about the determined assessable value of the consignment as per the NIDB data. He accepted the total determined assessable value of Rs.32,69,765/- and also the value of Rs.17,55,776/- of goods/items at Sr. No. 15 (chattons in metal clasp). He accepted the change in classification of the item No. 15 from CTH 74130000 to CTH 70181090. He submitted that importer is a proprietorship firm. He is ready to pay the dues as determined. He requested that penalty may not be levied under Section 112 and Section 114A together, the Importer being a proprietorship concern."*

4. Since the appellant had admitted the modus operandi adopted by it for contravention of the statutory provisions and voluntarily deposited the adjudged demand confirmed by the Department, we do not find any justifiable reason to consider the appeal favourably. Further, the appellant has also not adduced any evidence to show that the orders passed by the lower authorities cannot be sustained on merits.

5. Therefore, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals) in upholding the adjudged demands confirmed against the appellant. Accordingly, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha