CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 89646 Of 2018

(Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-182/18-19 dated 22.06.2018 passed by Commissioner of Customs (Appeals), Mumbai Zone-III)

Commissioner of Customs **.....Appellant**
Air Cargo Complex, Mumbai
Air Cargo Complex, Sahar, Andheri (E),
Mumbai-400 099.

VERSUS

Real Tech
Shop No. 5, 1st Floor, Plot-384, **.....Respondent**
Dongare Building, Shamrao Vitthal Lane off
Dr. D. Bhadakamkar Marg, Grant Road,
Mumbai-400 007.

Appearance:

Shri D. S. Maan, Authorized Representative for the Appellant

Shri Swami Nathan, Consultant a/w Ms Asmita Nayak, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/87012/2023

Date of Hearing: 25.09.2023
Date of Decision: 25.09.2023

PER : S. K. MOHANTY

Brief facts of the case are that the respondent herein M/s Real Tech had filed the Bill of Entry dated 03.09.2016 for import of "Laptop Keyboards" and "Laptop LED Screen", declaring the assessable value of imported goods as Rs.46,52,187/. The said Bill of Entry was ordered for 10% examination by the assessing group. During the course of examination, the department found that there are so many undeclared items such as Watches, Pen Drives, Mother Boards, Laptop, etc., in the imported consignment apart from the goods declared therein. The matter was investigated into by the department and the adjudication order dated 16.10.2017 was passed in this regard rejecting the assessable value declared by the respondent and re-determined the same as Rs.54,23,723/- in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and accordingly, confirmed the duty demand of Rs.9,43,185/- under Section 28(8) of the Customs Act, 1962 along with interest thereon. The original order had also confiscated the declared goods under Section 111(m) *ibid,* with an option to redeem the same on payment of redemption fine of Rs. 21 Lakhs. With regard to the un-declared goods excepting Counterfeit Wrist Watches, the original authority had re-determined the assessable value and confirmed duty demand of Rs.22,61,147/- under Section 28 (8) *ibid* along with interest. The Counterfeit Wrist Watches were absolutely confiscated in the original order under Section 111(d) *ibid* and were ordered for destruction as per procedure. Further, the original order had also imposed penalty of Rs.31 Lakhs under Section 114A *ibid* and Rs.68,59,382/- under Section 114AA *ibid* on the respondent. Feeling aggrieved with the Order-in-Original dated 16.10.2017, the respondent had preferred an appeal before the learned Commissioner (Appeals), which was disposed off vide the impugned order dated 22.06.2018 in partially modifying the original order. In respect of the declared goods, the learned Commissioner (Appeals) has reduced the quantum of redemption fine from Rs. 21 Lakhs to Rs.1 Lakh and has set aside the penalty imposed under Section 114A and 114AA *ibid* on the respondent herein; further, he imposed penalty of Rs.2,50,000/- under Section 112(a) *ibid* on the respondent herein and separate penalty of Rs.50,000/- under Section 112(a) *ibid* for violation of Section 111(d) *ibid* in import of Counterfeit Wrist Watches. Against the impugned order dated 22.06.2018, Revenue has preferred this appeal before the Tribunal *inter alia*, on the ground that the impugned order passed by the Commissioner (Appeals) is not legally sustainable inasmuch as the reduction in the quantum of redemption fine and non-imposition of penalty under Section 114A and 114AA *ibid* is not in conformity with the statutory provisions.

2. Heard both sides and examined the case records.

3. With regard to the un-declared goods, we find that the respondent herein had not placed any purchase order on the overseas supplier on supply of those non-declared goods, which were evident from the e-mail exchange between the respondent and its overseas supplier. The overseas supplier had categorically informed that the said consignment of un-declared goods was wrongly consigned to the respondent, and accordingly, the goods were re-exported by the respondent. Insofar as imposition of penalty under Section 114A *ibid* is concerned, the statute mandates for imposition of penalty only in the eventuality where the short-levy or non-levy of duty is on account of collusion, suppression, wilful misstatement etc., we find that since the respondent had not placed any order on the overseas supplier and those un-declared goods were supplied inadvertently by the overseas supplier, it cannot be said that the provisions of Section 114A *ibid* are

attracted for imposition of penalty on the respondent. Further, on perusal of the order passed by the appellate authority, we find that the provisions of Section 112 *ibid* have been invoked for imposition of penalty on the respondent. In this context, the 5th proviso appended to Section 114A *ibid* mandates that in case where the penalty has been imposed under Section 112, no further penalty can be imposed under Section 114A *ibid.* Thus*,* we are of the view that since, the provisions of Section 112 have been invoked for imposition of penalty on the respondent, the provisions of Section 114A *ibid* cannot be invoked for imposition of penalty on the respondent. Therefore, we are of the view that the appeal filed by the Revenue with regard to imposition of penalty under Section 114A *ibid* on un-declared goods cannot be sustained.

4. With regard to the declared goods, we find that the differential duty payable on such goods has been calculated to Rs.1,35,125/-. Since, the learned Commissioner (Appeals) has modified the adjudication order in reducing the quantum of redemption fine to Rs.1Lakh on the grounds that the redemption fine imposed by original authority is harsh and excessive, in comparison with the differential duty involved being Rs.1,35,125/-, we are of the view that such order passed by the Commissioner (Appeals) cannot be interfered for accepting the prayer of the Revenue for increasing the amount of the redemption fine. Thus, on this count Revenue’s appeal also fails. As regards the penalty imposed under Section 114AA *ibid* is concerned, we find that with regard to the declared goods, the respondent has contravened the provisions by declaring incorrect particulars in filing the Bill of Entry and in clearance of the goods from the port of import.

Therefore, we are in agreement with the Revenue that the provisions of Section 114AA are attracted in the circumstances of the present case for imposition of penalty on the respondent. Therefore, the impugned order setting aside the quantum of penalty imposed under Section 114AA *ibid* is set aside and it is ordered that the respondent is liable to pay penalty of Rs.1,35,125/- in terms of the provisions of Section 114 AA *ibid.*

5. In view of the foregoing discussions, the appeal filed by the appellant is disposed of.

6. In the result, the appeal is partially allowed.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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