CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 88424 OF 2014

(Arising out of Order-in-Appeal No. 3005 [Adj(I)]/2014(JNCH)/IMP-2862 dated 21.07.2014 passed by Commissioner of Customs (Appeals), Mumbai-II)

Premier Exports **.....Appellant**
Flat No. 1603, Tower No.2,
Rustomjee Ozone, Goregaon (W),
Mumbai-400 062

VERSUS

Commissioner of Customs, Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka-Uran,
District-Raigad,
Maharashtra-400 707

<u>Appearance:</u>

Shri R.V. Shetty a/w Shri S.R. Shetty, Advocates for the Appellant

Shri Ranjan 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/85333/2024

Date of Hearing: 14.03.2024
Date of Decision: 14.03.2024

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the officers of Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai (DRI), had developed an intelligence, which indicated that certain importers were mis-declaring the quantity of cigarettes imported under warehouse bill of entry for re-export purpose, with the intention of either effecting clandestine removal to domestic area or smuggling the same abroad by mis-declaring the relevant details. On the basis of such intelligence, one container being No. CAXU 8090067 was located and kept under watch by the customs authorities at the port of import. Subsequently, M/s Horizon Forwarders (CHA) filed the Bill of Entry No. 8570368 dated 23.11.2012 on behalf of the appellant. The said B/E was filed for clearance of the goods declared as '12 dozen plastic filing racks' and '10,49,000 cigarettes Walton Brand', with the declared value of Rs. 44,10,967.96. Examination of the cargo covered under the said B/E revealed that the appellant had mis-declared the quantity of cigarettes imported by it. On the basis of such examination, show cause proceedings were initiated by the department, which culminated into the adjudication order dated 29.11.2013, wherein the original authority had confiscated the cigarettes of a quantity of 92,31,000 sticks and provided the option to redeem the same on payment of redemption fine of Rs.1,00,00,000/-; further, the original order had also confiscated the declared quantity of 10,49,000 cigarette sticks, with the option to redeem the same on payment of redemption fine of Rs.10,00,000/-, with the condition that both the said confiscated goods should only be re-exported. Besides, the said original order had also imposed penalty of Rs.50,00,000/- under the provisions of Section 112(a) of the Customs Act, 1962 on the appellant. On appeal against the original order, the learned Commissioner of Customs (Appeals), Mumbai-II vide Order dated 21.07.2014 (impugned herein) has upheld the original order with regard to confiscation and imposition of redemption fine, but reduced the quantum of penalty to Rs.10,00,000/-. Feeling aggrieved with the impugned order, insofar as it has imposed penalty of the said amount, the appellant has preferred this appeal before the Tribunal

2. Heard both sides and perused the case records.

3. In support of reduction in the quantum of penalty imposed on the appellant, the learned Commissioner of Customs (Appeals) had recorded the following findings:

> *"I find that the impugned goods are still in the custody of the department. The appellant vide letter dated 30.01.2014 had relinquished all their rights against the impugned consignment. I also find that the impugned goods are perishable in nature and would not have any commercial value once the goods are expired. The appellant had not made any profit in this whole transaction. Though the impugned consignment was imported to be re-exported to third country, there was clear mis-declaration in quantity. There appears to be prima facie malafide intention of the appellant. However, the penalty imposed on the appellant appears to be on higher side and needs modification."*

4. On reading of the said observations made by the learned Commissioner (Appeals), we find that he took a lenient view in reducing the quantum of penalty on the appellant. However, considering the overall facts

and circumstances of the case, more particularly, absence of the profit margin involved in the case in hand and that the confiscated goods were still under the custody of the department, we are of the view that the ends of justice would be met, if the quantum of penalty is further reduced.

5. In view of the above, the impugned order is modified to the extent of reducing the quantum of penalty from Rs.10,00,000/- (Rupees Ten Lakhs) to Rs.5,00,000/- (Rupees Five Lakhs) under Section 112(a) *ibid*, which shall be paid forthwith by the appellant.

6. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Mirani