CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85575 OF 2014

[Arising out of Order-in-Appeal No: 1058 (GR.II-G)/2013 (JNCH)/IMP-819 dated 28th October 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Prakash Dye Chem
36 Ground Floor, Srinagar Colony, Ashok Vihar Road
Near Bharat Nagar, Delhi - 110052 … ***Appellant***

versus

Commissioner of Customs (Import)
JNCH, Nhava Sheva, Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Sanjay Singhal, Advocate for the appellant

Shri Ranjan Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85422/2024

DATE OF HEARING: 17/04/2024
DATE OF DECISION: 17/04/2024

The limited issue in this appeal of M/s Prakash Dye Chem, against the order[1] of Commissioner of Customs (Appeals), Mumbai – II, Nhava Sheva which confirmed fine of ₹ 5,00,000/- in lieu of confiscation under section 125 of Customs Act, 1962 and imposition of

[1] [order-in-appeal no. 1058 (GR.II-G)/2013 (JNCH)/IMP-819 dated 28th October 2013]

penalty of ₹ 2,00,000/- by the original authority, is the proportionality of fine and penalty.

2. It is common ground that the impugned consignment, imported against bill of entry no. 7501840/20.07.2012 declared to contain 12000 kgs (480 bags) of ‘EVA copolymer resin (EVA) (ATEVA)’ valued ₹ 18,83,448/-, also included an additional 5000 kgs of the said goods in 200 bags. The appellant has not disowned the excess goods and has no cavil either over the value adopted for the assessment of the additional quantity or the consequential differential duty of ₹ 1,79,344/- either.

3. Learned Counsel for the appellant submits that they had assumed their declaration to be correct as they had no reason to doubt the bills of lading. Further, they had furnished copies of correspondence with the supplier requiring the order, admittedly, for 17000 kgs to be split into two lots and there was no reason for them to assume that the instruction had been contravened. It is his submission that, notwithstanding the *bonafides* of their imports and evidence to that effect, the adjudicating authority proceeded to confiscate all the goods under section 111(m) of Customs Act, 1962, with consequential fine under section 125 of Customs Act, 1962 as a condition of redemption, besides imposing penalty of ₹ 2,00,000/- under section 112(a) of Customs Act, 1962.

4. Learned Authorised Representative pointed out that the intention to evade payment of duty is apparent in the failure of the appellant to

furnish any documentation relating to the excess shipment at the time of filing of bill of entry or at the time of examination particularly as the shipment was in breach of the purchase order purportedly issued by the appellant to the supplier in Texas, USA.

5. On perusal of the records, it is seen that the consignment of 12000 kgs was shipped in 480 bags of 25 kgs each for which ‘two TEU’ container was certainly excessive; even for the additional 200 bags, it was excessive. The importer had also instructed the supplier to split the consignment into two lots which, combined with the capacity of the container, certainly casts doubts about the transaction for which there is no explanation whatsoever. In the absence of any finding to that effect in the order of the lower authorities, that remains in the realm of speculation.

6. That the goods have been mis-declared, both of quantity and of value, is not in dispute and, therefore, the liability to confiscation under section 111(m) of Customs Act, 1962 is also not in dispute. Similarly, offer of redemption on payment of fine, in lieu of confiscation under section 111 of Customs Act, 1962, is an enforceable right when the goods are not prohibited. It is seen from the impugned order that the first appellate authority has held that redemption fine of 20% and penalty of 10% of value of the goods is not inordinately lacking in proportion to the gravity of the offence. On behalf of appellant, it was canvassed that,

considering the differential duty liability, these were excessive; however, it being the contention of the Learned Counsel that *proviso* to section 125(1) of Customs Act, 1962 requires 'margin of profit' to be the criteria for fine to be determined, there is no reason to base evaluation of proportionality of redemption fine on the differential duty liability. It was pointed out by Learned Counsel that it was the undeclared goods which were liable to confiscation and the quantification of fine and penalty should have been determined thereon. That stand is not to be discountenaced because other goods become liable for confiscation under section 119 of Customs Act, 1962 which has not been invoked and, therefore, not to be considered for such computation.

7. As a thumb rule, 20% of the value of the goods is not, in the absence of rebuttal by appellant, a disproportionate estimate of margin of profit. There is no reason to vary that, as well as, 10% as penalty, in this case. However, bearing in mind confiscability of 5000 kgs of the goods, valued at ₹7,84,700, redemption fine and penalty stands reduced to ₹ 2,00,000/- and ₹ 75,000/- respectively as sufficing to meet the ends of justice.

8. Appeal is accordingly disposed off.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*