

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 88677 of 2014

(Arising out of Order-in-Appeal No. 2374 (Gr. VII H)/2014(JNCH)/EXP-97 dated 10.06.2014 passed by the Commissioner of Customs (Appeals), JNCH, Sheva, Mumbai-II)

M/s Hindustan Unilever Ltd.

Personal Products Factory, Unit-I,
Doomdoo Industrial Estate,
District Tinsukia, Assam- 786 151.

.... Appellant

Versus

**Commissioner of Customs (Export),
JNCH, Nhava Sheva**

JNCH, Nhava Sheva, Mumbai-II,
Taluka- Uran, Dist- Raigad- 400 707.

.... Respondent

Appearance:

Shri Kiran Chavan, Advocate for the Appellant

Shri Deepak Sharma, 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/85456/2024

Date of Hearing: 01.05.2024

Date of Decision: 01.05.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant had filed the Bill of Entry (B/E) No. 3400751 dated 28.09.2013 before the Customs authorities for clearance of the imported goods namely, "Dove AP Original Whitening, Dove AP Silk Dry Whitening, Dove AP GF Cucumber and Dove AP Grapefruit Anti-perspirants". The appellant had claimed the classification of these goods under Tariff Item 3307 20 00. The said B/E was assessed under 2nd check basis with examination order to verify the applicability of the benefit provided under Notification No. 21/2012-Customs dated 17.03.2012. On examination, the shed staff reported that the

declared Retail Sale Price (RSP) of the goods is Rs.170/-; whereas, the RSP found pasted on the package of the goods is Rs.185/-. On the basis of change in the RSP, the Department concluded that the appellant had mis-declared the RSP in order to evade payment of Additional Duty of Customs (CVD). After due process of law, the Additional Commissioner of Customs (Export), JNCH, Nhava Sheva vide Order No. 117/2013-14 dated 10.12.2013 had adjudicated the matter, holding that CVD amount shall be charged on the MRP pasted on the package of goods i.e. Rs.185/- per Pcs; confiscated the imported goods under Section 111(m) of the Customs Act, 1962 with the option to the appellant to redeem the same on payment of redemption fine of Rs.5,00,000/- under Section 125 *ibid* and also imposed penalty of Rs.1,00,000/- on the appellant under Section 112(a) *ibid*. Appeal filed by the appellant against the adjudication order dated 10.12.2013 was disposed off by the learned Commissioner of Customs (Appeals), Mumbai vide Order-in-Appeal No. 2374(Gr.VII H) 2014(JNCH)/EXP-97 dated 10.06.2014 (for short, referred to as 'the impugned order') in upholding the adjudged demands confirmed in the original order. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that the lower MRP declared in the B/E is an error occurred due to communication gap between the supplier and the appellant and that there is no *mala fide* intention in defrauding the Government revenue. He further submitted that confiscation of the imported goods under Section 111(m) is not sustainable and as such, the appellant is not liable to pay the redemption fine and penalty confirmed by the authorities below. In support of such submission, learned Advocate has relied upon the order dated 22.01.2015, passed by this Tribunal in the case of Commr. of Cus. (Import), JNCH, Nhava Sheva Vs. Amrit Corp. Ltd., reported in 2016 (333) E.L.T. 340 (Tri.-Bom).

3. On the contrary, learned AR appearing for the Revenue submitted that since, the actual RSP was not declared in the B/E with regard to the imported goods, the same are liable for confiscation in

terms of Section 111(m) *ibid* and resultantly, the appellant is exposed to the penal consequences provided in the statute. He further submitted that question of *mens rea* is not a condition precedent for determination of the issue whether fine and penalty can be imposed on the importer for irregular importation the goods. In this context, he has relied upon the judgement of Hon'ble Supreme Court, delivered in the case of *Pine Chemical Suppliers Vs. Collector of Customs* - 1993 (67) E.L.T. 25 (S.C.).

4. Heard both sides and examined the case records.

5. It is an admitted fact on record that the appellant had declared the RSP in the B/E at Rs.170/- for the imported goods and on pointing out such defect by the Department that the RSP should have been Rs.185/- , they had paid the differential amount of CVD along with interest and fine and penalty on 03.12.2013 and thereafter, the subject goods were cleared for home consumption. The appellant, in this case had paid for the entire liability towards duty interest and penalties *suo motto*, which is evident from the records that such payments were not made under protest. Though, the appellant's submission is convincing that there was unintentional mistake in declaring the lower RSP in the B/E, but the statutory provisions have been designed in the way that there is no escape route to avoid confiscation of goods, which do not correspond in respect of the value declared in the Bill of Entry. When the goods are liable for confiscation, imposition of redemption fine and penalty under Section 125 *ibid* and Section 112(a) *ibid* respectively are automatic and thus, we do not find any infirmity in the orders passed by the lower authorities in ordering for confirmation of the redemption fine and penalties on the appellant. The Hon'ble Supreme Court, in the case of *Pine Chemical Suppliers* (supra), by upholding the order passed by the Tribunal, has held that mis-declaration of the goods imported by the appellants rendered the same liable to confiscation under Section 111(m) *ibid* and attracted Section 112 *ibid* for imposition of penalty for improper importation thereof.

6. In view of the above discussions, we do not find any merits in the appeal filed by the appellant and accordingly, the same is dismissed.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM