CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 85672 of 2024

(Arising out of Order-in-Appeal No. 45 & 46(CAC)/2024(JNCH)/APEALS dated 19.01.2024 passed by Commissioner of Customs (Appeals), Mumbai-II)

Bhawani Fabricators and Engineering Works ......Appellant
Plot No.59, Adinath Nagar Pal Road, Jodhpur,
Rajasthan - 342001.

VERSUS

Commissioner of Customs, Nhava Sheva-II ......Respondent
JNPT, Custom House, Nhava Sheva, Raigad – 400707.

Appearance:

Shri Jhamman Singh, Advocate for the Appellant

Shri Ram 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/85667/2024

Date of Hearing: 09.07.2024
Date of Decision: 09.07.2024

PER : S. K. MOHANTY

Heard both sides and perused the case records.

2. Brief facts of the case are that the appellant had filed the Shipping Bill No.7561010 dated 31.12.2020 before the Customs Authorities, Nhava Sheva, declaring the export goods as "Crushed Copper", having declared FOB value of Rs. 13,05,135/-. The appellant had claimed the classification of the said goods under CTI 26219000. On examination of the said goods by the Dock Officer, they found that the goods appeared to be "Garnet Stone", instead of declared goods as 'Crushed Copper'. Accordingly, representative samples were drawn and sent to M/s. Indian

Rare Earths Limited (IREL), Research Centre, Kollam, Kerela and the Chemical Examiner at JNPT, Nhava Sheva. On technical analysis of the goods, the Chemical Examiner at Nhava Sheva had confirmed that the Fe_2O^3in the goods is 76.81%. On the basis of such test report, the original authority has passed the order dated 23.02.2023 in changing the classification of the goods to CTI 26011190; confirmed duty demand of Rs.3,91,540/-. However, he has ordered for non-recovery of the duty amount, since the impugned goods were non exported by the appellant and imposed penalties under various provisions of the Customs Act, 1962. On appeal against the said adjudication order dated 23.02.2023, the learned Commissioner (Appeals) vide the impugned order dated 19.01.2024 has upheld part of the demand confirmed in the original order and reduced the quantum of penalty imposed under Section 114(ii) *ibid* to Rs.39,000/- and upheld the penalty of 2.5 lakhs imposed under Section 114AA *ibid*. Feeling aggrieved with the impugned order, the appellant has preferred this appeal, mainly on the ground that the quantum of penalty imposed under Section 114AA *ibid* is in the higher side, considering the nature of the goods and the role played by the appellant in declaring the goods before the customs department.

3. We find that the original authority also got confused in classifying the goods under CTI 26011190 inasmuch as the Chemical Examiner had categorically confirmed that the Fe content i.e. Fe_2O^3 in the goods examined was 76.81%. Considering the content of Fe_2O^3 in the impugned goods, we are of the view that the same should be appropriately classifiable under CTI 28211010. Since, there is confusion with regard to proper classification of the goods and the appellant had filed the shipping bill, mentioning the impugned goods as 'Crushed Copper', we are of the view that invocation of the provisions of Section 114AA *ibid* is justified, but the quantum of penalty should be reduced in the interest of justice.

4. Therefore, the impugned order, to the extent it has imposed penalty of Rs.2,50,000/- under Section 114AA *ibid* on the appellant is

modified, in reducing the quantum of penalty to Rs.1.25 lakhs, which should be paid forthwith by the appellant.

5. In the result, the appeal is partly allowed in favour of the appellant only to the extent of reduction in the quantum of penalty imposed under Section 114AA *ibid*.

(Dictated and pronounced in open Court)

(S. K. Mohanty)
Member (Judicial)

(M. M. Parthiban)
Member (Technical)

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