CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 85750 OF 2021

(Arising out of Order-In-Original no. 78/2020-21/CAC/CC(IMPORTII)/MKK dated 23.02.2021 passed by Commissioner of Customs,(IMP-II) Mumbai.)

ALPESH MARBLES P LTD
National Higway no. 14,
Abu Sirohi Road, Bela Bharla Viya Abu Road,
Bharha,
Rajasthan-307 025.

Appellant

Vs.

COMMISSIONER OF CUSTOMS, MUMBAI IMPORT-II
New Custom House,
Ballard Estate,
Mumbai-400 001.

Respondent

Appearance:

Shri N.D. George, Advocate for the Appellant.

Shri Deepak Sharma, Assistant Commissioner, Authorized Representative for the Respondent.

CORAM:
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 05.08.2024
Date of Decision: 05.08.2024

FINAL ORDER NO :- 85786/2024.

Present appeal is directed against Order-In-Original dated 23.02.2021 which was passed by the Original Authority after the matter was remanded by this Tribunal through final order dated 04.07.2005.

2. Brief facts of the case are that the appellant imported rough marbles and filed the bills of entry on 29.01.2000. The value declared by the Appellant was US dollars 226(CIF) per metric ton. During the relevant period, import of marbles slab was allowed only against special import license provided CIF value per metric ton was US dollars Three hundred or more. Since the appellant did not have a special import license, the matter was adjudicated through Order-In-Original dated 08.02.2000 through which value was enhanced to US dollars 300 (CIF) per metric ton for the purpose of assessment. The same was agreed to by the Appellant. The goods were confiscated and allowed to be redeemed on payment of fine of Rs. 3,60,000/- and penalty of Rs. 90,000/- was imposed on the Appellant under section 112

(a) of Customs Act, 1962. Aggrieved by the said order, Revenue filed appeal before this Tribunal praying for increasing the redemption fine and penalty. This Tribunal vide its final order dated 30.05.2002 remanded the matter for fresh adjudication. Subsequently, Order-In-Original dated 21.10.2004 was passed where in redemption fine of Rs 3,60,000/- was imposed and penalty of Rs 15,38,000/- was imposed. Against the said order dated 21.10.2004 appellant preferred appeal before this Tribunal. This Tribunal disposed of the said appeal along with other similar appeals through final order dated 04.07.2005 by remanding the matter to the Original Authority to verify the factual position of margin of profit and to decide upon quantum of redemption fine and penalty after taking into account the appellant's submission and calculation on the point of margin of profit. In compliance to the said final order dated 04.07.2005, Impugned Order-In-Original dated 23.02.2021 was passed. Through the Impugned Order, the Original Authority did not interfere with redemption fine of Rs 3,60,000/- but imposed penalty of Rs 8,00,000/-. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned counsel for the Appellant. Learned counsel for the Appellant has submitted that this Tribunal through final order dated 04.07.2005 remanded the matter to the Original Authority with a direction to verify factual position of margin of profit and to decide upon quantum of redemption fine and penalty after taking into account the appellant's submissions and calculation on the point of margin of profit. He submits that a C.A. certificate was produced before the Original Authority and a copy of which is also available at page no. 24 of the appeal paper book which indicates that appellant had incurred a loss of Rs. 5,12,890/- for the Financial year ended on 31.03.2001 and also incurred a loss of Rs. 54,30,788/- for the Financial year ended on 31.03.2002 and argued that appellant did not have any profit and in spite of the fact that there was no profit, the Original Authority increased the redemption fine from Rs. 90,000/- decided in the order through which assessment was finalized to Rs. 8,00,000/- and thus did not carry out the direction of this Tribunal and therefore the said order is bad in law.

4. Learned Authorized Representative has submitted copies of final order of this Tribunal in the case of M/s. Sophisticated Marbles & Granite Industries reported in 2004 (165) E.L.T. 353 (Tri. Mumbai) which was affirmed through citation at 2004 (166) E.L.T. 318 (Bom.) by Hon'ble Bombay High Court.

5. I have carefully gone through the record of the case and submissions. I note that this Tribunal while passing the final order on 04.07.2005 had taken

into consideration the case laws cited by the learned Authorized Representative and taking them into consideration, a direction was given to the Original Authority to verify factual position of margin of profit and decide upon quantum of redemption fine and penalty. I find that the details of calculation were provided to the Original Authority. However, the original authority has not taken into consideration the same. I note that the direction in the remand order was to take into consideration margin of profit and I also note that the certificate issued by the Chartered Accountant available on the record indicates that appellant had incurred losses. I also note that when the assessment was finalized redemption fine of Rs. 3,60,000/- was imposed on the Appellant and penalty of Rs. 90,000/- was imposed on the Appellant which was not agitated by the appellant. I, therefore, modify the impugned order in so far as the imposition of the penalty is concerned from Rs. 8,00,000/- to 90,000/-. For clarity, I further sum up that redemption fine shall be Rs. 3,60,000/- and penalty under section 112(a) of Customs Act, 1962 shall be Rs. 90,000/-.

6. With the above modifications, I allow the appeal partially.

(dictated and pronounced in open court)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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