CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86645 of 2013

(Arising out of Order-in-Appeal No. 166/MCH/JC/GR.IIB/2013 dated 05.03.2013 passed by the Commissioner of Customs (Appeals), Mumbai-I)

M/s Kumar Mahendra Exim .... **Appellant**
412/413, Mandvi Navjeevan, 4th Floor,
121/127, Kazi Sayed Street, Mumbai – 400 003

Versus

Commissioner of Customs (Import), Mumbai-I .... **Respondent**
New Custom House, Ballard Estate, Mumbai – 400 001

Appearance:

Shri Vinay Ansurkar, 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/85788/2024

Date of Hearing: 14.08.2024
Date of Decision: 14.08.2024

Per: S.K. Mohanty

Briefly stated, the facts of the case are that the appellant had filed the Bill of Entry (B/E/), being No. 3234135 dated 18.04.2011 for clearance of PVC Sheeting (in Rolls).The said goods were supplied by M/s Malaya Winds SDN BHD, Malaysia. The declared value of the goods was USD 1100 per MTs (CIF). The bill of entry was assessed finally on second check basis by the appraising group. On examination of the goods, the net weight of the goods was found to be 67,616.40 kgs., instead of the declared net weight of 48,000 kgs. The consignment consisted of rolls of 8 different widths. On the basis of the examination, department had initiated proceedings against the appellant, which culminated into the adjudication order dated 13.05.2011, where in the original authority had confiscated the imported goods under Section 111(m) of the Customs Act, 1962 and gave the option to redeem the same on payment of redemption fine of Rs. 2.50 lakh under Section 125 *ibid*; rejected the declared value and re-determined the value under Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (for short, CVR, 2007); and imposed penalty under Section 114A *ibid*. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order date 05.03.2013 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. We find that based on the B/E filed at Nhava Sheva Customs in respect of identical goods imported at a price of Rs.56.50/- per Kg., which was submitted by the appellant, the adjudicating authority had correctly invoked the provisions of Rule 12 of the CVR, 2007 for rejection of the declared value and redetermination of the same under Rule 4 ibid. Since, the reference of the B/E filed for the identical goods was available with the department, rejection of the declared value and redetermination of the same as per the available B/E is proper and justified. We further find that the quantity of imported goods as declared in the B/E by the appellant was 48000 Kgs., as against the quantity of 67,676 Kgs. found during the course of examination by the department. Thus, there is mis-declaration of quantity to the extent of 19,676 Kgs., and accordingly, confiscation of the goods under Section 111(m) *ibid* is proper and ordering for redeeming the same, on payment of redemption fine is in conformity with the statutory provisions. Since, there is evidence that there is mis-declaration of value and quantity, for which no plausible evidence was submitted by the appellant to prove its *bona fide*, imposition of penalty under Section 114A *ibid* is consequential and such imposition cannot be considered differently. Further, we also find that in the record of personal hearing held on 13.05.2011, duly signed by both the appellant’s representative and the adjudicating authority, the appellant had stated as under:

> *“Further they produced a bill of entry of Nhava Sheva-Mumbai where the import of the identical goods is taking place currently at a price of Rs.56.50/ Kg. They accepted the differential liability due to the enhanced weight and revised value and accepted to make the differential customs duty payment under Section 28 of the Customs Act, 1962”*

5. The voluntary deposition of the appellant that there is mis-declaration of quantity of goods and their acceptance for payment of the duty liability, clearly demonstrate that the orders passed by the authorities below are proper with regard to ordering for payment of differential duty along with interest, confiscation of goods with an option to redeem on payment of redemption fine and imposition of penalty, and as such, cannot be faulted with.

6. Therefore, we do not find any infirmity in the impugned order and accordingly, the appeal filed by the appellant is dismissed

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha