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

CUSTOMS APPEAL NO. 87020 OF 2021

(Arising out of Order-In-Appeal No. 557(Gr.V)/2021(JNCH)/Appeals dated 16.07.2021 passed by Commissioner of Customs (Appeals).)

CARTRIDGE KING PUNE
459, Sadashiv Peth,
Tilak Road, Near Alka Theatre,
Pune- 411 030.

Appellant

Vs.

COMMISSIONER OF CUSTOMS-COMMISSIONER OF CUSTOMS, NHAVA SHEVA – V
Jawaharlal Nehru Customs House,
Nhava Sheva, Taluka- Uran,
District- Raigad,
Maharashtra- 400 707.

Respondent

Appearance:

Shri Chirag Shetty, Advocate for the Appellant.

Shri Krishna Azad, Assistant Commissioner, Authorized Representative for the Respondent.

CORAM:
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Date of Hearing: 09.09.2024
Date of Decision: 09.09.2024

FINAL ORDER NO :- 85918/2024.

PER :- MR. RAJEEV TANDON

The Appellant has filed the present appeal assailing the Order-In-Appeal No. 557(Gr.V)/2021(JNCH)/Appeals dated 16.07.2021 upholding the order of the learned adjudicating authority dated 18.11.2019 issued in the matter. The Adjudicating authority vide the said Order-In-Original ordered confiscation of the imported goods allegedly mis-declared/non-declared under section 111 (l) and 111 (m) of the Customs Act, 1962 besides enhancing assessable value and imposing a penalty of Rs. 4,00,000/- under section 112 (a) of the ibid on the appellant.

2. No show cause notice was issued to the Appellant in the matter as they had waived the same, being a matter of adjudication of a live consignment. The importer vide bill of entry no. 3361656 dated 23.05.2019 imported assorted parts of cartridges, OPC drums and black toner from China. It is the case of the department that upon 100% examination of the said cargo only twenty three items were declared hence certain assorted parts of various cartridges OPC drums and cardboard boxes were not mentioned in the declaration at the time of import. Similar allegations of non-declaration of certain items imported have also been levelled by the department in respect of imports made vide Bill of Entry No. 4089851 dated 17.07.2019. The department thus contends that the importer had not declared all the goods imported as required in the terms of section 46 of the Customs Act, and hence the imported goods are liable for the confiscation and accordingly adjudicated the matter as indicated in para above. Apart from holding the goods liable for confiscation as the department found the declaration made by the appellant is "incomplete and vague", they further subjected him to penalty referred to supra.

3. The learned Commissioner (Appeals) in appellate proceedings upheld the order of the adjudicating authority holding that the goods were found to be mis-declared/non-declared.

4. Heard both sides and perused the records.

5. The learned counsel for the appellant submits that order of the lower authorities are not legal and proper in as much as they were passed in violation of the principles of natural justice (as no investigation report by SIIB (Import) Nhava Sheva was made over to them, prejudicing their interest. Holding that there has been no mis-declaration by them the appellant states

that the value of the alleged non-declared goods was included in the invoice value and that there was no duty demand in respect of goods ordered to be confiscated. I note that the Commissioner (Appeals) has however recorded his proposition to the effect that the fact remains that the goods upon examination were found to be mis-declared in quantity and therefore the appellant was liable for penal consequences, interalia pointing out that 5 cartons of black toner powder (for Bill of Entry no. 336156 dated 23.05.2019), and empty cartridges in CKD condition (for Bill of Entry no. 4089851 dated 17.07.2019) were not declared. As for the plea of violation of Natural Justice, the learned Commissioner (Appeals) has stated that as there was no formal show cause notice, the onus to seek the said examination report from the department was upon the appellant.

6. The learned adjudicating authority in para 12 of the order has interalia stated as under

> *"12. It is relevant to mention that the claim of importer that the value of the undeclared goods was already included in the invoiced value <u>was found to be correct</u> in view of the scrutiny of the retail invoices of the assembled cartridges, assembled and sold by the importer. <u>Further, during the investigation, no evidence was noticed which indicate that the declared invoiced value for the whole consignment was not the correct transaction value</u>."*
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> *(emphasis supplied)*

This finding of the adjudicating authority has not been refuted by the learned Commissioner (Appeals).

7. In view of the aforesaid categoric finding of the Original Authority and not having been disputed/over turned by the learned appellate authority, I find that there is no case left out to doubt the bonafides of the importer. At best when it is the case of the department that the value of imported goods

was duly invoiced and said value of undeclared/mis-declared goods indicated in the declaration made no case for demand of additional duty, no case for any offence can be made out against the appellant. I am not in agreement with the contentions of the learned Commissioner (Appeals) that it was for the appellant to seek the charge report/examination report on basis of which the charge having being made by the department. While the examination report indeed be so, resultantly it has not led to any enhancement in duty liability and the transaction value (TV) as declared has been held as the correct TV. The declared invoice value having been held to be the correct transaction value, no case of imposition of penalty arises, all the more so as no additional duty liability has been affixed on the importer. Further the fact of non-supplying of the investigation report of the SIIB (Import) is indeed a serious flaw and violation of natural justice. On this basis alone the order is liable to be set aside. I am thus of the view that there is no merit in the claim of the department that certain goods were not declared. The mis-declaration, if any , as the department does not challenge the transaction value at best is a mere omission and no more than a technical offence, and the case of the importer that the value of all imported goods were duly invoiced strongly supports the premise. Thus, there is no case for the department to subject the appellant to any penal consequences. It is further noted from records that quantity of the components corresponding to the empty cartridge said to be not declared were duly specified in the packing list, and so also for the black toner powder contained cardboard cartons. The department has nowhere made out a case that the importer was required to declare separately each and every component of the empty cartridges under import/CKD condition. The fact that there is no duty demand despite alleged mis-declaration completely substantiates the case of the appellant.

7. Under the circumstances and in view of my findings above, I set aside the order of the lower authority. The appeal filed is allowed with consequential relief if any as per law.

(Dictated and pronounced in open court)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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