CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 3

CUSTOMS APPEAL NO. 85767 OF 2021
CUSTOMS APPEAL NO. 85768 OF 2021

(Arising out of Order-in-Original No.81/2020-21/CAC/CC(IMPORT-II/MKK and OIO No.82/2020-21/CAC/CC(IMPORT-II/MKK dated 25.02.2021passed by the Commissioner(Appeals-II), CGST & Central Excise, Mumbai, 3rd Floor, CGST Bhawan, Plot No.C-24, Sector E, Bandra-Kurla Complex, Bandra (EAST), Mumbai -400 051)

TRIDENT MARBLES P LTD
CTS No.1972, Airport Side Services Road
Western Express Highway,
Vile Parle (E), Mumbai-400099 **Appellant**

Vs.

THE COMMISSIONER OF CUSTOMS—MUMBAI IMPORT-II
NCH, Ballard Estate,
Mumbai-400001 **Respondent**

Appearance:
Present for the Appellant:Shri N.D.George, Advocate
Present for the Respondent: Shri Ranjan Kumar(AR)

CORAM:HON'BLE MR.ASHOK JINDAL, MEMBER (JUDCIAL)

FINAL ORDER NO.86218-86219/2024

Date of Hearing/Decision: **11.09.2024**

PER: ASHOK JINDAL

As the issue is common in these two appeals, therefore, they are being disposed of by this common order.

2. The facts of the case are that the appellants filed two bills of entry for clearance of rough marble blocks imported from Italy. The goods were examined on first check basis and allowed to be cleared provisionally against a P.D.Bond and Bank Guarantee for 35% of CIF value after enhancing the value to USD 30 per sqmtr which comes to USD 556 PMT. The goods were tested by Geological Survey of India, Nagpur which was

not correct. The goods were cleared against SIL as other calarious stones other than marble was allowed under SIL subject to minimum floor price of USD 450 PMT and the importer has paid duty on value as calculated @USD 556 and SIL to the tune of 3 times was also debited. Vide the impugned order, a penalty was imposed on the appellant. Thereafter, the matter travelled upto the Tribunal and the Tribunal vide Final Order No.A531 to 555/05/C-II dated 4.7.2005 remanded the matter to the adjudicating authority with the direction that the adjudicating authority shall verify the factual position. The appellant during the course of hearing before the adjudicating authority, submitted a copy of the balance sheet alongwith CA certificate wherein during the relevant period, the appellant has incurred losses. In the remand proceeding, the adjudicating authority although recorded that the appellant has filed the balance sheet for the year 1999-2000 but while interpreting the issue, the adjudicating authority recorded that the appellant has not produced any calculation sheet or margin of profit. Accordingly, the duty was enhanced. Against this order, the appellant is before me.

3. Ld.Counsel for the appellant submits that the appellant has produced balance sheet showing profit of margin but the adjudicating authority has not considered the same and enhanced the penalty. In similar situation, in the case of M/s.Royale Impex vs. Commissioner of Customs, Mumbai-Import-II vide Final Order No.85901/2023 dated 11.05.2023, this Tribunal has held that since the details of calculation were

provided to the original authority, however, the original authority has not taken into consideration the same, in that circumstances, penalty was reduced by this Tribunal. Therefore, in this case also, the penalty is to be reduced.

4. On the other hand, ld.AR appearing for the Revenue reiterates the findings of the impugned order.

5. Heard the parties.

6. Considering the facts that it is on record that the appellant has provided balance sheet showing margin of profit and the same has been recorded by the adjudicating authority in the impugned order. But no consideration was given to the same by the adjudicating authority and it was held that the appellant has not provided any documentary evidence.

7. In that circumstance, I do not find any merit in the impugned order wherein the direction given by the Tribunal has not been complied with. Therefore, the penalty of Rs.5,00,000/- (five lakh)imposed on the appellant is not sustainable and reduced to Rs.50,000/- (fifty thousand) on each consignment.

8. In these terms, the appeals are disposed of.

(Dictated and pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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