CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86647 of 2013

(Arising out of Order-in-Appeal No. 166, 167/MCH/JC/GR.II B/2013 dated 05.03.2013 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I)

Kumar Mahindra Exim .... **Appellant**
412/413, Mandvi Navjeevan, 4th Floor,
121/127, Kazi Sayed Street, Mumbai- 400 003.

Versus

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

APPEARANCE:

Shri Vinay N. 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/86239/2024

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 appellants herein had imported certain quantities of PVC Flex Rolls from M/s Malaya Wind SDN, Malaysia. The overseas supplier had shipped the said goods under the cover of their Invoice No. MWSB/05-2010 dated 12.04.2011. Advance copies of the relevant import documents viz., invoice, Bill of Lading (B/L), packing list, country of origin, insurance policy etc., were forwarded by the overseas supplier to the appellants. On scrutiny of those documents, the appellants had observed that the B/L No. PKGCB11003498 dated 13.04.2011 had shown the shipped quantity of PVC Flex Rolls as 70 MTs, against the quantity declared in the invoice as 48 MTs. Therefore, the appellants took up the issue with the overseas supplier for amendment of the B/L for reflecting the correct weight therein. Thereafter, the overseas suppliers through their shipping agent had moved an application for amendment of the Import General Manifest (IGM), to the extent of reflecting the net weight of the goods as 70MTs, against the manifested weight of 48MTs. The request made by the shipping agent for amendment of the IGM was considered favorably by the department. As a consequence of the amendment to the IGM, the appellants had filed the Bill of Entry (B/E) No. 3460517 dated 04.05.2011, by declaring the net weight of 70MTs and total assessable value of Rs.34,99,650/-. The goods as per the B/E were examined under first check procedure. Thereafter, the matter was adjudicated vide Order-in-Original No. 15/JC/IIB/MG-2011-12 dated 25.05.2011 by the learned Joint Commissioner, Group II B, Mumbai Customs, wherein it was ordered for confiscation of 22 MTs of the imported goods under Section 111(m) of the Customs Act, 1962; providing the option to the appellants for redeeming the same on redemption fine of Rs.1,50,000/-. Besides, the said order had also imposed penalty of Rs.3,19,000/- on the appellant under Section 112(a) *ibid*. On appeal against the said adjudication order, together with the order dated 13.05.2011, the learned Commissioner of Customs (Appeals), Mumbai vide the Order-in-Appeal Nos. 166, 167/MCH/JC/GR.II B/2013 dated 05.03.2013 (for short, referred to as 'the impugned order') has dismissed the appeals filed by the appellants. Feeling aggrieved with one of the impugned order, being No. 167/MCH/JC/GR.II B/2013 dated 05.03.2013, the appellants have preferred this appeal before the Tribunal.

2. The appellants have assailed the impugned order mainly, on the ground that the IGM was amended from 48 MTs to 70 MTs by the steamer agent and thereafter, the B/E was filed for duty assessment. Hence, there is no mis-declaration with regard to the quantity of the goods, in order to attract the provisions of Section 111(m) *ibid*. It was further contended that since the value declared in the B/E was

accepted by the department, there is no case of undervaluation, for invoking the provision of Section 112(a) *ibid* for imposition of penalty on the appellants.

3. Heard both sides and perused the case records.

4. On reading of the case records, it transpires that the quantity of imported goods wrongly mentioned initially in the IGM was corrected by way of amendment of the said document and thereafter, the B/E was filed by the appellants, mentioning the quantity as per the amended IGM. Thus, it is not a case of mis-declaration of goods and as such, it cannot be said that the goods were improperly imported by the appellants, for which confiscation of the same is justified. Further, it is not the case of Revenue that the appellants had undervalued the goods in the B/E filed by them. This fact is evident from the respective orders passed by the lower authorities, wherein no specific observations were made to such effect. On the contrary, the said orders have justified in confiscation of goods and ordered for imposition of redemption fine and penalty, only on the ground that 22 MTs of imported goods were mis-declared. Since, the B/E was filed by the appellants by correctly mentioning the weight of imported goods as per the amended IGM, it cannot be said that there was under valuation or mis-declaration of the goods. We find that on an identical set of fact, the Hon'ble Bombay High Court, in the case of *Commissioner of Customs & Excise, Goa Vs. Kabul Textiles (LLC)*, reported in 2006 (206) E.L.T. 1173 (Bom.), while endorsing the views expressed by the Tribunal (in the order, impugned against), has held that the word 'entry' used in Section 111(m) *ibid* is only restricted to a bill of entry and since, the said document was filed after making necessary correction in the IGM, then there is no ground for confiscation of the imported goods. In the present case, since the imported goods are not liable for confiscation, there is also no ground for imposition of penalty under Section 112(a) *ibid* on the appellants inasmuch as the penal consequences provided there under are applicable in situation of improper importation of goods, and liability for confiscation of the same, arising thereon.

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld the original order, wherein the imported goods were confiscated and redemption fine and penalty were imposed on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM