CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Customs Appeal No. 86755 of 2021

(Arising out of Order-in-Original CAO No. 50/2021-22/CAC/CC/(Import-II)/MKK dated 06.08.2021 passed by the Commissioner of Customs (Import-II), Mumbai.)

Dinesh Pratapchand Shah **Appellant**
99/103, Jewel Crown,
1st Floor, Tamba Kanta,
Masjid,
Mumbai - 400 003.

Vs.

Commissioner of Customs, Mumbai Import-II **Respondent**
New Custom House, Ballard Estate,
Mumbai - 400 001.

Appearance:

Shri Ageel Sherazi & Ms. Anushka Mhatre, Advocates, for the Appellant.

Shri Krishna Azad, Assistant Commissioner, Authorised Representative for Respondent.

CORAM:

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

Date of Hearing: 14.01.2025
Date of Decision: 17.01.2025

FINAL ORDER NO. 85041/2025.

Present appeal is directed against order-in-original dated 06.08.2021 which was passed by the original authority after the matter was remanded by this Tribunal through final order dated 04.07.2005. This appeal is filed by the present Appellant who was partner of dissolved firm M/s. Bono Marble. The firm was dissolved on 31.03.2014.

2. Brief facts of the case are that the appellant imported rough marble slabs and filed Bill of Entry bearing No.106647 on 01.02.2000. The value declared by the appellant was USD 290.50/- (CIF) per MT. During the relevant period, the import of marble slabs was allowed only against special import licence, provided CIF value per MT was USD 450/- or more. Since the appellant did not have a special import licence, the matter was adjudicated through order-in-original dated 10.02.2000 through

which the value was enhanced to USD 450/- per MT (CIF) for the purpose of assessment. The same was agreed to by the appellant. The goods were confiscated and were allowed to be redeemed on payment of fine of Rs.2,50,000/- and penalty of Rs.65,000/- 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 final order dated 30.05.2002 remanded the matter for fresh adjudication. Subsequently, order-in-original dated 23.10.2004 was passed wherein redemption fine was not interfered with but penalty of Rs.5,50,000/- was imposed. Against the said order dated 23.10.2004, 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 with a direction to verify the factual position of margin of profit and to decide upon quantum of redemption fine and penalty after taking into account appellant's submissions and calculations on the point of margin of profit. In compliance to the said final order dated 04.07.2005, order-in-original dated 06.08.2021 was passed. Through the said order dated 06.08.2021 which is impugned order, the original authority did not interfere with the redemption fine of Rs.2,50,000/- but imposed penalty of Rs.4,00,000/-. 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 has passed final order dated 04.07.2005 against order-in-original dated 23.10.2004 remanding the matter to the original authority. The original authority through order dated 06.08.2021 has imposed redemption fine of Rs.2,50,000/- and penalty of Rs.4,00,000/-. He has further argued that the directions of this Tribunal passed in order dated 04.07.2005 through which the matter was remanded to verify margin of profit were not carried out. He has further submitted that in order-in-original in para 9, it is stated that the appellant had submitted calculation of profit margin duly certified by Chartered Accountant showing that the appellant had incurred losses and that it means that there was no profit and in spite of the said factual position, the original authority has imposed high penalty that establishes that the original

authority has not carried out the directions of this Tribunal and, therefore, the said order is bad in law.

4. Heard the learned AR. He has supported the impugned order.

5. I have carefully gone through the records of the case and submissions made. I find that the calculation of profit margin relevant period were submitted to the original authority. However, the original authority has not taken into consideration the contents of the same. The issue regarding quantum of penalty has already been decided by Hon'ble Supreme Court in the case of Stonemann Marble Industries reported in 2011 (264) ELT 3 (SC). Taking the facts and circumstances into consideration, I modify the impugned order to the extent that I reduce the penalty from Rs.4,00,000/- to Rs.65,000/- under Section 112(a) of Customs Act, 1962. I do not interfere with the imposition of redemption fine of Rs.2,50,000/-.

6. In above terms, the impugned order-in-original is modified and the appeal is allowed partially.

(Order pronounced in the open court on 17.01.2025.)

(Anil G. Shakkarwar)
Member (Technical)

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