(2021) 02 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 50988 Of 2020

M/s Royal Industries @Hash Commissioner Of Customs

Date of Decision : 24-02-2021

Acts Referred:
Customs Act, 1962 — Section 14(1), 111(m), 112(a), 114AA, 125
Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 — Rule 3, 12
Courier Import and Export (Electronic Declaration and Processing) Regulations, 2010 — Regulation 4(2), 5(3), 12(1)(v)

Citation : (2021) 02 CESTAT CK 0027

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Advocate : Akhil Krishan Maggu, P. Juneja

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the order-in-appeal dated 17.07.2020 passed by the Commissioner of Customs (Appeals), New Customs House,

New Delhi.

2. Brief facts of the case are that the appellant is a partnership firm bearing IEC No. 0803012993 and is operating in India and is in the business of

import, manufacturing and export of goods. The appellant imported â??10 kgs. of 1, 3-DIHYDROXYNAPHTHALENE vide HAWB

No.772540468746 dated 12.06.2018 through FEDEX.FEDEX filed courier Bill of Entry bearing No. CBEXIII_DEL_2018- 2019_2806_14398 dated

28.06.2018. As per the information on the package, FEDEX declared the value of goods at USD 900.00 (FOB), equivalent to assessable value of Rs.

75,328/- involving customs duty of Rs. 20,892, issued by Shanghai Hohance Chemical Co. Ltd., China.

3. The goods were examined and it was found that declared value of the goods

appeared to be on lower side. Therefore, the appellant (through

Fedex) was asked to produce value evidence. In reply, the appellant submitted the proforma invoice No. HH201805282N dated 28.05.2018 for USD

21,500.00 (CIF), covering the item imported vide above mentioned HAWB. The revised value of USD 21,500.00 (CIF) was considered as fair value

of the imported goods by the Competent Authorities. Accordingly, on the basis of proforma invoice, the assessable value of the goods comes to Rs.

14,85,650/-. In view of submission of proforma invoice, it appeared that the declared value of Rs.75,328/- is liable for rejection under Rule 12 of the

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, the value as per proforma invoice i.e. USD 21,500.00 (CIF)

equivalent to assessable value of Rs. 14,85,650/- is considered as fair and reasonable value of the imported goods in terms of Section 14(1) of the

Customs Act, 1962, read with Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The total duty leviable on

the goods, therefore, comes to Rs. 4,12,045/- against the declared duty of Rs. 20,892/-, on the declared value. It, thus, appeared to Revenue that the

importer has misdeclared the value of the imported goods to evade customs duty to the tune of Rs.3,91,153/-. The impugned goods therefore,

appeared liable to confiscation under Section 111(m) of the Customs Act, 1962. The appellant also appeared liable to penal action under Section

112(a) of the Act, ibid. Also the appellant it appeared, has intentionally used false invoice in order to evade customs duty, ad valorem. Hence, they

appeared liable to penal action under Section 114AA of the Customs Act, 1962. The appellant vide their letter dated 06.07.2018 requested that they do

not want personal hearing and show cause notice in the present case and further requested to clear their goods on nominal fine and penalty.

4. As the appellant had requested to waive the requirement of show cause notice and personal hearing vide their letter dated 06.07.2018, the

Adjudicating Authority held that the appellant has declared the goods as â??10 kgs. of 1, 3- DIHYDROXYNAPHTHALENEâ?, imported vide

AWB No. 772540468746. The appellant declared the value of the goods as USD 900.00 (FOB), equivalent to assessable value of Rs. 75,328/-,

involving customs duty of Rs. 20,892/- and submitted invoice No. 20180619 dated 20.06.2018. The declared value of the goods appeared to be very low. Therefore, the appellant was asked to submit the value evidence. The appellant submitted the proforma commercial invoice No. HH201805282N

dated 28.05.2018 valued at USD 21,500.00 (CIF). Accordingly, on the basis of proforma invoice, the assessable value of the goods comes to

Rs.14,85,650/-. Further held that the declared value in the Bill of Entry does not represent true transaction value of the imported goods and therefore,

liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and it was determined at Rs.

14,85,650/- (assessable value), on the basis of proforma invoice. The Adjudicating Authority rejected the declared value of Rs. 75,328/- of the goods,

imported vide Bill of Entry No. CBEXIII_DEL_2018-2019_2806_14398 dated 28.06.2018, under Rule 12 of the Customs Valuation (Determination of

Value of Imported Goods) Rules, 2007 and re-determined the assessable value of goods, having re-determined assessable value of Rs. 14,85,650/-

under Section 111(m) of the Customs Act, 1962. However, gave an option to the appellant to redeem the same on payment of fine of Rs.3,00,000/- in

lieu of confiscation under Section 125 of the Customs Act, 1962 and also imposed penalty of Rs. 4 lakhs on the appellant under Section 112(a) of the

Act, ibid and further penalty of Rs. 4 lakhs was also imposed under Section 114AA of the Act, ibid. Redemption fine and penalty was in addition to

the duty applicable on the goods.

5. Being aggrieved, the appellant filed appeal before the Commissioner of Customs (Appeals), who vide order dated 17.07.2020 rejected the appeal,

upholding the adjudication order. Being aggrieved, the appellant is before this Tribunal.

6. Learned Counsel for the appellant urges that the Court below have failed to appreciate the scheme of filing â??courier Bill of Entryâ??, which is

filed by the â??Authorised courierâ?? under the Customs Act read with the Customs Broker Licensing Regulation, 2013 read with the Courier Import

and Export (Electronic Declaration and Processing) Regulations, 2010, as amended. Under Regulation 4(2) of Courier I&E Regulation, 2010, imported

goods shall bear a declaration from the sender or consigner, regarding the contents of each of the package and total value thereof.

7. Further urges that Regulation 5(3) of Courier I&E Regulation requires, the authorised courier or his agent shall make entry of goods imported by

him in an electronic declaration, by presenting to the proper officer, the â?? courier Bill of Entryâ??.

7.1 Further urges that Regulation 12(1)(v) of courier I&E Regulation requires, the courier shall exercise due diligence to ascertain the correctness and

completeness of any information which is submitted to the proper officer, with reference to clearance of imported goods.

8. Further urges that there is no case of any mis-declaration or malafide made out against the appellant-importer, and penalty have been imposed

mechanically without appreciation of facts and the law.

9. Further urges that under the scheme of the Act, till the time of filing of courier Bill of Entry by the authorised courier, based on the information

contained on the package, there is no communication or involvement of the importer. The authorised courier only gives an intimation to the importer of

the arrival of the goods and filing of the Bill of Entry. It is only on any objection raised by the Customs Department, the authorised courier interacts

with the importer.

10. Further urges that it is an undisputed fact that the appellantimporter at the very first instance, have brought the correct value based on the

proforma invoice, to the knowledge of the Department. It is also a matter of record that the appellant have remitted the price as per the proforma

invoice through â??Authorised banking channelâ?? and have recorded such transaction in the books of account maintained in the ordinary course of

business.

11. Further urges that the consigner /shipper located in China have admitted their mistake and have also regretted vide their e-mail dated 29.06.2018,

enclosing the correct final invoice.

Further that there is no allegation of any collusion between the appellant and the shipper (located in China), and/or the courier (Fedex).

12. Accordingly, the learned Counsel for the appellant prays that no case of any mis-declaration is made out against the appellantimporter, and it is

evidently a clerical error on the part of the shipper. The penalties imposed are fit to be set aside.

13. Learned Authorised Representative for the Revenue relies on the impugned order. He further urges that the value on the package have been

declared as USD900 by the shipper, which must definitely have been done with the knowledge of the appellant-importer. He further urges that the

appellant-importer is responsible for filing of the correct courier Bill of Entry, and in the facts and circumstances a case of mis-declaration is made out

under Section 111(m) of the Act. He further relies on the letter dated 06.07.2018 written by the appellant to the Customs Department, praying that

they are ready to bear the fine and penalty on the shipment and do not want any personal hearing and/or show cause notice. Thus, penalties have been

rightly imposed. Accordingly, he prays for dismissing the appeal.

14. Having considering the rival contentions, I find that it is the obligation of the authorised courier to file the â??Courier Bill of Entryâ?? based on the

information contained on the package. Evidently, it is a case of clerical mistake by the shipper, who has wrongly declared the lower value instead of

the correct value. I further find that the appellant have at the very first instance on query raised by the Department, have come forward with the

correct value based on the proforma invoice. Further, it is an admitted fact that the appellant have remitted the price of USD 21500 through authorised

banking channel, and as such no case of any malafide is made out against the appellant. At best, it is the mistake of the authorised courier who was

not vigilant at the time of booking of the courier parcel to ensure the correct declaration by the shipper. I further find that no case of any collusion is

made out against the appellant shipper and /or against the courier. I further find that penalty have been imposed mechanically without proper

appreciation of the facts and the law applicable.

15. Accordingly, I allow this appeal and set aside the order of confiscation as well as the penalties imposed under section 112(a) and 114AA of the

Act. Thus, the appeal is allowed with consequential relief to the appellant.

(Pronounced on 24.02.2021).