
(2023) 04 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 51629 Of 2022, Customs Stay Application No. 50404 Of 2022

Principal Commissioner Of Customs, Appellant New Delhi

APPELLANT

Vs

M/s Salasar Impex

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Customs Valuation (Determination Of Value Of Imported Goods) Rules, 2007 — Rule 3(1), 4, 5, 6, 7, 8, 9, 12
Customs Act, 1962 — Section 14, 28AA, 28(8), 54(1), 77, 111, 111(d), 111(f), 111(m), 112, 112(i), 112(ii), 114A, 114AA, 119, 125, 126
Indian Contract Act, 1872 — Section 2

Citation : (2023) 04 CESTAT CK 0002

Hon'ble Judges : P.V. Subba Rao, Member (T); Binu Tamta, Member (J)

Bench : Division Bench

Advocate : Rakesh Kumar, Sunaina Phul

Final Decision : Disposed Of

Judgement

P.V. Subba Rao, Member (T)

1. We have heard Shri Rakesh Kumar, learned authorized representative for the Revenue and Ms. Sunaina Phul, learned counsel for the respondent and perused the records.

2. Revenue filed this appeal to assail the order in appeal Impugned order dated 6.6.2022 passed by the Commissioner (Appeals) wherein he allowed the appeal of the importer (respondent herein) and modified the Order in Original OIO dated 19.5.2022 passed by the Additional Commissioner. The operative parts of the OIO and the impugned order are as follows:

“(1) I order for absolute confiscation of 114.48 MTS of impugned/prohibited imported goods i.e., “Areca Nuts” valued at Rs. 1,25,92,800/- (Rupees One Crore Twenty Five Lakh Ninety Two Thousand Eight Hundred only) on the basis of Rs. 110 per Kg. vide Bill of Entry No. 8200903 dated 08.04.2022 under Section

111(d), 111(f) and 111(m) of the Customs Act, 1962.

(2.) I order for confiscation of 25.28 Metric Tonnes of Linear Low-Density Polyethylene valued at Rs. 17,95,536/- (Rupees Seventeen Lakh Ninety Five Thousand Five Hundred and Thirty Six only) under Section 119 of the Customs Act, 1962. However, I give an option to the importer to redeem the goods. i.e. 25.28 Metric Tonnes of Linear Low-Density Polyethylene valued at Rs. 17,95,536/- (Rupees Seventeen Lakh Ninety Five Thousand Five Hundred and Thirty Six only) on payment of redemption fine of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) under Section 125 of the Customs Act, 1962. The Customs duty as self-assessed in the Bill of Entry No. 8200903 dated 08.04.2022 shall be paid for 25.28 Metric Tonnes of Linear Low-Density Polyethylene.

(3.) I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under Section 112 of the Customs Act, 1962 on the Importer M/s Salasar Impex, 822/1, Nanak Pao Colony, GT Karnal Road, Mukherjee Nagar, North West Delhi 110009.

4. I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) under Section 114AA of the Customs Act, 1962 on the Importer M/s Salasar Impex, 822/1, Nanak Pao Colony, GT Karnal Road, Mukherjee Nagar, North West Delhi 110009”.

Impugned order

In view of above discussions and findings, I allow the appeal of the appellant and modify the OIO No. DLI/CUSTOM/PREV/GSS/ADC/56/ 2021-22 dated 19.5.2022 as under-

a) The confiscated areca nuts are allowed to be re-exported on payment of redemption fine of Rs. 2.5 lakhs under section 125 of the Customs Act, 1962 and other dues;

b) Confiscation of LLDPE under section 119 of the Customs Act, 1962 and redemption fine thereon is set aside. The same should be allowed to be cleared for home consumption on payment of applicable duties, etc.

c) Penalty under section 112 of the Customs Act, 1962 is reduced to Rs. 2.5 lakhs and the penalty under section 114AA is set aside.

Matter is disposed accordingly.”

3. Revenue's prayer in the appeal is as follows:

(1) To set aside the instant order passed by the Appellate authority and uphold the order dated 19.5.2022 issued by the adjudicating authority whereby the goods were considered prohibited goods and absolute confiscation of prohibited goods was ordered.

(2) In the meantime, stay the operation of the above order in appeal as operation of the order in appeal shall jeopardize the interests of the Revenue in as much as the goods confiscated absolutely in the order in original may be redeemed for re-export.

(3) To set aside the confiscation of areca nuts followed by redeeming the same for re-export on payment of redemption fine of Rs. 2.5 lakhs being beyond the jurisdiction of the appellate authority on the grounds referred to above and restore the absolute confiscation of areca nuts as order in the order in original date d19.5.2022.

(4) To set aside the reduction of penalty under section 112 of the Customs Act, 1962 to Rs. 2.5 lakhs and to restore the penalty under section 112 of the Customs Act, 1962 and also restore the penalty under section 114AA of the Customs Act, 1962

(5) Take any decision as deemed fit in light of the submissions given hereinabove and the facts of the case.

4. The facts of the case are that officers of the Customs gathered information that five containers were lying uncleared at ICD Tughlakabad for a long time and no bill of entry was filed and the goods in the containers could have been mis-declared in terms of quantity and value. They placed an alert about the consignment in the Customs Electronic Data Interchange EDI system on 7.4.2022. The next day, i.e., on 8.4.2022 the appellant filed a Bill of Entry declaring the imported goods as 'areca nuts' and linear low density polyethylene LLDPE. On examination, the goods were found as per the declaration in the Bill of Entry and the invoice.

5. As per notification no. 20/2015-20 issued by the Ministry of Commerce under the Foreign Trade (Development and Regulation) Act, 1992, import of areca nuts is free if the CIF value is Rs. 251 per kg or more and it is prohibited if the CIF value is less than Rs. 251/- per kg. The declared CIF value in the Bill of Entry was Rs. 251/- per kg and if this value is considered, the import of the areca nuts is free. Suspecting the areca nuts to be overvalued so as to avoid the prohibition on imports, the officers conducted a market enquiry and determined the market price of the imported areca nuts in India to be between Rs. 100 and Rs. 110/- per kg. Reckoning Rs. 110/- per kg as the CIF price, the original authority held that import of the areca nuts was prohibited and accordingly, found that they were liable for confiscation under section 111(d).

6. The original authority also found that the areca nuts were not mentioned in the Import General Manifest IGM and the Bill of Lading and hence, they were also liable to confiscation under section 111(f). He also found that they were liable to confiscation under section 111(m). Accordingly, he absolutely confiscated the areca nuts.

7. He also confiscated the LLDPE holding that it was used to conceal the areca nuts and hence was liable for confiscation under section 119. However, he allowed the LLDPE to be redeemed on payment of a fine of Rs. 1,50,000/- and appropriate duty.

8. He imposed a penalty of Rs. 10,00,000/- under section 112 and a penalty of

Rs. 5,00,000/- under section 114AA.

9. Revenue's case is that the Commissioner (Appeals) has erred in setting aside the penalty under section 114AA, reducing the penalty under section 112 and allowing the confiscated areca nuts to be redeemed on payment of a fine of Rs. 2.5 lakhs for export for the reason that they were prohibited goods and hence were liable for absolute confiscation. The grounds of the appeal by the Revenue are as follows:

a) The appellate authority has wrongly accepted the contention of the importer that the delay in filing the Bill of Entry was on account of the death of Shri Gurmandeep Singh who had placed the order for the consignment and rejected Revenue's contention that the importer was waiting to clear the Areca nuts in the guise of LLDPE is not supported by evidence.

b) The appellate authority has wrongly held that linking the filing of Bill of Entry to the alert being placed in the system would mean doubting the confidentiality of the alert mechanisms.

c) The appellate authority has wrongly concluded that the market enquiry was conducted in the absence of the importer is not correct as the importer gave his acceptance to the value.

d) The appellate authority erred in allowing redemption of the areca nuts for export because the value of the areca nuts was low and hence their import was prohibited in terms of DGFT notification No. 20/2015-20 dated 25.7.2018. Hence their absolute confiscation should have been upheld.

e) The appellate authority relied on the judgment of the Supreme Court in *Rajgrow Impex LLP & Others 2021(6) TMI 778-SC* in which the Supreme Court held that though the goods cannot be allowed entry into the country and were liable for confiscation, however, if the importer opts, re-export of the same can be permitted on payment of redemption fine, penalty and other dues. Once the confiscation has been upheld, the property of the goods vests in the Central Government as per section 126 and hence they cannot be allowed to be redeemed for re-export.

10. There is no cross appeal by the appellant.

11. Thus, the contention of the Revenue in this appeal is that the areca nuts were correctly confiscated absolutely by the adjudicating authority and therefore, they should not have been allowed to be redeemed for re-export by the Commissioner (Appeals) in the impugned order. We now proceed to examine the relevant legal provisions, submissions on both sides and how the legal provisions apply to the case on hand.

Confiscation of the areca nuts and their redemption allowed by the impugned order

12. Section 111 provides for confiscation of goods of various categories of which

the relevant clauses are as follows:

Section 111. Confiscation of improperly imported goods, etc.-

The following goods brought from a place outside India shall be liable to confiscation: -

..

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

..

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

...

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54

13. Section 125 deals with the redemption of the goods. It reads as follows:

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

xxxxx

14. As per section 125, if the goods are not prohibited, the owner of the goods shall be given and if they are prohibited, the owner of the goods may be given an option of redeeming the goods.

Thus, it is not illegal to allow redemption of even prohibited goods. If they are not prohibited goods, then the option must be given. Of the three clauses under which the goods were confiscated, section 111(d) deals with prohibited goods and section 111(f) and 111(m) deal with confiscation for other violations.

15. Although the confiscation of the areca nuts under the three clauses is not

assailed before us, since this appeal is based on the ground that the areca nuts were prohibited and hence should have been absolutely confiscated, it becomes necessary to examine if the goods were prohibited at all. It is also the prayer of the Revenue to take decision in the light of its submissions and the facts of the case. Therefore, we proceed to examine the facts of the case also. The original authority confiscated the goods under section 111(d) for the reason that the value of the areca nuts, based on their market survey was only Rs. 110/- per kg and if this is reckoned as the CIF value, import of the areca nuts was prohibited. It is undisputed that if the CIF value as declared in the Bill of Entry is considered, the import of areca nuts is not prohibited at all.

16. The original authority also found that the areca nuts were liable for confiscation under section 111(f) as they were not mentioned in the import general manifest or the Bill of Lading. He also found that they were liable for confiscation under section 111(m).

17. The original authority re-determined the CIF value based on the market price of the imported areca nuts in the domestic market. Reckoning this as the CIF, he concluded that import of the areca nuts is prohibited and that they were liable for confiscation under section 111(d).

18. It needs to be determined as to what is the nature of the CIF value and if it can be altered by the Customs officers. Cost, Insurance and Freight (CIF) is one of the terms of international commerce (INCOTERMS) according to which, the seller and buyer agree on the cost of the goods including the cost of transporting them to the destination and the transit insurance required for the purpose. There are other INCOTERMS such as free on board (FOB) which includes only the cost of the goods, Cost & freight (C&F) which includes the cost of the goods plus the cost of transportation to the destination but not the transit insurance. These are all transaction values which are decided as per the implicit or explicit contracts between the importer and his overseas exporter of the goods. The goods and the value form the consideration for each other and they determine the rights and liabilities of the parties.

For instance, if the agreed CIF value is ?X' dollars, the importer has to, remit ?X' dollars to the exporter and the exporter has to supply the goods as agreed to. There is no law under which this transaction value, which is in the nature of an agreement between the parties, can be re-determined by someone else including any authority who is not a party to the contract. Section 14 of the Customs Act, 1962 spells out what the transaction value is. It reads as follows:

Section 14. Valuation of goods. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for

delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

19. The price which is paid or is payable for the goods will be decided between the buyer (importer) and the seller (overseas exporter). It shall also be the value to assess the Customs duty if the transaction is:

- (a) for delivery at the time and place of importation; and
- (b) the buyer and seller are not related; and
- (c) the price is the sole consideration for sale; and
- (d) subject to some other conditions specified in the Rules

20. The expression 'for delivery at the time and place of importation' evidently means the CIF value plus the cost incurred in offloading the goods from the ship to the port (which is commonly known as landing charges). There are, however, situations, in which the 'transaction value' can be rejected by the proper officer and then the value to determine the customs duty can be done as per the Customs Valuation (Determination of value of Imported goods) Rules, 2007 Valuation Rules. Rule 12 of the Valuation Rules deals with the rejection of the declared value and it reads as follows.

Rule 12. Rejection of declared value . -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

21. If the declared transaction value is rejected, valuation of the imported goods, (i.e., determining the value to calculate the duty payable) is to be done as per Valuation Rules 4 to 9 based on value of identical goods or value of similar goods, etc. Thus, while the proper officer can reject the transaction value and assess duty based on some other value determined as per the Valuation Rules, the transaction value- be it CIF, C&F, FOB- cannot be changed by him. It is the consideration to be paid by the buyer to the seller for the goods as per the contract (either explicit or implicit) between them. What constitutes a contract has been explained in Section 2 of the Indian Contract Act, 1872 which reads as follows:

2. Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
- (c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;
- (g) An agreement not enforceable by law is said to be void;
- (h) An agreement enforceable by law is a contract;
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable

22. When goods are imported, the transaction value is the consideration paid or to be paid by the importer to the exporter for the goods supplied. Thus, the rights and liabilities of the two parties are decided by the transaction value. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate Explanation 2 to Section 25 of Indian Contract Act . Even if the consideration is inadequate (say, one Kg. of areca nuts for Rs. 251/-), the rights and liabilities of the parties would still be as per the contract. If the CIF (or any other form) transaction value is altered, it changes the rights and liabilities between the parties and no stranger to the contract (i.e. someone who is not a party to it) including the 'proper officer' under the Customs Act has any locus standi to change the rights and liabilities of the parties. It is for this reason, that Rule 12 of the Valuation Rules gives the officer the power to reject the transaction value but not to change it. The officer can reject the transaction value and determine the assessable value of the goods under the Customs Act as per the Valuation Rules but he cannot change the transaction value.

23. While the transaction value (CIF, FOB C&F etc.) determined the lis between the buyer and seller, the assessable value decided the lis between the importer and the Revenue. The customs officers cannot change the transaction value and the overseas exporter cannot either contest or claim any benefit from the assessable value for imports. If for instance, the transaction value is Rs. 100/- which is rejected and the proper officer determines the assessable value at Rs. 150/- say, based on, contemporaneous imports, the overseas exporter does not get the right to claim Rs. 150/- nor is the exporter obliged to remit Rs. 150/- for the consignment.

24. So far as the prohibition under the notification issued by the DGFT is concerned, it is based on the CIF value, i.e., the transaction value including the cost, freight and transit insurance. It is not based on the assessable value under the Customs Act. Therefore, so long as the CIF value is as per the DGFT Notification, import of the goods is not prohibited. Therefore, the areca nuts which were imported were not prohibited because the CIF value was not below the threshold.

25. Even from a purely public policy point of view, prohibition of imports should be based on some criteria which an importer can understand at the time of import. It cannot be based on what assessable value the Customs officer or any of the appellate authorities, may, determine. CIF value will be known to the importer at the time of placing the order and he can decide whether he can import or not as per the policy.

26. We are fully conscious of the fact that the confiscation of the areca nuts under section 111(d) is not under challenge before us by either side. However, the contention of the Revenue in this appeal is that the areca nuts are prohibited goods and hence should not have been allowed to be redeemed under section 125. We, therefore, examined the contention that the imported areca nuts were prohibited goods. Since we found that the imported areca nuts were not prohibited goods, the respondent has a right to their redemption under section 125.

27. As far as the confiscation of the goods under sections 111(f) and (m) are concerned, these are not on account of the goods being prohibited goods.

Confiscation of the LLDPE granules under section 119 by the adjudicating authority which is set aside by the impugned order

28. It is not in dispute that the LLDPE granules were declared in the Bill of Entry. It is also not in dispute that they were also mentioned in the IGM. The case of Revenue is that the appellant attempted to smuggle the areca nuts because they were not mentioned in the IGM and the LLDPE granules were used to conceal the areca nuts and hence the LLDPE granules were liable to confiscation under section 119 and the confiscation has been wrongly set aside in the impugned order. Section 119 reads as follows:

Section 119. Confiscation of goods used for concealing smuggled goods. - Any goods used for concealing smuggled goods shall also be liable to confiscation.

Explanation . - In this section, "goods" does not include a conveyance used as a means of transport.

29. It is a matter of record that both the areca nuts and the LLDPE granules were mentioned in the Bill of Entry and the goods were found as per the description. The IGM (which is filed by the master of the vessel or his agent) did not mention the areca nuts.

However, it did mention the LLDPE granules. The respondent importer had not, initially filed the Bill of Entry and therefore, an alert was placed in the Customs EDI system and thereafter the respondent filed the Bill of Entry the next date. The reason for delay in filing in the Bill of Entry was, according to the respondent, the death of the person who had initially placed the order. According to the Revenue, the respondent filed the Bill of Entry knowing that the alert was placed in the system. Commissioner (Appeals) held in the impugned order that to say that the respondent filed the Bill of Entry because of the alert amounts to saying that the confidentiality of the alert placed by the department is not maintained. We fully agree with the Commissioner (Appeals). If the Revenue suspected any foul play and put an alert in the Customs EDI system, it is for it to at least ensure that it is not done in a manner as to be available to the importer. In the absence of any evidence that the alert was communicated to the importer, the filing of the Bill of Entry cannot be correlated with the placing of an alert in the system even if the Bill of Entry is filed the next day. We do not find any evidence to show that the respondent importer used the LLDPE to conceal the areca nuts. He declared both the areca nuts and LLDPE in the Bill of Entry. The IGM is not filed by the importer but is filed by the master of the vessel or his representative. If something is amiss in the IGM, it cannot be held against the respondent importer.

30. Further, section 119 does not say that the goods used for concealing the smuggled goods 'shall be confiscated' but only says that they shall be 'liable to confiscation'. The expression 'shall be liable to confiscation' was interpreted by the Hon'ble High Court of Delhi in Jain Exports (P) Ltd. 1987 (29) E.L.T. 753 (Del.) and it was held that the adjudicating authority has the discretion to decide whether or not to confiscate but he has to exercise this discretion judicially and not arbitrarily. The relevant part of this order is as follows:

.....The language does necessarily imply that there is a discretion because the language is not "such goods shall be confiscated". On the other hand the language is "such goods shall be liable to confiscation". The Collector of Customs when acting under Section 167 obviously acting in a quasi-judicial capacity. When discretion is vested in such a quasi-judicial tribunal, such discretion must be exercised judicially and not arbitrarily. The Collector must decide in each particular case if there were circumstances which would call for the drastic

punishment of confiscation. If there was a case in which discretion should have been exercised in favour of the importer, this was such a case.....

31. This decision was upheld by the Hon'ble Supreme Court 1992 (61) E.L.T. 173 (S.C.) .

Hon'ble Madras High Court also held so in SHA RIKABDOSS BHAVARLAL 2000 (125) E.L.T. 65 (Mad.) . Therefore, even if the LLDPE granules were used to conceal the smuggled goods, the adjudicating authority and the appellate authority need to exercise their discretion to see if they should be confiscated. In our considered view, in the actual matrix of this case, the Commissioner (Appeals) has correctly set aside the confiscation of the LLDPE granules under section 119.

Setting aside of penalty under section 114AA and reduction of penalty under section 112 to Rs. 2.5 lakhs

32. Section 114AA reads as follows:

Section 114AA. Penalty for use of false and incorrect material

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

In this case, the only declaration made by the respondent is the Bill of Entry and the goods were found as per the declaration in the Bill of Entry. The IGM was not filed by the appellant and if there is any error or inaccuracy in the IGM, it cannot be held against the respondent. Therefore, the Commissioner (Appeals) was correct in setting aside the penalty under section 114AA.

33. The original authority imposed a penalty of Rs. 10,00,000/-on the respondent which the Commissioner (Appeals) reduced to Rs. 2,50,000/-. Section 112 reads as follows:

SECTION 112. Penalty for improper importation of goods, etc.- Any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section(8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

34. The reasons why the original authority imposed penalty under section 112 are as follows:

"13. Thus, as discussed in the foregoing paras, it is clear that the importer has mis-declared the value of the imported goods so as to make them come under the ambit of freely importable goods. The goods i.e., "Areca Nuts" have been found mis-declared in IGM filed and Bill of Lading when compared to the goods declared in the Bill of Entry. Therefore, I come to the conclusion that the imported goods are prohibited and liable for confiscation under Section 111(d), 111(f) and 111(m) of the Customs Act, 1962 as discussed in the paras supra. Further, since LLDPE (Linear Low-Density Polyethylene) was declared in the Bill of Lading and used as concealing material for Areca Nuts, hence 25.28 Metric Tonnes of Linear Low-Density Polyethylene valued at Rs. 17,95,536/- (Rupees Seventeen Lakh Ninety Five thousand Five Hundred and Thirty Six only) is also liable for confiscation under Section 119 of the Customs Act, 1962.

14. 25.28 Metric Tonnes of Linear Low-Density Polyethylene valued at Rs. 17,95,536/- (Rupees Seventeen Lakh Ninety Five Thousand Five Hundred and Thirty Six only) is rightly classifiable under Tariff Item 3901 10 10 with Basic Customs Duty 7.5% with IGST 18% and same is required to be collected from the Importer. Also, M/s Salasar Impext, 822/1, Nanak Pao colony, GT Karnal Road, Mukherjee Nagar, North West Delhi 110009, is liable for penalty under

Section 112 of the Customs Act, 1962.”

We have already found in favour of the respondent insofar as the confiscation of the LLDPE granules is concerned and held that the confiscation was correctly set aside by the Commissioner (Appeals). As far as the areca nuts are concerned, although their confiscation was not challenged before us, in view of the assertion of the Revenue that they were prohibited goods (and hence should not have been allowed to be redeemed on payment of fine), we have examined and held that they were not prohibited goods. Therefore, section 112(i) does not apply. There is nothing on record to show that any duty was sought to be evaded by the appellant on the areca nuts. Therefore, section 112(ii) also does not appear to apply.

35. In this factual matrix, we find no reason to interfere with the impugned order of the Commissioner (Appeals) reducing the penalty under section 112 to Rs. 2.5 lakhs.

36. In view of the above, we uphold the impugned order and reject Revenue's appeal. The stay application also stands disposed of.