CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I (SM)

Customs Appeal No. 61792 of 2018

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-1767-1769-18 dated 08.10.2018 passed by the Commissioner (Appeals), CGST, Ludhiana]

M/s Hindustan Distributors **......Appellant(s)**
SCO 136, Top Floor,
Sector 24-D,
Chandigarh 160023

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
ICD GRFL, G T Road,
Sahnewal, Ludhiana,
Punjab 141001

WITH

(i) Customs Appeal No. 61793 of 2018 (M/s Hindustan Distributors)
[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-1767-1769-18 dated 08.10.2018 passed by the Commissioner (Appeals), CGST, Ludhiana]

(ii) Customs Appeal No. 61794 of 2018 (M/s Hindustan Distributors)
[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-1767-1769-18 dated 08.10.2018 passed by the Commissioner (Appeals), CGST, Ludhiana]

(iii) Customs Appeal No. 60607 of 2023 (M/s Hindustan Distributors)
[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-569-571-2023 dated 27.07.2023 passed by the Commissioner (Appeals), CGST, Ludhiana]

(iv) Customs Appeal No. 60608 of 2023 (M/s Hindustan Distributors)
[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-569-571-2023 dated 27.07.2023 passed by the Commissioner (Appeals), CGST, Ludhiana]

(v) Customs Appeal No. 60609 of 2023 (M/s Hindustan Distributors)
[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-569-571-2023 dated 27.07.2023 passed by the Commissioner (Appeals), CGST, Ludhiana]

APPEARANCE:

Present for the Appellant(s): Shri Naveen Bindal, Advocate

Present for the Respondent: Shri Anurag Kumar, Authorized Representative

<u>CORAM:</u> HON'BLE SHRI S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60286-60291/2024

DATE OF HEARING: 27.05.2024
DATE OF DECISION: 30.05.2024

S. S. GARG

These six appeals are directed against two different impugned orders bearing no. LUD-EXCUS-001-APP-1767-1769-18 dated 08.10.2018 and LUD-EXCUS-001-APP-569-571-2023 dated 27.07.2023 passed by the Commissioner (Appeals), CGST, Ludhiana, whereby in the first three appeals, the learned Commissioner (Appeals) vide impugned order dated 08.10.2018, has upheld the Order-in-Original dated 13.05.2016 by confirming the imposition of redemption fine of Rs.6,00,000/- and penalty of Rs.1,50,000/- under Section 112(a) of the Customs Act, 1962 in respect of each Bill of Entry; but in other three appeals, vide subsequent impugned order dated 27.07.2023, the same Commissioner (Appeals) has partially set aside the Order-in-Order dated 07.04.2016 by setting aside the redemption fine but still retained the penalty of Rs.1,50,000/- under Section 112(a) of the Customs Act, 1962 in respect of each Bill of Entry. The details of all the six appeals are given herein below in tabular form:

Sl. No.	**Appeal No.**	**Bill of Entry No. & Date**	**Redemption Fine (Rs.)**	**Penalty (Rs.)**
1.	C/61792/2018	4511041 dated 08.03.2016	6,00,000/-	1,50,000/-
2.	C/61792/2018	4511106 dated 08.03.2016	6,00,000/-	1,50,000/-

3.	C/61792/2018	4511031 dated 08.03.2016	6,00,000/-	1,50,000/-
4.	C/60607/2023	4386114 dated 26.02.2016	Nil	1,50,000/-
5.	C/60608/2023	4386117 dated 26.02.2016	Nil	1,50,000/-
6.	C/60609/2023	4386116 dated 26.02.2016	Nil	1,50,000/-

Since the facts in all these appeals are identical, therefore, all the six appeals are taken up together for discussion and decision.

2.1 Briefly stated facts of the present case are that the appellant filed six bills of entry as mentioned in the table hereinabove for the import clearance of 'Prime Pre-painted Steel Coils (Non Alloy)' falling under tariff item 72107000 of the Customs Tariff declaring CIF price USD 485 per MT (including discount of USD 2400 for the consignment) through their Customs Broker namely M/s Krishna Clearing & Forwarding, Ludhiana. The impugned goods were imported from M/s Zhejiang Huada New Materials Co Ltd, China.

2.2 On 05.02.2016, the DGFT New Delhi vide Notification No. 38/2015-2020 amended the import policy conditions of iron and steel falling under Chapter 72 of ITC(HS) by fixing the Minimum Import Price (MIP). The relevant portion of the said notification reads as under:

"Notification No. 38/2015-2020 dated 05.02.2016

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020 as amended from time to

> *time, the Central Government hereby amends the Import Policy Conditions against 173 HS Codes under Chapter 72 of ITC (HS), 2012- Schedule-I (Import Policy) as per the Annex subject to the following conditions:*
>
> *a) Imports under Advance Authorisation Scheme are exempted from Minimum Import Price (MIP) under this Notification,*
>
> *b) MIP is also exempted for all API grade steel conforming to X-52 and higher API grades for manufacturing pipes used for pipeline transportation systems in the petroleum and natural gas industries, and*
>
> *c) MIP conditions laid down in this Notification are valid for six months from the date of the notification or until further orders, whichever is earlier.*
>
> *2. Further, imports/shipments under Letter of Credit already entered into before the date of this notification shall be exempted from the Minimum Import Price condition subject to Para 1.05(b) of Foreign Trade Policy, 2015-2020.*
>
> *3. Effect of this Notification: Minimum Import Price (MIP) is introduced against 173 HS Codes under Chapter 72 of ITC (HS), 2012 - Schedule-I (import Policy) as detailed in the Annex.***"**

In view of the above notification, import of iron and steel products namely 'prime pre-painted steel coils (non alloy)' falling under tariff item 72107000 of the Customs Tariff could be imported freely when the CIF value per MT in USD is 752 or more. Whereas in the present case, the importer declared the transaction value of the goods at USD 485 per MT on CIF terms only, which was less than the Minimum Import Price i.e. USD 752 per MT as fixed vide notification cited supra. Therefore, as per the department, the impugned goods had been imported in contravention to provisions of Foreign Trade Policy 2015-20 and hence the impugned goods were liable to confiscation under Section 111(d) of the Customs Act, 1962.

2.3 Thereafter, a query was raised in the EDI system to the appellant on 26.02.2016. In reply to the query, the appellant submitted that they have imported the impugned goods against the contract dated 31.12.2015 and have made advance payment to the extent of 20% of the contract price on 04.01.2016 and the balance payment of 80% have been made on 26.02.2016. The appellant further submitted that the notification dated 05.02.2016 issued by the DGFT is not applicable in their case, but in order to avoid demurrage and detention, they requested to dispense with the issuance of show cause notice and to pass the adjudication order. The adjudicating authority on the basis of the facts of the case vide the Orders-in-Original dated 07.04.2016 and 13.05.2016 confiscated the impugned goods under Section 111(d) and allowed to redeem on redemption fine of Rs.6,00,000/- each under Section 125 of the Customs Act, 1962 and also imposed penalty of Rs.1,50,000/- each under Section 112(a) of the Act. Aggrieved by the said findings of the adjudicating authority, the appellant filed appeals before the Commissioner (Appeals), who vide impugned order dated 08.10.2018, upheld the Order-in-Original dated 13.05.2016 by confirming the imposition of redemption fine and penalty; but vide subsequent impugned order dated 27.07.2023, partially set aside the Order-in-Order dated 07.04.2016 by setting aside the redemption fine but still retained the penalty. Hence, the appellant preferred the present appeals.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned orders are not sustainable in law and are liable to be set aside, as the same have been passed without properly appreciating the facts and the law; and binding judicial precedents.

4.2 He further submits that in the present case, the goods have been held liable for confiscation under Section 111(d) of the Act which states that the goods shall be liable to confiscation if such goods are imported or attempted to be imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The relevant portion of the said Section is reproduced herein below:

> ***"Section 111 - Confiscation of improperly imported goods, etc.***
>
> *The following goods brought from a place outside India shall be liable to confiscation:*
>
> *(a)* *****
>
> *(b)* *****
>
> *(c)* *****
>
> *(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."*

4.3 He further submits that the appellant had imported 'pre-painted steel coils (non-alloys)' under Chapter Heading 72107000 of the Customs Tariff Act and made the self assessment under Section 17(1) of the Act. At the time of filing of bill of entry and making self

assessment, the appellant had declared correct description of the goods, chapter heading, quantity and value of the goods. There was no particular declared by the appellant which was incorrect. As per Notification No. 38/2015-2020 dated 05.02.2016 issued by the DGFT, Minimum Import Price of the goods shall be USD 752 per MT.

4.4 He further submits that the appellant was under the belief that in spite of the notification, the appellant was entitled to pay duty on transaction value and therefore, assessed the goods accordingly under Section 17(1) of the Act. It was a case of *bonafide* belief of the appellant. The appellant also challenged the notification and the impugned orders before Hon'ble High Court. It was not a case of *malafide* intent to evade duty as all the facts were well within the knowledge of the department at the time of filing of bill of entry and at the time of self-assessment of goods. Query was raised in the EDI system and it was pointed out that notification dated 05.02.2016 is applicable. As per Section 17(2) of the Act, the proper officer may verify the entry made under Section 46 and self-assessment of the goods made under Section 17(1); and as per Section 17(3), the proper officer may require the importer to produce document or information whereby the duty leviable on the imported goods or as the case may be, can be ascertained. Further as per Section 17(4) of the Act, the proper officer may re-assess the duty leviable on such goods if self-assessment was not done correctly by the importer. The department had the power to examine/verify the assessment made by the importer and can re-assess the goods. Therefore, there exists

no reason to seize the goods, confiscate the goods and to impose redemption fine and penalty.

4.5 He further submits that the goods can be seized under Section 110 of the Act. As per Section 110(1), if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. It is a settled law that confiscation of the goods is sustainable in case of *malafide* intention only. The goods have been held liable for confiscation under Section 111(d) of the Act wherein the goods were not imported against any prohibition. He also submits that it was a simple case of re-assessment where seizure, confiscation and consequent fine and penalty were not warranted.

4.6 In support of his submissions, the learned Counsel relies on the following decisions:

- ***Oriental Containers Ltd vs. UOI - 2003 (157) ELT 503 (Bom.)***
- ***Commissioner of Customs (Export), Mumbai vs. Surbhit Impex Pvt Ltd - 2012 (286) ELT 500 (Bom.)***
- ***A.R. Trading Company vs. CCE, Bangalore - 2020 (372) ELT 388 (Tri. Bang.)***
- ***Agarwal Industrial Corporation Ltd vs. CC, Mangalore - 2020 (373) ELT 280 (Tri. Bang.)***
- ***Goyal Metal Industries Pvt Ltd vs. CC (Import), Chennai - 2018 (359) ELT 236 (Tri. Chennai)***
- ***John Deere India Pvt Ltd vs. CC (Preventive), Amritsar - 2018 (363) ELT 509 (Tri. Chan.)***
- ***Pathange And Company vs. CC, Hyderabad – 2020-TIOL-73-CESTAT-HYD*** *(Final Order No. 31112/2019 dt. 20.11.2019)*

5.1 On the other hand, the learned Authorized Representative for the Revenue also filed written submissions alongwith case-laws relied upon by him. He reiterates the findings of the impugned order and submits that importer’s actions were in contravention of the policy conditions rendering the imported goods liable for confiscation under Section 111(d) of the Customs Act, 1962.

5.2 The learned AR further submits that initially the appellant challenged the legality and validity of the notification dated 05.02.2016 before the Hon’ble High Court, but subsequently the Hon’ble High Court has upheld the power of the DGFT in issuing the impugned notification.

5.3 The learned AR further submits that imposition of redemption fine and penalty under Section 112(a) of the Act is tenable in law in view of the under valuation.

5.4 In support of his submissions, the learned AR relies on the following case-laws:

- ***M/s Raj Grow Impex LLP vs. Union of India - 2021 (377) ELT 145 (SC)***
- ***M/s Agricas LLP vs. Union of India - 2020 (373) ELT 752 (SC)***
- ***CC, Ludhiana vs. B.E. Office Automation Products Pvt Ltd - 2020 (371) ELT 592 (Tri. Chan.)***

6. I have carefully considered the submissions made by both the parties and perused material on record; and also gone through the decisions relied upon by both the parties. I find that the short

question involved in these appeals is whether the imposition of redemption fine and penalty under Section 112(a) of the Customs Act, 1962 is legally sustainable in view of the fact that the appellant has already paid the Minimum Import Price (MIP) for the impugned goods as fixed vide Notification No. 38/2015-2020 dated 05.02.2016 issued by the DGFT, by which impugned goods cannot be imported with the value less than the Minimum Import Price (MIP). It is a fact that initially the appellant and other importers challenged the legality and validity of the notification dated. 05.02.2016 issued by the DGFT and but once the legality and validity of the said notification was upheld by the Hon'ble High Court, the appellant paid the duty as per the said notification at Minimum Import Price (MIP) and did not question the same and only filed these appeals against the imposition of redemption fine and penalty.

7. It is pertinent to note that in the impugned order dated 08.10.2018 passed by the learned Commissioner (Appeals), sufficient reasons have not been given for imposing the redemption fine and penalty. Further, I find that in the impugned order dated 27.07.2013 relating to the same impugned goods, the learned Commissioner (Appeals) has categorically held that there was no attempt by the appellant to mis-declare the description or transaction value; and consequently the learned Commissioner (Appeals) set aside the confiscation under Section 111(d) of the Customs Act, 1962 and also set aside the imposition of redemption fine, but still retained the penalty imposed under Section 112(a) of the Act.

8. Further, I find that once the confiscation is set aside, then the question of imposition of penalty under Section 112(a) of the Act does not arise. Here, it is pertinent to refer to Section 112(a) of the Customs Act, 1962, which is reproduced herein below:

> ***"Section 112 – Penalty for importer 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)*** ****** *"*

On perusal of the above said provision, I find that penalty under Section 112(a) of the Act can be imposed for such an act which would render the goods liable to confiscation under Section 111; and in the present case, the learned Commissioner (Appeals) has set aside the confiscation, hence the imposition of penalty is bad in law.

9. Further, I find that in the present case, there was no *malafide* intention to evade duty on the part of the appellant and hence, the imposition of penalty is not sustainable in view of the various decisions relied upon by the learned Counsel for the appellant cited supra; particularly the decision of this Tribunal in the case of ***John Deere India Pvt Ltd*** (supra), wherein it has been held that when the issue relates to interpretation then the goods are not liable to confiscation and no redemption fine is imposable on the said goods and consequently no penalty is imposable on the appellant. Further, the Tribunal in the case of ***Pathange And Company*** (supra), has held in para 8 and 9 as under:

> ***"8.*** *We find that this issue is no longer res-integra and the three Member Bench in the case of* ***Asian Copiers [2015 (2) TMI 1221-CESTAT New Delhi)]*** *has, by a majority decision, decided that import of Multi Functional Digital Copiers prior to 05.06.2012 was not restricted. While deciding this matter, they have also considered the judgment of the Tribunal Chennai in the case of* ***Unitech Enterprises [2012(279)ELT 236 (Tri.-Chennai)],*** *relied upon by the Ld. DR. Respectfully following the ratio of this decision, we hold that the import of the impugned goods is not restricted and their confiscation under section 111(d) is not sustainable and needs to be set aside. We have also considered the argument of Ld. Counsel that confiscation was also on account of under valuation of the goods which has been conceded by the importer. A plain reading of the Order-in-Original shows that confiscation was held under section 111(d) of the Customs Act, 1962 which pertains to import in violation of the restrictions and prohibitions and not under section 111(m) which deals with confiscation for under valuation, etc. We, therefore, find that the confiscation under section 111(d) of the Customs Act 1962 needs to be set aside. Consequently, the redemption fine imposed under section 125 on the appellant also needs to be set aside. The penalty imposed under section 112(a) of the Customs Act, 1962 is consequent to the goods being held liable for confiscation under section 111. As we find that the goods are not liable for confiscation under section 111(d), the penalty imposed under section 112(a) also needs to be set aside and we do so.*
>
> ***9.*** *The appeal is allowed and the impugned order to the extent of confiscation of goods, imposition of redemption fine and imposition of penalty is set aside, with consequential relief.****"***

10. Further, I also find that the case-laws relied upon by the learned AR for the Revenue are not applicable in the facts and circumstances of the instant case.

11. In view of the above discussion, considering the totality of the facts and circumstances of the case, I am of the considered opinion

that the both the impugned orders are not sustainable in law and therefore, I set aside both the impugned orders by allowing the appeals of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 30.05.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi