

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 50720 of 2021-SM

(Arising out of order-in-appal No. 22(SM) CUS/JPR/2021 dated 10.03.2021 passed by the Commissioner (Appeals), Central Excise & Central Goods, Service Tax, Jaipur).

M/s Ceramic Tableware Pvt. Limited
S-707(A), Road No. 6, VKI Area
Jaipur -302013.

Appellant

VERSUS

Commissioner of Customs
NCR Building, Statue Circle
C-Scheme, Jaipur – 302 005.

Respondent

APPEARANCE:

Sh. Bipin Garg, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO. 50524/2022

DATE OF HEARING: 27.05.2022
DATE OF DECISION: 17.06.2022

ANIL CHOUDHARY:

The issue involved in this appeal is whether Redemption fine of Rs. 12 lakhs and penalty of Rs. 9 lakhs have been rightly imposed under Section 112(a)(ii) and Section 114AA, respectively.

2. Brief facts of the case are that the appellant is a manufacturer of ceramic tableware located at Jaipur. They are regular importer of their inputs – 'calcium phosphate' falling under chapter heading 28352690. In regular course of business the appellant imported calcium phosphate and filed Bill of Entry Nos. (i)

6897549 dated 15.02.2020 (ii) 6969438 dated 21.02.2020 and (iii) 70066555 dated 25.02.2020. However, due to some clerical error, the description of goods was mentioned as 'Apatite (GR) Calcium Phosphate' falling under chapter heading 25102030. However, the appellant suo motu discovered the error in filing the Bill of Entry, and accordingly approached the Revenue for correct classification and payment of duty vide letter dated 27.02.2020, pointing the mistake and mentioning that the correct classification of the goods is 28352690 and accordingly prayed for rectification in the Bill of Entry and offering to pay the differential amount of customs duty and GST /IGST. It was also pointed out that the mistake occurred due to error in the shipping documents (being Bill of Lading wherein the goods have been mentioned as 'Apatite (GR) Calcium Phosphate' HS Code 25102030). The said mistake is also in the commercial invoice.

3. The Officers of the Customs examined the consignment of Bill of Entry dated 15.02.2020 on 28.02.2020, in presence of the authorised representative of the Customs Broker wherein they found that the tag affixed on the jumbo bag, mentions the description of the goods as 'calcium' instead of 'Apatite (GR) Calcium Phosphate'. It appeared to Revenue that as the appellant is a regular importer of calcium phosphate they have deliberately misclassified the goods in the Bill of Entry for paying lower custom duty as the total duty BCD plus IGST on 'Apatite (GR) Calcium Phosphate' was 10% whereas on calcium phosphate it is 28% or (10% + 8%). It further appeared that for import of calcium phosphate under tariff heading 28352690, the importer have to obtain NOC from the Drug Controller

Department, as required under the Drugs and Cosmetic Act. Thus it appeared to Revenue that in order to skip this mandatory requirement they have misclassified the goods.

4. The appellant reiterated the request for correction of classification of the goods in the Bill of Entry alongwith offer to pay the differential duty by their subsequent letter dated 2-3/03/2022. However, it appeared to Revenue that it is a case of deliberate mis-declaration and accordingly the goods were liable to confiscation under Section 111(d), (l), (m), (n) and (o) of the Customs Act. Accordingly, the goods were put under seizure on 02.03.2020 and it further appeared that the appellant was liable to penalty under Section 112(a)(ii) and Section 114AA. It further appeared that differential duty payable is Rs. 10,88,650/-. The appellant in continuation of their earlier letter suo motu admitted the error and praying for correction in the Bill of Entry, agreed to the proposed demand and differential duty by giving consent letter dated 05.03.2020. The appellant also waived their right to receive show cause notice.

5. On the aforementioned facts, the Additional Commissioner of Customs passed order-in-original dated 07.03.2020 holding that the appellant have intentionally filed Bill of Entry under wrong description and classification, and accordingly held the goods are liable for confiscation under Section 111(d), (l), (m), (n) and (o) of the Customs Act. Further, penalty under Section 112(a)(ii) was imposed -Rs. 12 lakhs and also penalty under Section 114AA of the

Customs Act of Rs. 9 lakhs. Further, option of redemption was given subject to payment of redemption fine of Rs. 10 lakhs.

6. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to reject the appeal confirming the order in original. Being aggrieved, the appellant is before this Tribunal.

7. Learned Counsel for the appellant inter alia urges that there is no case of any deliberate mis-declaration made out. The Bill of Entry was filed by the Clerk of the appellant, who filed the Bill of Entry based on the documents like Commercial Invoice and Bill of Lading. However, as soon as the matter came to the knowledge of the Senior Officer in appellant company, they immediately have suo-motu filed application for rectification and offered to pay the differential duty, even before any inspection or dispute raised by the Customs Department. Thus, in the facts and circumstances, no case of deliberate mis-declaration to short pay custom duty is made out. Further, the appellant is regular importer of calcium phosphate and has already been granted the 'No Objection Certificate' by the Drug Controller - Department. Thus, there was no reason for the appellant to deliberately mis-declare the description of goods and classification. It is further urged that the appellant is regular importer, thus, there is no reasonable basis available to Revenue to draw adverse inference against the appellant. Accordingly, he prays for allowing the appeal by setting aside the order of confiscation, redemption fine and penalty.

8. Learned Authorised Representative for the Revenue relies on the impugned order.

9. Having considered the rival contentions, I find that there appears to be a genuine mistake in the nature of clerical mistake on the part of the Clerk of the appellant company. This fact is evident on the basis of record, as the appellant has suo motu approached the Department for making necessary rectification in the Bill of Entry with regard to the classification, and also offered to pay the differential duty. Such suo motu offer was made before the Department pointed out or issue of any notice to the appellant. Thus, I hold that it is a case of simple clerical error and there is no case of contumacious conduct on the part of the appellant.

10. In view of my findings, I allow this appeal by setting aside the impugned order of confiscation and penalty both under Section 112(a)(ii) and 114AA of the Act.

11. Thus, the appeal is allowed. The appellant is entitled to consequential benefits.

(Pronounced on 17.06.2022).

(Anil Choudhary)
Member (Judicial)