CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40432 of 2020

[Arising out of Order-in-Original No.72954/2019 (Denovo) dated 24.12.2019 passed by the Commissioner of Customs (Chennai II), Chennai]

M/s.Shree Salasar Tools (an HUF) **Appellant**
No.307, 3rd Floor, Metro Tower,
Near Kinnary Cinema Ring Road, Surat
Gujarat 395 002.

Vs

The Commissioner of Customs **Respondent**
(Sea Port), Chennai II Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE:

Shri B. Satish Sundar, Advocate
For the Appellant

Shri R. Rajaraman, Assistant Commissioner (AR)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 21.09.2022
Date of Pronouncement: 23.09.2022

FINAL ORDER No. 40327 / 2022

Brief facts of the case are that appellant, who is the importer, filed a Bill of Entry dated 27.06.2018 for the clearance of assorted goods declared as "Balloon machine, Plastic balloon pump, Party throw flower, Plastic clothing accessories, Load cell, Embroidery machine

needle, Glitter paper, Encoder etc. vide invoice dated 01.06.2018 with declared value of Rs.13,08,871.47 issued by M/s.SST Asia Trading FZE, U.A.E imported vide Bill of Lading dated 28.05.2018 from People's Republic of China.

2. The goods were examined on second check examination basis to verify make / model / specification etc. The Department also ordered for verification and applicability of Anti-Dumping Duty (ADD) in respect of items mentioned at Sl.No.6 & 7 which were declared as "Embroidery Machine Needles". As per the examination report, -

(i) the items mentioned at Sl.No.6 & 7 of the Bill of Entry which were declared as "Embroidery Machine Needle" which were self-assessed and classified under Chapter 84485190 and self-assessed at the rate of 1.2 USD per kg was found to be 'sewing needles' of different brands. The said items attract ADD when imported from China vide Notification No.31/2017-Customs (ADD) dt. 22.06.2017.

(ii) Glitter paper (1331 kgs.) mentioned at Sl.No.8 declared as "made up of paper" classified under 48239090 with declared value @ 0.4 USD per kg, appeared to be made of plastic. The declared value of the item also was found to be low.

(iii) The item mentioned at Sl.No.10 i.e. EF 120 Electronic Card (2000 pcs) declared as 'Parts of Embroidery Machine' was classified under 84485900 and the unit price was declared @ USD 0.15 per piece. The said item appeared to be as 'PCB card for Embroidery Machine'. The declared value was found to be low.

(iv) Stepping Motor (88 pcs) mentioned at Sl.No.11 classified under 84485900 and self-assessed at the rate of 12.5 USD per piece.

(v) The item at Sl.No.2 declared as Plastic Balloon Pump, was found to be hand pump and not electric pump.

3. The goods were marked to CFS for re-examination as to the quantity of the needles in order to enable the group to calculate the ADD that has to be levied. On re-examination of the cargo at CFS, it was noticed by the Shed officers that the item mentioned at Sl.No.6 i.e. Embroidery Machine Needles of TIGER brand were packed in total 25 boxes with 80 packets per box and each pack containing 500 needles. Therefore, the total no. of needles at Sl.No.6 worked out to be Rs.50 lakhs. Further, the item mentioned at Sl.No.7 i.e. Embroidery Machine Needles of TOYO brand were packed in total 20 boxes with 40 packs per box and each pack containing 1000 needles. The total number of needles at S.No.7 worked out to be Rs.8 lakhs. Thus, the total nos. of needles mentioned at Sl.No.6 & 7 together was worked out to Rs.58 lakhs.

4. The items mentioned at Sl.No.2,6,7,8,10 & 11 were reclassified as detailed below :

S.No.as per BE	Description of the goods	Declared CTH	Assessed CTH
2.	Plastic Balloon Pump	84142090	39269069
6.	Embroidery Machine Needle	84485190	84523090
7.	Embroidery Machine Needle	84485190	84523090
8.	Glitter Paper	48239090	39269099
10.	Electronic Card	84485900	84529099
11.	Stepping Motor	84485900	84529099

5. After adjudication, the Deputy Commissioner of Customs (Gr-5) passed Order-in-Original dated 02.08.2018 whereby the declared value of the goods at Sl.Nos.6,7 & 8 were rejected and reclassified. The classification of the items at Sl.Nos.2,6,7,8,10 & 11 was also rejected and ordered for reclassification and re-assessment. The assessable value of goods at Sl.Nos.6,7 & 8 was reassessed at Rs.1,32,72,600/- under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Consequently, the demand of differential duty of Rs.49,16,950/- was confirmed along with interest. Further, demand of ADD on items at Sl.Nos.6 & 7 was confirmed to the tune of Rs.89,74,456/- as per

Notification No.31/2017-ADD. The original authority ordered for confiscation of the goods at Sl.No.2,6,7,8,10 & 11 under Section 111 (d) and (m) of the Customs Act, 1962. He also gave an option to the importer to redeem the said goods on payment of a redemption fine of Rs.35 lakhs in terms of Section 125 (a) of Customs Act, 1962. A penalty of Rs.1 lakh was imposed on the importer under Section 112 (a) of the Act ibid.

6. The above order was challenged by the appellant-importer by filing an appeal before the Commissioner (Appeals) who after hearing the appeal remanded the matter to the original authority as per Order-in-Appeal dated 16.10.2018 for redetermination of classification of Embroidery Machine Needle, the application of ADD thereof on goods at Sl.Nos.6 & 7 after seeking Chartered Engineer certificate. The department also filed an appeal before the Commissioner (Appeals) being aggrieved by the order passed by the Deputy Commissioner dated 02.08.2018. The said appeal was filed on the ground that the differential duty worked out was Rs.49.16 lakhs and ADD was Rs.89 lakhs. The total amount of duty on the goods then worked out to be Rs.1.38 lakhs and it is beyond the jurisdictional power of Deputy Commissioner in terms of Board's Circular No.24/2011-Cus. dt. 31.05.2011. The said appeal filed by the Department came to be heard by the Commissioner (Appeals) after the remand of the appeal filed by the importer. The Commissioner (Appeals) therefore took the view that the order passed by the original authority has merged with the order

passed by him while remanding the mater to the original authority and therefore rejected the Revenue's appeal as being infructuous.

7. Being aggrieved by such order, the Department filed an appeal before the Tribunal. The matter was heard by the Tribunal and vide Final Order No.41372/2019 dated 19.11.2019, the Tribunal held that the issue requires to go back to the competent authority for re-adjudication after following the principles of natural justice. The order passed by the commissioner (Appeals) was set aside and the matter was remanded to the competent authority to re-adjudicate the case within 12 weeks of receipt of the order of the Tribunal.

8. Pursuant to such remand, the matter was taken up for readjudication by the Commissioner and the impugned order was passed, the operative part of the order reads as follows :

> "i. I reject the declared value of the goods at S.No. (6,7 and 8) imported vide Bill of Entry No.6974966 dated 27.06.2018, under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and I re-determine the assessable value of goods at S.No. (6,7,8 & 10) imported vide Bill of Entry No.6974966 dated 27.06.2018, at Rs.1,21,60,968/- **(Rupees One Crore Twenty One Lakhs Sixty Thousand Nine Hundred and Sixty Eight only)** under rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
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> ii. I reject the classification of the items at S.No.2,6,7,8,10 & 11 of the BE and order to adopt the classification at the time of re-assessment and also confirm the re-classification of the goods as detailed in the above para.

iii. (a) I order to confiscate the goods at S.No.2,6,7,8,10 & 11 imported vide Bill of Entry No.6974966 dated 27.06.2018 under section 111 (d) & (m) of Customs Act, 1962. However, I give an option to the importer to redeem the goods mentioned at sl.no.2,8,10 & 11 valued at 4,33,990/- (re-determined value) on payment of Fine of **Rs.25,000/- (Rupees Twenty Five Thousand only)** under section 125 (a) of Customs Act, 1962 and payment of applicable differential duty with applicable interest thereon.

(b) Further I give an option to the importer to redeem the goods mentioned at Sl.no.6 & 7 viz, industrial sewing needles valued at Rs.1,21,60,968/- as re-determined in above Para 1, on payment of Redemption Fine of R**s.6,00,000/- (Rupees Six Lakhs only)** under Section 125 of the Customs Act, 1962 for the limited purpose of re-export at their (importer's) own cost within 120 days from the receipt of this order.

iv. I impose penalty of **Rs.7,00,000/- (Rupees Seven Lakhs only)** on the importer M/s.Shree Salasar Tools, Gujarat under Section 112 (a) of Customs Act, 1962."

9. Arguments for the appellant:- Ld. Counsel Shri B. Satish Sundar appeared for appellant. He submitted that the appellant is presently not challenging the classification, valuation or assessment or levy of duty by the original authority. The challenge in the present appeal is confined to the fine and penalty imposed in regard to goods mentioned in Sl.Nos.6 & 7 only. The original authority in the *de novo* adjudication had ordered for re-export of the goods and imposed redemption fine of Rs.6 lakhs for the limited purpose of redeeming the goods for re-export. A penalty of Rs.7 lakhs was also imposed. The appellant is contesting only the redemption fine and the penalty imposed.

10. He submitted that the order of imposition of redemption fine for re-export is unsustainable. When the goods are re-exported there is no relevancy to the market value of the goods, margin of profit, customs duty payable which are the parameters for fixation of redemption fine in terms of Section 125 of the Customs Act, 1962. The goods under confiscation are not cleared for home consumption but allowed only to be re-exported. Appellant has already re-exported the goods by paying the redemption fine. As the goods have been redeemed only for the purpose of re-export there is no relevancy of market value of the goods or margin of profit as required under Section 125 of the Customs Act, 1962. To support his argument, he relied upon the following judgements :

(i) *Judgment of the Hon'ble Supreme Court in the case of Siemens Ltd. Vs. Collector of Customs reported in 1999 (113) ELT 776 (SC)*

(ii) *Judgment of the Hon'ble High Court, Madras in the case of Sankar Pandi Vs. UOI reported in 2002 (141) ELT 635 (Mad.) affirmed by the Hon'ble Supreme Court reported in 2018 (360) ELT A214 (SC)*

(iii) *Judgement of the Hon'ble Tribunal in the case of M/s.Perfect Trading Company Vs. Commissioner of Customs (AIR) reported in Final Order No.40065/2022 dated 10.2.2022*

(iv) *Judgement of the Hon'ble Tribunal in the case of M/s.Selvam Industries Vs. Commissioner of Customs reported in Final Order No.40121/2022 dated 17.3.2022.*

11. With regard to penalty of Rs.7 lakhs imposed, he submitted that Embroidery Machine Needles were so declared on the *bona fide* belief that the classification is correct and that they do not attract ADD. This is because, the very same goods were imported by the

appellant through Nhava Sheva Port from the very same supplier on earlier occasions. The goods then had been subjected to verification by the SIIB who after conducting inspection came to the conclusion that the goods are embroidery machine needle classifiable under 8448 and therefore ADD is not imposable. The appellant has produced the related import documents of earlier imports wherein the declared classification is mentioned. These documents were produced before the original authority also. The appellant had adopted the classification based on the earlier imports from the very same supplier. It is clear that the appellant had no willful intention to misclassify or misdeclare or evade duty. In such circumstances he prayed that the penalty may be waived. He relied upon the following judgements :

(i) *Judgment of the Hon'ble Supreme Court in the case of Akbar Badruddin Jiwani Vs. Collector reported in 1990 (47) ELT 161 (SC)*

(ii) *Judgment of the Hon'ble Madras High Court in the case of Commissioner of Customs, Chennai Vs. WIPRO Ltd. Reported in 2019 (368) ELT 901 (mad.)*

(iii) *Judgment of the Hon'ble Madras High Court in the case of Novel Digital Electronics Vs. Commissioner of Customs, Chennai reported in 2015 (321) ELT 29 (Mad.)*

12. Arguments for the Department :- Ld. A.R Shri R. Rajaraman appeared and argued for the Department. He adverted to para-14 of the impugned order. He submitted that as per Notification

No.31/2017-Customs (ADD) dated 22.06.2017, ADD is applicable to sewing machine needles when imported from China PR. The scope of the product under consideration includes sewing machine needles meant for household and industrial purposes in various seizes and point style. So, Embroidery Machine Needles which are sewing machine needles attract ADD whether meant for household or industrial purposes. Accordingly, the classification of impugned goods mentioned at Sl.Nos.6 & 7 was rejected and reclassified the same from CTH 84485190 to CTH 84523090. Based on the notification, it was held that the goods attract ADD. The appellant had not only misdeclared and misclassified the goods at Sl.Nos.6 & 7 but there was mis-classification in respect of Sl.No.2 which were declared as "Plastic balloon pump". On examination, these goods were found to be hand pump and not electric pump. The goods were reclassified from 84142090 to 39269069 and accordingly the Basic Customs Duty leviable was 10% as against the earlier rate of 7.5%. The goods declared at Sl.No.8 i.e. 1331 kgs of Glitter paper were actually found to be made of plastic and these were ordered to be classified under CTH 39269099. The value of the goods was also found to be low and the same was enhanced from USD 1 per kg to USD 0.4 per kg.

13. It is submitted by Ld. A.R that in para-16 of the impugned order, it is noted that the goods declared at Sl.No.10 i.e. EH 120 Electronic Card was actually found to be PCB Card for Embroidery

Machine and these were rightly classifiable under CTH 84529099 i.e. parts of embroidery machine. The classification adopted by the appellant for these goods was also incorrect. Thus there was misdeclaration and misclassification of goods for which reason the goods became liable for confiscation. He submitted that further the appellant had submitted before the adjudicating authority that they do not intend to contest the issue with regard to classification or demand of differential duty and are willing to re-export the goods at Sl.Nos.6 & 7 for the reason that they have found a new buyer overseas. Since there is much misdeclaration and misclassification, the request of the appellant to waive redemption fine and penalty is without any basis. He prayed that the appeal may be dismissed.

14. Heard both sides.

15. The issue is whether the Redemption Fine of Rs.6 lakhs imposed under Section 125 of the Customs Act, 1962 in regard to goods at Sl.No.6 & 7 to reexport and the penalty of Rs. 7 lakhs imposed under Section 112 (a) of the Act ibid is legal and proper.

16. In para-1 of the impugned order it is noted by the original authority that appellant vide their letter dated 09.12.2019 had stated that they accepted the enhanced value and classification in respect of items mentioned at Sl.Nos.2, 8,10 & 11 and are ready to pay the differential duty along with applicable interest in regard to

these items. They further requested permission to re-export the goods mentioned at Sl.Nos.6 & 7. Before this Tribunal also, the Ld. Counsel has submitted that they are not contesting the classification, valuation or assessment or levy of differential duty. The contest in the present appeal is confined to imposition of redemption fine of Rs.6 lakhs and penalty imposed to the tune of Rs.7 lakhs. The original authority has given option to the importer to redeem the goods mentioned in Sl.Nos.6 & 7 for the purpose of re-export on payment of redemption fine of Rs.6 lakhs. Ld. Counsel has stressed that the goods having been not cleared for home consumption, the imposition of redemption fine is unwarranted.

17. The Hon'ble jurisdictional High Court in the case of *Sankar Pandi Vs Union of India* – 2002 (141) ELT 635 (Mad.) relied upon the decision of the Hon'ble Apex Court in *Siemens Ltd. Vs Collector of Customs* – 1999 (113) ELT 776 (SC). The relevant paragraphs of the Hon'ble jurisdictional High Court's order are reproduced as under :

> **"[Order]. -** Heard the learned Counsel for the parties.
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> **2.** The petitioner in this Writ Petition is aggrieved by the orders passed directing the petitioner to pay penalty regarding payment of redemption value for the articles which are brought from Singapore. Subsequently, the petitioner contended that he is no longer interested to take return for the purpose of use or consumption within India, but he wanted to re-export the same. Therefore, he prayed that he need not pay any redemption value. No order has been passed in the revision petition where such prayer has been made. Hence, the present Writ Petition has been filed.

3. It appears that the question relating to re-export is covered by the decision of the Supreme Court rendered in the case of *Siemens Limited* v. *Collector of Customs* reported in S.C. 1999 (113) E.L.T. 776. Keeping in view the abovesaid decision there cannot be any doubt that the petitioner is entitled to re-export the articles in question and for the abovesaid purpose, it is not necessary for him to pay redemption fine as imposed by the authorities.

4. The learned Counsel for the petitioner further submitted that since the petitioner is not going to import the articles and use or sell the articles within India, the imposition of penalty of Rs. 33,000/- should be quashed.

5. The learned Counsel appearing for the Department has opposed to this stating that the petitioner has violated and the penalty has been rightly imposed.

6. In the facts and circumstances of the case, I feel the imposition of penalty of Rs. 33,000/-, keeping in view the relevant value of the articles concerned, appears to be grossly high and interest of justice would be met by reducing the penalty to Rs. 15,000/- and such amount should be paid by the petitioner within a period of two weeks from the date of receipt of this order. Only after the amount is paid, the petitioner would be permitted to re-export the items concerned.

7. In the result, the Writ Petition is partly allowed. No costs. Consequently, connected W.M.Ps. are closed."

18. The said decision rendered in *Sankar Pandi* (supra) was not disturbed by the Hon'ble Apex Court as reported in 2018 (360) ELT A214 (SC) holding as under :

"The Supreme Court Bench comprising Hon'ble Mr. Justice D.K. Jain and Hon'ble Mr. Justice T.S. Thakur on 31-3-2010 **dismissed** the Civil Appeal No. 2061 of 2003 filed by Union of India against the Judgment and Order dated 6-12-2001 of Madras High Court in Writ Petition No. 2384 of 2001 as reported in **2002 (141) E.L.T. 635 (Mad.)** (*Sankar Pandi* v. *Union of India*). While dismissing the appeal, the Supreme Court passed the following order :

"Having regard to the peculiar facts and circumstances of the case, we do not find it to be a fit case for exercise of our jurisdiction under Article

136 of the Constitution. Accordingly, the appeal, by special leave is dismissed, keeping the question of law open."

The Madras High Court in its impugned order had held that redemption fine is not imposable for improper importation of goods if such goods subsequently re-exported by the importer. However, penalty is required to be imposed for violation of the Customs Act.

A report relating to grant of leave to appeal in this matter was reported in 2003 (157) E.L.T. A87 (S.C.).

19. In the present case, it is also seen that on an earlier occasion, the very same goods were imported by the appellant-importer from the very same supplier through Nhava Sheva Port. The documents relating to the earlier imports have been furnished by the appellant and it is stated that they have been produced before the original authority also. Taking note of these facts into consideration and also relying upon the decision of the Hon'ble jurisdictional High Court, I am of the view that the redemption fine imposed in the present case requires to be set aside which I hereby do.

20. The appellant has argued to set aside penalty of Rs.7 lakhs imposed by the adjudicating authority. It has to be stated that the appellant is not contesting the reclassification or levy of differential duty. Apart from the goods at Sl.No.6 & 7 all other goods have been redeemed by the appellant by paying redemption fine and appropriate

duty. It is seen that these goods which fall in Sl.No.2, 8, 10 & 11 have also been misdeclared / misclassified. For this reason, I do not think that the penalty imposed under Section 112 (a) of the Customs Act, 1962 is improper. However, the penalty of Rs.7 lakhs appears to be on a higher side. I hold that the penalty calls for reduction and it is reduced to **Rs.2,00,000/- (Rupees Two lakhs only)** and ordered accordingly.

21. From the foregoing, the impugned order is modified to the extent of setting aside the redemption fine imposed for redeeming the goods for the purpose of re-export mentioned at Sl.Nos.6 & 7 of the Bill of Entry. Penalty of Rs.7,00,000/- imposed under Section 112 (a) of the Customs Act, 1962 is reduced to **Rs.2,00,000/- (Rupees Two lakhs only).**

Appeal is partly allowed in the above terms.

(Pronounced in court on 23.09.2022)

Sd/-
(**SULEKHA BEEVI C.S.**)
MEMBER (JUDICIAL)

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