

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

And

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

C.M.A.No.2156 of 2016

M/s.SUN Exports,
No.5, Sultan Street,
Mannady, Chennai - 600 001. ... Appellant

Vs.

- 1.The Commissioner of Customs (Air Port), New Customs House,
Meenambakkam, Chennai - 600 027.
- 2.Customs, Excise and Service Tax
Appellate Tribunal, South Zonal
Bench, Shastri Bhavan, No.26,
Haddows Road, Chennai - 600 006. ... Respondents

Prayer:

Appeal filed under Section 130 of the Customs Act, 1962, against the Final Order No.41360/2015 dated 30.09.2015 in Appeal No.C/309/2011-SM, passed by the second respondent Tribunal, which was received by the Appellant on 23.11.2015. against the order No.C3/1009/01 dated 21.09.2011 in Appeal No.C.Cos.No.665/2011, passed by the commissioner of customs (Appeals) Chennai against the order in Original No.448/2011-GR5A (ACC/dated 06.09.11 passed by the commissioner of customs, Chennai

For Appellant : Mr.B.Satish Sundar
For Respondents : Mr.A.P.Srinivas for R1
R2 - Tribunal

J U D G M E N T

(Order of the Court was made by HULUVADI G.RAMESH,J.)

The present appeal is directed against the Final Order No.41360/2015 dated 30.9.2015, passed by the Tribunal, whereby the redemption fine and penalty, as ordered by the Commissioner (Appeals) were enhanced.

2.The case of the Revenue as is evident from the records is that for violation of the rules relating to Standards of Weights and Measures (Packaged Commodities) Rules, 1977, wherein, there was non-declaration of MRP on the packaged goods, which is mandatory and, therefore, after issue of show cause notice, the confiscated goods were allowed to be redeemed on payment of redemption fine of Rs.4,00,000/= and penalty of Rs.2,00,000/=. Against the said order, the appellant/importer filed appeal before the Commissioner of Customs (Appeals), who, vide order dated 21.9.2011, held that since there was no mala fide intention on the part of the appellant/importer to evade duty and since there is no revenue loss to the Government, relying upon the Board's circular No.19/2001, while the redemption fine was reduced from Rs.4,00,000/= to Rs.50,000/=. the penalty was reduced from Rs.2,00,000/= to Rs.25,000/=. Aggrieved against the said order, the Revenue filed appeal before the Tribunal, which increased the fine from Rs.50,000/= to Rs.2,00,000/= and penalty from Rs.25,000/= to Rs.1,00,000/=. Aggrieved by the said order the appellant/importer is before this Court by filing the present appeal.

3.As per the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, printing of MRP on the outside of the carton is a mandatory provision to be followed to avoid the possibility of misleading the public by charging exorbitant price than the one fixed for the particular commodity. In the case on hand, the MRP has not been printed in the outside of the packaged commodity, which fact is not in dispute. Therefore, for violation of the said provision, the appellant/importer was visited with penalty in addition to redemption fine.

4.On an appeal against the said order by the appellant/importer, the Commissioner of Customs (Appeals), while holding that there was no revenue loss to the Government on account of violation of the said provision, further held that non-printing of MRP has not led to misleading of the public or that the public were cheated on account of the said violation. In such view of the matter, the penalty as also the redemption fine was reduced by the Commissioner of Customs (Appeals).

5. On an appeal against the said order by the Revenue, the Tribunal found that mobile phones worth Rs.37 Lakhs were imported on RSP value, which had been declared, but MRP not having been affixed on the packaged cartons, for violation of the rules pertaining to Standards of Weights and Measures (Packaged Commodities) Rules, 1977, redemption fine along with penalty is imposable and, accordingly, considering the gravity of the offence, redemption fine was increased from Rs.50,000/= to Rs.2,00,000/= and penalty was increased from Rs.25,000/= to Rs.1,00,000/=. Aggrieved by the said enhancement of redemption fine and penalty, the present appeal has been filed by the appellant/importer.

6. Learned counsel appearing for the appellant/importer vehemently contended that there is no mis-declaration of any of the parameters and that the RSP declared by them is the basis on which duties have been calculated and paid. However, the Tribunal has erroneously gone on the premise that the entire profits would accrue to the appellant, without taking into consideration the profits that would accrue to the retailers, which finding, is per se flawed and deserves to be set aside. Further it is also contended by the learned counsel appearing for the appellant that the time granted till 3rd September, 2011, under the Legal Metrology (Packaged Commodities) Rules, 2011, enabling deferment of any prosecution for non-compliance of any rules, though has been taken into consideration by the Commissioner of Customs (Appeals), while reducing the quantum of redemption fine and penalty, however, the said fact has not been taken into consideration by the Tribunal.

7. Per contra, learned counsel appearing for the respondent/Revenue submitted, that MRP being a mandate so as to avoid cheating and misleading the public with reference to charging over and above the actual rate, non-disclosure of the same entails action under Section 125 of the Act. Though the product imported by the appellant does not stand prohibited vide any notification issued by the Central Government, however, contravention of any law as provided under Section 11 (2) (u) of the Customs Act would automatically attract Section 125 of the Act. It is the submission of the learned counsel appearing for the Revenue that display of MRP as mandated by the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 having not been done, the commodities were confiscated and by virtue of the powers envisaged under Section 125 of the Act, on payment of redemption fine and penalty, the same were released for clearance. Therefore, the act of the Revenue is fully justified and, therefore, no interference is called for with the order passed by the Tribunal.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the Revenue and perused the materials available on record as also the relevant provision of law on which reliance has been placed by the parties.

9. By virtue of Section 11 (1) of the Act, power is vested with the Central Government, upon proper satisfaction, to prohibit any goods for import or export of any specified description, by way of a notification insofar as it relates to purposes specified in sub-section (2) to Section 11. Section 11 (2) (u) provides for prevention of the contravention of any law for the time being in force. Section 11 (2) (s) also provides that prohibition may be extended in case the imported goods are not in compliance of any laws applicable to similar goods produced or manufactured in India.

10. Section 125 of the Act provides for confiscation of goods and release of the same in lieu of payment of redemption fine and penalty subject to the satisfaction of the adjudicating authority.

11. From the above provision of law it is evident that any commodity, be it exported or imported, if it is not in compliance with any law or is in contravention of any law, could be prohibited, by notification, for being exported or imported. Further, the rule also provides for prohibition of the same if the commodity imported does not adhere to the law as is available for similar commodities manufactured in India. Further the law also provides for levy of redemption fine and penalty insofar as imports are concerned.

12. In the above factual scenario, MRP is mandated to be displayed on all packaged commodities, be it manufactured in India or imported from outside India. The reason behind such a provision of law being that the general public should not be taken for granted by the seller by charging exorbitant prices. The public have a right to know the price at which the product can be sold, so that unjust enrichment by the seller is prohibited. With the avowed object in mind, the rules have been framed for displaying the MRP on the packaged commodity.

13. Though it is the contention of the learned counsel appearing for the appellant that they have declared RSP and duties have been calculated and collected by the authorities, it is to be noted that as per the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, it is mandatory on the part of the dealer to display the MRP on the packaged commodity. In the case on hand, it is not in dispute that the MRP has not been displayed on the packaged carton. In that view of the matter, the adjudicating authority has exercised the power vested in him

and had released the confiscated goods on payment of redemption fine and payment of penalty.

14. It has to be remembered that goods worth more than Rs.37 lakhs had been confiscated, which had been released on payment of redemption fine. It is further to be noted that only the RSP had been declared based on which duty had been calculated and paid. Therefore, over and above the RSP, the wholesaler, dealer and retailer would be taking profits and, therefore, naturally, the MRP would be over and above the RSP declared. Though the adjudicating authority had taken into consideration the value of the goods and the returns on the same and released the goods on payment of redemption fine and penalty, the Commissioner of Customs (Appeals), without proper application of mind, has reduced the penalty to a far lesser amount on the reasoning that there is no revenue loss to the Government. The display of MRP on the packaged carton is for the knowledge of the public so that they are not taken for a ride by charging exorbitant amounts and cheated by unscrupulous elements. Therefore, there is no question of revenue loss to the Government, but it is only for the better knowledge of the public at large so that they are abreast of the price which they would be required to pay on purchase of a product. Therefore, the reasoning given by the Commissioner of Customs (Appeals) for reducing the redemption fine and penalty is not justifiable.

15. The Tribunal, after considering in detail the interest of the public at large as also the violation caused and to prevent public exploitation, while enhanced the redemption fine and penalty that was ordered by Commissioner of Customs (Appeals), had also taken the interest of the importer and had fixed the quantum of redemption fine and penalty at a far lesser amount than the one ordered by the adjudicating authority. The said exercise, by no stretch of imagination, could be said to be done with haste and without reasoning. The Tribunal had followed the rule of law in fixing the reasonable fine and penalty, which would be a deterrent for persons, who indulge in exploiting people. In such view of the matter, the order passed by the Tribunal is justifiable and no interference is called for with the said order.

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16. Accordingly, finding no merit, this civil miscellaneous appeal is dismissed confirming the order dated 30.9.2015 passed

by the Tribunal in Final Order No.41360/2015. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs (Air Port), New Customs House, Meenambakkam, Chennai - 600 027.

2.Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shastri Bhavan, No.26, Haddows Road, Chennai - 600 006.

3 The Commissioner of Customs (Appeals) 60, Rajaji Salai, Customs House, Chennai 600 001

+1cc to Mr.B. Sathish Sundar, Advocate, S.R.No.73469
+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.73755

GJ(CO)
md(24/01/2017)

C.M.A.No.2156 of 2016

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