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C.M.A.No. 1069 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

C.M.A.No. 1069 of 2018

M/s. Walchand Nagar Industries Ltd.,
Walchand House,
15/1/B-2, G.A.Kulkarni Path,
Kothrud,
Pune – 411 038.

.. Appellant

VS

The Commissioner of Customs
(Sea Port Import, Chennai),
Customs House,
New No.6, Rajaji Salai,
Chennai – 600 001.

.. Respondent

Prayer : Appeal filed under Section 130 of the Customs Act, 1962 against the Final Order No.40239/208 dated 30.01.2018 in Appeal No.C/62/2009-DB passed by the Customs, Excise and Service Tax Appellate Tribunal.

For Appellant : Mr.Krishna Srinivasan, Senior Counsel
for M/s.S.Ramasubramaniam and Asso.

For Respondent : Mr.K.Mohana Murali
Senior Standing Counsel



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JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The appellant is the assessee and has filed this Civil Miscellaneous Appeal challenging order dated 30.01.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (in short, ‘CESTAT/Tribunal’).

2. The appeal has been admitted on 24.03.2021 on the following substantial questions of law:-

- “i. Whether the respondent/Department can invoke the provisions of Section 111 and in particular Section 111(m) and the consequential provisions of Section 112(a) by confiscating imported goods merely on account of non declaration of the value of a portion of the imported goods which otherwise are in conformity with the tariff entries specified in Schedule I of the Customs Act, 1962?*
- ii. Whether the respondent/Department was justified in imposing a redemption fine and penalty as a condition precedent for redeeming the goods whose importation was permissible under the Import Trade Control Statutes and only suffered from the vice of the value not being correctly described on bona fide grounds? And*
- iii. Whether the respondent/Department even if entitled to impose a redemption fine and penalty in the imported goods, could only do so on the undeclared portion of the value of the goods imported and not the entire consignment value, thus failing to apply the principle of proportionality?”*

3. We have heard Mr.Krishna Srinivasan, learned Senior Counsel,



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for M/s.S.Ramasubramaniam and Associates, for the appellant and Mr.K.Mohana Murali, learned Senior Standing Counsel, for the Department. We have also had the benefit of perusing the material papers and decisions and notifications cited by the parties.

4. The brief facts are as follows. The appellant had imported a consignment of 'Dryers, Heater and Cooler' falling within Tariff Entry 84 19 20 20, under Bill of Entry dated 31.07.2008. On arrival of the consignment, the authorities conducted an investigation and arrived at the conclusion that there had been an error in the valuation of the goods, and the consignment had been under valued.

5. The appellant was asked to furnish some clarifications and provided piecemeal information, ultimately accepting the charge levelled by the Department to the effect that the design charges for the goods imported should form part of the assessable value of the goods under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (in short, 'Rules').

6. An Order-in-Original came to be passed, wherein, the conclusions of the officer were as follows:-

'a. I reject the value of AUD 4,16,520 C&F declared in respect of Bill of Entry No. 806644 dated 31.07.2008 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same at AUD 10,13,270 C&F



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(A.V.Rs.4,27,09,243/-) as per the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) and Rule 10(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

b. I confiscate the impugned goods valued at Rs.4,27,09,243/- (Rupees Four Crore Twenty Seven Lakhs Nine Thousand Two Hundred and Forty Three Only) under Section 111(m) of the Customs Act, 1962. However, I allow the goods to be redeemed on payment of a Redemption Fine of Rs.43,00,000/- (Rupees Forty Three Lakhs Only) by the importers under Section 125 of the Customs Act, 1962.

c. I impose a penalty of Rs.21,50,000/- (Rupees Twenty One Lakhs Fifty Thousand Only) on the importers M/s. Walchandnagar Industries Ltd., Pune under Section 112(a) of the Customs Act, 1962.'

7. The appellant accepted the valuation arrived at by the authorities and remitted the duty of AUD 10,13,720 C&F basis corresponding to the enhanced value of Rs.4,27,09,243/-. No appeal was filed before the CESTAT challenging the departmental valuation. As far as confiscation was concerned, the Commissioner permitted redemption of the goods confiscated on payment of redemption fine of Rs.43,00,000/- under Section 125 of the Act.

8. The appellant chose to challenge only the confiscation of the goods and the imposition of penalty at Rs. 21,50,000/- in terms of Section 112(a) of the Customs Act, 1962 (in short, 'Act'). The CESTAT dismissed the appeal by its order dated 30.01.2018 being of the view that the question of challenging confiscation and penalty did not arise in light of



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the appellant having accepted the error in its valuation. More than once, the CESTAT notes that the appeal was directed only against the aspect of confiscation of goods and imposition of penalty, and the question of valuation not having been assailed, there was no merit in the appeal.

9. Before us learned Senior Counsel would reiterate the submissions made before the authorities below. To be noted that even before us, there is no challenge to the differential valuation and the appellant unequivocally accepts the departmental valuation. Hence the position that the valuation in the Bill of Entry, being AUD 4,16,520/- and the proper valuation of the goods ought to have instead been AUD 10,13,720 C&F. This aspect of the matter has attained finality.

10. Notwithstanding the above, learned Senior Counsel would argue that the confiscation of the goods was incorrect seen in light of two notifications viz., (i) Notification No.21/2002-Customs Department dated 1.03.2002 and (ii) Notification 12/2012-Customs Department dated 17.03.2012, both issued by the Ministry of Finance, Department of Revenue.

11. Our attention is drawn to the entries under Serial Nos. 164 and 275 respectively of the above notifications, being '*plans, drawings and designs*' where the duty imposed was 'Nil'. The appellant also relies on the decision of the learned Single Judge passed in W.P.No.30233 of 2017



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dated 23.11.2017.

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12. Per contra, Mr.Mohana Murali, learned Senior Standing Counsel, would defend the order of the CESTAT pointing out that there is no error therein, in light of the admitted difference in valuation that the appellant has accepted. Hence, the question of assailing the confiscation and penalty does not arise.

13.As far as the confiscation is concerned, he would rely on the provisions of Section 111 (m) of the Act, and as far as the penalty is concerned, the provisions of Section 112 (a) of the Act, that, accordingly to him, are mandatory.

14. Having heard both learned counsel, we are of the view that, there is no scope for intervention. Admittedly, the aspect of valuation has attained finality even at the stage of original assessment by the Commissioner. The Commissioner has, in Order-in-Original dated 13.02.2009, set out the tortured sequence of events by which the valuation was ultimately finalized at AUD 10,13,720 C&F.

15.The appellant had committed various errors in relation to valuation and this has been captured in the Order-in-Original, the relevant portions of which we extract below, to illustrate this aspect:-

'28. In the instant case, the importers had filed Bill of Entry No. 806644 dated 31.07.2008 seeking clearance of 4 sets of Dryer Parts, 1 Seat of Heater and 1 Set of



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Cooler Parts declaring a total value of AUD 4,16,520 CIF from M/s Metso Minerals (Australia) Ltd. This value is figuring in the Invoice No. C1189/MSA/001 dated 20.05.2008 submitted along with the Bill of Entry.

29. However, subsequent investigations had revealed that the declared value of AUD 4,16,520 CIF was not the correct one and that the actual value was AUD 10,13,720 C&F. This has been accepted by Shri S.J.Lale, General Manager (Materials), M/s. Walchandnagar Industries Ltd in his voluntary statement dated 03.12.2008. During the course of Personal Hearing also, he has reiterated the same stating that the cost of the design was not included in the value, and they would pay full duty arrived by the Department.

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31. Only when the case was investigated by SIIB, correct picture could be unearthed. It is seen that the original Purchase Order numbered FF84-800002 dated 12.09.2007 was raised for a sum of AUD 11,01,475 C&F for supply against a contract entered with M/s. Metso Minerals (Australia) Ltd., for design, manufacture, testing and supply of Fluidised Bed Dryers, which included a sum of AUD 1,11,475 towards supervision charges for erection and commissioning. The said purchase order was subsequently split into two viz., 1) No. FF84- 800002 (a) dated 12.09.2007, which was supposed to have a value of AUD 9,90,000 for the supply of imported components was revised to AUD 10,60,000 with an addition of a new item "Fluid Bed Cooler" of worth AUD 70,000 to the scope of the supply.

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36. In view of the discussions above, the value of AUD 4,16,520 C&F declared in the Bill of Entry is not the true transaction value and is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. As per Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, "subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10".



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Accordingly, the value of the impugned goods is to be re-determined at AUD 10,13,720 C&F under Section 14(1) of the Customs Act, 1962 read with Rule 3(1) and Rule 10 (b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. By adopting the above said value, the Assessable value of the goods works out to Rs.4,27,09,243/- as against the declared Assessable Value of Rs.1,75,48,488/-. The duty amount payable would work out to Rs.1,22,31,589/- as against the declared duty of Rs.50,25,748/- resulting in evasion of duty to the tune of Rs.72,05,841/-."

16. The records clearly indicate the series of errors committed by the assessee in arriving at the proper assessable value. The value reflected in the bill of entry had been incorrect, and when confronted, the appellant conceded to the error. Subsequent investigations revealed further errors in the valuation of the consignment that also the appellant acceded to. Ultimately the valuation in the 'Bill of Entry' had been rejected and the proper assessable value determined by the authorities and accepted by the appellant. There is no going back as far as this aspect of the matter is concerned.

17. Before us, a tentative attempt has been made to rely on two Notifications to show that '*design charges*' have been exempted in the computation of assessable value for payment of duty. The import of the above Notifications are to the effect that the rate of duty as far as '*plan, drawings and designs*' are concerned, was Nil. That rate is in relation to a



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separate assessable commodity being '*plans, drawings and designs*', and cannot be interpolated to mean design charges in respect of the Dryers, Heater and Cooler imported by the assessee, that constitute a distinct, separate assessable commodity.

18. In fact, it is too late in the day for the assessee to take that stand, as, before the authorities it had acceded to the position that design charges ought to have been included as part of the assessable value of the imported commodity under Rule 12 of the Rules. Reference to and reliance on the aforesaid Notifications, thus does not advance the case of the appellant in the least.

19. The argument relating to confiscation, is also premised upon the aforesaid Notifications that we have held, do not apply to this case. Hence, for the above reasons, this argument is also rejected.

20. Section 111 deals with the confiscation of improperly imported goods and clause (m) thereof, provides for the confiscation of '*[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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54]*'.

21. Hence any goods where the value reflected in the Bill of Entry



does not correspond to proper valuation, or where the description of the goods in the Bill of Entry does not correspond with the Entry under the Act, would be confiscable in terms of Section 111(m).

22. In this particular case, we are only concerned with the first limb of clause (m), relating to valuation. Since the assessee has itself accepted the errors in valuation and has paid the duty per the enhanced value determined by the Department, it is very clear that Section 111(m) stands attracted to this case on all fours. The question of confiscation hence has been correctly dealt with by the Tribunal and we see no necessity to intervene.

23. Coming to the question of penalty, Section 112 provides for penalty for improper importation of goods, in the case of an assessee *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*. In such an event, the assessee *shall* be liable to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher.

24. The Supreme Court, in the case of *Akbar Badrudin Jiwani v Collector of Customs, Bombay*¹ had occasion to consider the imposition of penalty under Section 112 of the Act and in the context of a difference

¹47 ELT 161
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of opinion relating to the classification of the goods, held that some discretion may be employed by the assessing officer in this regard. Otherwise, there is little discretion that is available under Section 112.

25. In the present case, we are of the categorical view that the scope for discretion does not arise at all, as the question of difference in valuation is admitted. In these circumstances, we find no scope to intervene qua the question of penalty too.

26. In light of the aforesaid discussion, the questions of law are answered in favour of the revenue and against the assessee.

27. C.M.A.No. 1069 of 2018 stands dismissed. No costs.

[A.S.M, J.] [M.S.K, J.]
03.12.2025

Index:Yes
Neutral Citation:Yes
ssm

To

The Commissioner of Customs
(Sea Port Import, Chennai),
Customs House,
New No.6, Rajaji Salai,
Chennai – 600 001.



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DR. ANITA SUMANTH,J.
and
MUMMINENI SUDHEER KUMAR,J.

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