

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
KARACHI BENCH - I
3RD FLOOR, JAMIL CHAMBERS
SADDAR, KARACHI

Before:- Mr. Mohammed Yahya, Member (Technical - I), Karachi

Customs Appeal No.K-782/2015

M/s. Madni Impex
LA8/18 Block-22, Federal B. Area,
Karachi

Appellant

Versus

The Collector of Customs,
Model Collectorate of Customs Appraisement (West),
Custom House,
Karachi

Respondents

Mr. Muhammad Abbas, Advocate, present for the appellant.
Mr. Arslan Majeed, DC, present for the respondent.

Date of hearing: 21.10.2015

Date of Order: 31.10.2015

ORDER

Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order I intend to dispose of the Customs Appeal No.K-782/2015 filed by M/s. Madni Impex, LA8/18, Block-22, Federal B. Area, Karachi, under Section 194-A of the Customs Act, 1969, against Order-in-Appeal No.9991/2015 dated 03.04.2015 passed by the Collector of Customs (Appeals), Karachi.

2. Brief facts of the case are per Show Cause Notice No.CN-311689-05012015 dated 06.01.2015 are that the importer M/s. Madni Impex electronically filed Goods Declaration No.KAPW-HC-98721-31.12.2014 and declared to contain single SEQUIN+CORDING device embroidery machine (6-Color, 24-Heads) with standard attachment and accessories, Model SW624, Packed in bulk, total quantity 02-sets, I/O China at a total invoice value of USD 20000 under PCT heading 8447.9010. The importer determined his liability of payment of

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applicable duties & taxes and sought clearance under Section 79(1) of the Customs Act, 1969. In order to check as to whether the importer has correctly paid the legitimate amount of duties and taxes the under reference GD was selected for scrutiny in terms of Section 80 of the Customs Act, 1969 and was referred to Examination for confirmation of description, quantity and other physical attribute of the goods. Perusal of the case in the light of examination report revealed that the importer has mis-declared in terms of Value (higher invoice found in the consignment). On physical examination shed staff has reported that invoice found of the consignment is US\$26000 as against declared invoice value US\$20000 the difference is US\$6000 i.e. (30%). For ease of reference examination report is reproduced as under:

"Examination department has reported that this GD has encounter following discrepancy Assessment Alert case of mis-declaration of value (invoice found inside the container) declared value: 20,000USD found value:26,000 USD (invoice No.LY141203B found) difference of 30% documents found inside the container. Goods are examined on the basis of information retrieved from the system. On physical examination following goods are found:

Description single Sequin+Cording Device Embroidery Machine (6-color, 24-heads) with standard attachment and accessories, Model SW624 Packed in bulk, total quantity: 2-sets, I/O China. Checked weight 100% (gross) found 12500KGS vide KICT weight bridge certificate (attached), images are also attached for further confirmation. This E-Report is only retained to container under examination. Group may check all aspects. Group may take necessary action as per law in the light of this E-Report against the importer."

The aforesaid facts prove that the importer has deliberately concealed the value of goods and has mis-declared in terms of value in order to get the assessment on suppressed weight of goods and to evade legitimate amount of

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Customs Duty & other Taxes to the tune of Rs.303,798/- willfully and with mala fide intention and have attempted to defraud / deprive the sales exchequer from its legitimate revenue. The value of offending goods comes to Rs.2,642,074/-.

4. The importer have therefore contravened the following Acts: Laws Violated / Contravened Acts Sections (a), Customs Act, 1969, 32 & 79(1)(b), Sales Act, 1990 Section 33 (c), Income Tax Ordinance, 2001, 148 punishable Acts Sections (a), Customs Act, 1969 Clause 14 & 45 of Section 156(1)(b), Sales Tax Act, 1990 Clause 11(c) of Section 33(c), Income Tax Ordinance, 2001 148. Therefore the importer is hereby called upon to show **cause** as to why penal action should not be taken against him under the aforesaid provisions of law.

5. On the basis of Show Cause Notice No.CN-311689-05012015 dated 06.01.2015 the Assistant Collector, Adjudication-I, Karachi passed an Order-in-Original No.309843-08012015 dated 08.01.2015. The operative part of this order is reproduced as under:

"I have gone through the case and heard the written as well as verbal submissions of the trader. The perusal of the case in the light of ER reveals that an invoice is found of the consignment amounting US\$26000 as against declared invoice value US\$20000. Thus, the difference is US\$6000. Thus, the charge is regarding the mis-declaration of the value on the basis of direct evidence of the impugned goods is found established. The trader has therefore contravened in terms of Section 79(1) of the Customs Act, 1969. The charge leveled in the show cause notice is therefore found established. Hence, the impugned goods are liable to be confiscated. However, an option to get the goods redeemed under Section 181 of Customs Act, 1969, is given to the importer on the payment of redemption fine of 35% redemption fine because of mis-declaration of the value of the impugned goods. In the light of SRO 499(1)/2009, therefore, 35% redemption fine i.e.924,726/- and a personal penalty of Rs.100,000/- is also imposed under clause (14)

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and 14(A) of Section 156(1) of the Customs Act, 1969. The trader is strictly warned to be careful in future regarding the declaration of the goods. The assessing officer is directed to assess the goods on the basis of value found on the retrieved invoice from the container or VR-whichever is higher, finalize the goods on the payment of redemption fine and penalty, besides the payment of duty and taxes involved and apply correct VR, PCT, IPO and SRO applicable."

5. Being aggrieved and dis-satisfied with the impugned Order-in-Original No.309843-08012015 dated 08.01.2015, passed by the Assistant Collector, Adjudication-I, Karachi, the appellant filed the instant appeal before Collector of Customs (Appeals), Karachi. On the basis of memo of appeal the Collector of Customs (Appeals), Karachi passed an Order-in-Appeal No.9991/2015 dated 03.04.2015 and reject the appeal. The operative part of the order is reproduced as under:

"I have examined the case record. The appellants have not been able to justify the difference between value declared by them and that given in the found invoice. The plea that supplier gave them discount is an afterthought. As the found invoice is an independent evidence and depicts true value therefore the appellants have been rightly held to have committed an offence under Section 32(1) of the Customs Act, 1969. The plea by the appellants to levy fine only on the differential value is also not tenable as the offence pertains to incorrect declaration of value therefore fine is required to be calculated on the actual value. In a somewhat similar situation in CPLA No.146-K of 2012, fine was levied @50% of the actual custom value of goods the same remained undisturbed. I find no merit in appeal, the same is rejected."

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6. Being aggrieved and dis-satisfied with the impugned Order-in-Appeal No.9991/2015 dated 03.04.2015, passed by the Collector of Customs (Appeals),

Karachi, the appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal which is reproduced as under:

"1. That it is submitted before the Honourable Customs Appellate Tribunal that the above named appellant imported single sequin plus cording device embroidery machine (6 color, 24 heads) with standard attachment and accessories model SW624 packed in bulk total quantity 02 sets, I/O China @ unit price of US\$10000/- per set against performa invoice bearing No.LY141203B dated 11.12.2014 (copy of the performa invoice is enclosed). The above named appellant negotiated the value and the manufacturer agree to supply the goods at the US\$10000/- set. It may be submitted before the Honourable Customs Appellate Tribunal that the certificate origin China Pakistan FTA Certificate has been issued showing value of the impugned machinery as US\$18910/- showing value AS FOB value. The FTA certificate was issued by the Govt. agency of the Republic of China after verification of the documents submitted at the time of export of impugned machinery to the Pakistan. This Certificate proves that the above named appellant had correctly declared the value of the goods and the transaction value declared by the above named appellant is correct, true and represents customs value actually payable by the above named appellant. The above named appellant, therefore, vehemently deny the allegation of mis declaration of value in the goods declaration and request before the Appellate Tribunal to set aside the impugned show cause notice.

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2. That the above named appellant agreed to pay the taxes on the differential value but the adjudicating authority

imposed a heavy fine and penalty which was not in consonance with the evasion of taxes. It may be submitted before the Appellate Tribunal that the total evasion of customs duty and other taxes has been worked out to Rs.303,798/- whereas the redemption fine have been imposed on the impugned embroidery machine as Rs.924,726/- and in addition to fine a personal penalty of Rs.100,000/- has also been imposed on the above named appellant. The appellant is therefore, request that there is no mis declaration of value and it was not in the knowledge of the appellant that the shipping department of the manufacturer inserted invoice of US\$26000/- in the container otherwise the above named appellant would have pay taxes on the goods. The element of mens rea is absent in the case and in plethora cases the higher courts have held that in such circumstances the fine and penalty is not leviable. In the circumstances, the appellant submits that the fine and penalty may be waived.

3. Reliance is placed upon judgment of the Sindh High Court PTCL 2005 CL 343 f in which the Honourable High Court has specifically held that in case of confiscation of the goods the redemption fine was to be worked out with reference to duties and taxes attempted to be evaded and not the duty and taxes leviable on the whole consignment. In the impugned case the learned Adjudicating Authority has taken assessed value of the whole consignment contrary to the above cited judgment in which it has been held that the redemption fine was to be worked out with reference to duties and taxes attempted to be evaded. The show cause notice indicates that the total amount of taxes involved has been determined as Rs.303,798/-. This means that the value

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is to be taken for imposition of fine is the value with reference to duties and taxes attempted to be evaded. It may be mentioned that on the basis of the above cited judgment of the Honourable High Court of Sindh also reported as 2004 PTD 298 this Honourable Appellate Tribunal in case No.2011 PTD (Trib.) 2205 also held that redemption fine may be worked out in respect of duty and taxes attempted to be evaded or more appropriately on the amount of duty and taxes leviable on offending goods. In the case the learned Adjudicating Authority for purpose of imposition of fine has taken the total value of the consignment which is contrary to the above named appellant had no knowledge of any invoice showing higher value than the value actually paid to the consignment, there was absence of element of mens rea and the appellant declared the value as was shown in the invoice received from the shipper. The above named appellant approached the supplier and regretted that export officials have attached an invoice of higher value then it was agreed the supplier tendered apology for mistake. The above named appellant was however agreed to pay taxes on the US\$6000/- which was the differential amount of value but the learned Adjudicating Authority imposed a very harsh fine and penalty."

7. Heard the arguments of appellant's advocate, DR of the respondent MCC Appraisement-West and gone through the record of the case. In this case the appellant imported two units of single sequin plus cording device embroidery machine (6-Color, 24-Heads) with standard attachment and accessories. While examining the Goods Declaration the appellant declared the value of impugned goods as US\$20,000, whereas, upon examination an invoice was recovered showing the value of goods as US\$26000. The respondent alleged the appellant of mis-declaring the value by under invoicing the value. Upon adjudication a

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redemption fine to the extent of 35% of the ascertained value i.e. US\$26000 shown in invoice recovered from the container has imposed. A question arises here as to what will be the value for the purpose imposition of redemption fine i.e. the value of the whole consignment or the difference of value declared by the importer on GD and value shown in the invoice recovered from the container. It is imperative to discuss here that the Honorable Sindh High Court in PTCL 2005 CL.343 has held that extent of redemption fine has be worked out with reference to duties and taxes attempted to be evaded and not the duties and taxes on the whole consignment.

8. Drawing strength from the above cited judgment I consider that the imposition of redemption fine in lieu of confiscation on the entire value of the consignment is unjust, harsh and irrational. In view of above observations and discussions, the respondent is directed to calculate the amount of redemption fine on the differential value of the consignment i.e. declared by the appellant while filing the Goods Declaration and the one shown in the invoice recovered with the consignment. The Order-in-Original No.309843-08012015 dated 08.01.2015 and Order-in-Appeal No.9991/2015 dated 03.04.2015 are modified to

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9. Order passed and announced accordingly.

(Mohammed Yahya)
Member (Technical - I)

Appeal No. Old 1-782/2015 26/05/2015
Appeal No. New 1-782/2015
M/s. Madni Impex Karachi against
Order-in-Appeal 9991/2015 03/04/2015
by Collector of Customs Appeals

Copy forwarded to:

- 1- M/s. Madni Impex Karachi
- 2- Collector of Customs Hyderabad
- 3- Collector of Customs Quetta
- 4- The D.G Intelligence & Investigation Hyderabad
- 5- The D.G Valuation / Post Clearance Audit, Hyderabad
- 6- Office Copy

Qn/6660/2015/A-cust
Asst. Registrar
Customs Excise & Sales Tax
Appellate Tribunal
Karachi Bench