

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, MUMBAI**

Customs Appeal No. 1187 of 2012

Arising out of Order-in-Original No. 99/2012, Dated: 27.08.2012

Passed by Commissioner of Customs (Import), Nhava Sheva

Date of Hearing: 03.06.2019

Date of Decision: 25.10.2019

**M/s I G INTERNATIONAL
SCF-12, SUBJI MANDI, SECTOR-26
CHANDIGARH - 160026**

Vs

**COMMISSIONER OF CUSTOMS (I)
NHAVA SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE
POST URAN, SHEVA - 400707, DIST. RAIGAD**

WITH

Customs Appeal No. 1188 of 2012

Arising out of Order-in-Original No. 99/2012, Dated: 27.08.2012

Passed by Commissioner of Customs (Import), Nhava Sheva

**SHRI GIAN CHAND ARORA
SCF-12, SUBJI MANDI, SECTOR-26
CHANDIGARH - 160026**

Vs

**COMMISSIONER OF CUSTOMS (I)
NHAVA SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE
POST URAN, SHEVA - 400707, DIST. RAIGAD**

Appellant Rep by: Ms Pooja Reddy, Adv.

Respondent Rep by: Ms PVinitha Sekhar, AC

CORAM: S K Mohanty, Member (J)

Sanjiv Srivastava, Member (T)

Cus - Assessee had imported Apples from M/s Dovex Export Co & M/s Oneonta Trading Corporation - Based on intelligence, investigations were conducted in India and USA - These investigations revealed that they had misdeclared the value of imported goods - During investigations, searches were conducted at the premises of importer and incriminating documents recovered - Shipping Documents such as BLs, actual invoices, invoices with lesser values, packing lists, certificates of origin, insurance certificate, etc in respect of these imports were also collected from US Customs through the Consulate General of India, New York (letter dated 13.10.2008) - After recording the statements of importer and related persons in respect of these imports, a SCN was issued to the importer - The documents received from U S Custom through Consulate General in U S

A were scrutinized and scrutiny done revealed that assessee had misdeclared the value of goods - It has been held by Tribunal in Ram Kahazana Electronic - [2003-TIOL-305-CESTAT-DEL](#) and Best & Co - [2008-TIOL-2043-CESTAT-DEL](#) that the evidences gathered through Consulate General from the foreign suppliers/Customs, are the documents recovered in terms of international agreements and treaties, and could be relied upon for determination of value of imported goods - The issue in respect of reliance placed by Commissioner on the statement of Shri Gian Chand Arora, is also well settled by decisions in K I Pavunny - [2002-TIOL-739-SC-CUS-LB](#) and D M Mehta & Bros - [2015-TIOL-281-CESTAT-MUM](#) - In fact the statement of Shri Arora is based on documents forwarded by Consulate General and he has seen and admitted those documents by putting his dated signature - In his statement, he has also explained the manner in which instructions were given to the foreign supplier for preparing two sets of invoice and also the manner of making the differential amounts - He has given the names of persons to whom he has made the payments for the supplies received under cover of invoices - By mis-declaring and filing the Bill of Entry on the basis of manipulated invoices, assessee have definitely suppressed the value of goods imported - Their act of suppression with intent to evade payment of duty, extended period of limitation as per the proviso to sub-section (1) of Section 28 of Customs Act, 1962 has been correctly invoked - For this reason, the penalties imposed under Section 114A of Customs Act, 1962 are justified in view of Apex Court decision in case of Rajasthan Spinning and Weaving Mills - [2009-TIOL-63-SC-CX](#) - It is true that for the act of misdeclaration, the goods became liable for confiscation under section 111 (m) of Customs Act, 1962 - Further for their act of misdeclaration making the goods liable for confiscation, assessee is liable to penalty under Section 112(a) - In view of the fact that proviso in Section 114A specifically provides that if the penalty has been imposed under that section, penalty cannot be imposed under Section 112, Commissioner has not imposed any penalty on assessee on whom penalty under Section 114A has been imposed - He has imposed penalty on assessee no 2, which is justifiable in view of decision of Tribunal in case of Pradeep Master Batches Pvt Ltd - [2017-TIOL-167-CESTAT-MUM](#) - However since the goods were not available for confiscation nor released provisionally after seizure to assessee against bond and bank guarantee, the order for confiscation of goods and imposition of redemption fine cannot be sustained in view of decision of Larger Bench of Tribunal in case of Shiv Kripa Ispat Pvt. Ltd. - [2009-TIOL-388-CESTAT-MUM-LB](#) - Since assessee have short paid the duty at the time of clearance, the demand for interest under Section 28AB is justified - The Tribunal is not in agreement with the submissions of assessee that because they have deposited the duty prior to issuance of SCN, no penalties could have been imposed on them in view of decision of Bombay High Court in case of Padmashri V V Patil SSK - [2007-TIOL-419-HC-MUM-CX](#) - The impugned order is upheld except for setting aside the order in respect of confiscation of goods and imposition of redemption fine: CESTAT

Appeals partly allowed