IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. C/70841-70844/2016-CU[DB]

(Arising out of Order-in-Original No. 07/Noida Customs/2016 dated 31/05/2016 (in Appeal Nos. C/70841-70842/2016) & Order-in-Original No. 44/Commr./Noida Customs/2016 dated 09/06/2016 (in Appeal Nos. C/70843-70844/2016) passed by Commissioner of Central Excise & Customs, Noida)

M/s Morgan Tectronics Ltd. (in Appeal Nos. C/70841 & 70843/2016) **&**

Shri P.V. Khullar, Director (in Appeal Nos. C/70842 & 70844/2016)

Appellant(s)

Vs.

Commissioner of Customs Noida Customs Commissionerate, Noida

Respondent(s)

Appearance:

Shri J.M. Sharma (Authorised Representative) for Appellant(s)
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent(s)

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/09/2018
Date of Decision : 11/09/2018

FINAL ORDER NOs **72290-72293 / 2018**

Per: Anil G. Shakkarwar

Present all the four appeals are arising out of two Orders-in-Original in respect of three consignments imported by the appellant who is a unit in Special Economic Zone, Noida. Therefore, they are taken together for decision.

2. Brief facts of the case are that the appellants are a unit located in Special Economic Zone, Noida and as on the date of importation they were having valid letter of approval (In Short Called LOA) issued by Ministry of Commerce. The appellants imported three consignments containing Chinese Mobile Phones. The consignments were incepted by SIIB working under Commissioner, Customs, Air Cargo Complex, New Delhi. It appeared to Officers that there was some mis-declaration in respect of description and value, therefore, the issue was adjudicated by Original Authority wherein he has rejected the declared assessable value and re-determined the same he has further confiscated the imported goods and imposed redemption fine of Rs.35 lakhs and imposed a condition that the imported consignment should be re-exported outside India. He further imposed penalty on the appellant and also imposed personal penalties on Director through two Orders-in-Original. Aggrieved by the said orders importer and directors are before this Tribunal.

3. Heard learned counsel for the appellants. The learned counsel for the appellants has drawn our attention to Para 4.2 of the Order-in-Original dated 31.05.2016 wherein it is stated that a per Rule 27(10) of SEZ Rules, 2006, the assessment of the goods imported by a unit located in SEZ is to be performed by the officers who are either authorized officers or specified officers and both are respectively defined

under Rule 2(c) and 2(zd) of SEZ Rules, 2006 and both of them are working on the establishment of Development Commissioner of SEZ. He has further argued that the impugned order was passed by Commissioner of Customs, Noida and he had no jurisdiction to pass the said order. He has relied on decision of this Tribunal in their own case reported as Morgan Tectronics Ltd. vs. Commissioner of Customs, New Delhi reported at 2015 (316) ELT 276 (Tri.-Delhi). He has submitted that Para 8 of the said order clearly indicates that in terms of Section 53(1) of SEZ Act, 2005, the SEZ is deemed to be territory outside the Customs Territory of India and since the goods were meant for import in a unit in SEZ in the said case Commissioner of Customs of Air Cargo New Customs of New Delhi did not have jurisdiction. He has further submitted that similarly the present Original Authority also did not have jurisdiction to decide the present case since the goods were imported by unit located in SEZ, Noida.

4. Heard the learned AR who is agreed that said final order in appellant's own case is squarely applicable in the present case.

5. Having considered the submissions from both the sides and on perusal of Final Order passed by this Tribunal in the appellant's own case as indicated (supra), we find that this Tribunal has held as follows:-

"8. Moreover, in terms of the Section 53(1) of the SEZ Act, 2005, the SEZ is deemed to be territory outside the Customs Territory of India, and the goods imported were meant for the unit in SEZ Noida. In our view, the Commissioner of Customs, Air Cargo, New Customs House, New Delhi had no jurisdiction to confiscate these goods and impose penalty on the appellant and it is only the Joint/Dy. Commissioner/Asstt. Commissioner of Customs, in Noida SEZ unit, who had the jurisdiction to take necessary action. For this reason also, the impugned orders are not sustainable."

6. Following our earlier decision we hold that the Commissioner of Customs, Noida did not have jurisdiction to adjudicate matter related to import of above state three consignments by the importer who was a unit located in SEZ, Noida. We, therefore, set aside both the impugned orders and allow all the appeals.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ankit