FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 06/03/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **C/A/70450-70453/2018-CU[DB]** dated **05/03/2018**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/70605/2017	**Anm Electronics Pvt Ltd** Shop No.-1, Block A-4,csc First Floor,paschim Vihar, Near Cottage Enclave NEW DELHI NEW DELHI 110063
2	C/70606/2017	**Nitin Manak Director** C/o Anm Electronics Pvt Ltd M-171,second Floor ,guru Harkrishan Nagar,paschim Vihar NEW DELHI NEW DELHI
3	C/70607/2017	**Ms G Source Hk International** C/o Priyadarshi Manish (advocate)437, Basement, Mathura Road(behind Bhogal Bus Stop) Jangpura New Delhi New Delhi 110014
4	C/70635/2017	**Angelo Joseph Gomes** Director Of M/s Anm Electronics Pvt Ltd Flat No 404/33, Shiv Krupa Building, Mhada Colony KANDIVALI(WEST) MUMBAI MAHARASHTRA 400067

Name and Address of Respondent

5 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

6 C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL
FORMULE 1, WEGMANS
BUSINESS PARK, KP-III,
GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

7 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

8 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

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Other Appellants and Respondents as per Annexure

Copy To

9Advocate(s) / Consultant(s):

Priyadarshi Manish,Adv
437,MATHURA ROAD, (BEHIND BHOGAL BUS STOP) JANGPURA ,
NEW DELHI-110014
I.P. EXTENSION, PATPARGANJ,
DELHI

10 Bar Association, CESTAT, Allahabad

11 Director Publications, Customs, Excise, I.P. Estate, Delhi

12 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

13 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

14 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1 8, Sector 10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

18 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

19 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

20 C.D.R. 21 Office Copy 22 Second Folder Copy 23 Guard File

Asstt. Registrar

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

APPEAL No. C/70605-70607 & 70635/2017-CU[DB]

(Arising out of Order-in-Original No. 11/Pr. Commr./Noida-CUS/2017 dated 21/07/2017 passed by Principal Commissioner of Customs, Noida)

M/s ANM Electronics Pvt. Ltd. (in Appeal No. C/70605/2017),

Nitin Manak , Director (in Appeal No. C/70606/2017),

M/s G. Source (HK) International (in Appeal No. C/70607/2017) &

Angelo Joseph Gomes, Director (in Appeal No. C/70635/2017)

Appellant(s)

Vs.

Principal Commissioner of Customs, Noida **Respondent(s)**

Appearance:

Shri Priyadarshi Manish (Advocate)	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 : 09/01/2018
Date of Pronouncement : 05/03/2018

FINAL ORDER NOs. 70450-70453/2018

Per: Anil G. Shakkarwar

Above stated four appeals are taken together for decision since they are arising out of common Order-in-Original bearing No. 11/Pr. Commr./Noida-CUS/2017 dated 21.07.2017 passed by Principal Commissioner of Customs, Noida Customs Commissionerate.

2. Brief facts of the case are that M/s ANM Electronics Pvt. Ltd. Shop No. 1, Block A-4, CSC First Floor, Paschim Vihar, Near Cottage Enclave, New Delhi, filed Bill of Entry No. 0000206 dated 26.07.2016 for Home Consumption at Arshiya Supply Chain Management (P) Ltd. FTWZ, Khurja, for clearance of imported goods declared as Mobile Phones, Ear Phones, Charger, Battery, Cards for DTH, accessories of electronic items and other assorted articles, as declared in invoice No. ANM 2016051111A & B claiming the classification under Chapter 85, 39, 48, 95. The said goods were supplied by M/s G Source (HK) International BLK-G, Hong Kong. The goods covered by said Bill of entry were in Container No. APHU7302462-40' container. The examination of the goods was conducted by SIIB wing of Customs during the period from 21st to 23rd September, 2016. Customs Officers found that carrier seal on the said container was found to be replaced. In the course of examination the officers observed that some cartons ~~customers~~ contained Mobile Phones purported to have been manufactured by brand owner "Samsung/Micromax" and other mobile phones and accessories for mobile phones. They also recovered some stickers having Samsung name. It appeared to Revenue that the said goods were counterfeit and they had contravened Intellectual Property Rights and were prohibited goods within the meaning of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and import of such goods into India

was prohibited within the meaning of Rule, 11 of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and were liable for confiscation under the provisions of Section 111 (d) and (m) of Customs Act, 1962. Further it appeared to Revenue that the value declared was grossly undervalued. Further, investigations were carried out at the declared premises of the M/s ANM Electronics. The said goods were seized on 24.09.2016 under Section 110 of Customs Act, 1962. On inquiry it was gathered that M/s ANM Electronics was a company registered with register of companies and it's a legal entity was a company limited by shares with authorized capital of Rs.1 lakh and paid up capital of Rs.1 lakh. It appeared that the seized goods were counterfeit and piratical within the meaning of Section 2(33) of Customs Act, read with Rule 6 of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The procedure under IPR Rules to secure technical analysis report from the brand owner was followed. For the said purpose Ms. Gurpreet Gulati, Advocate & IPR Consultant from M/s React India Pvt. Ltd. Gurgaon authorized on behalf of brand owner Samsung were requested to inspect the seized goods. On inspection they submitted technical analysis report that the goods were counterfeit. Therefore, appellants were issued with a show cause notice dated 22.03.2017. There was a proposal to reject the declared assessable value of Rs.1,07,83,253/- and enhanced the value of the said goods to Rs.7,46,28,450/-

under Rule 12 read with Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Through the said show cause notice M/s ANM Electronics Pvt. Ltd. were called upon to show cause as to why declared assessable value of Rs.1,07,83,253/- should not be rejected, why assessable value should not be determined as Rs.7,46,28,450/-, why counterfeit goods having brand Samsung should not be confiscated under Section 111 (d) of Customs Act, 1962, why remaining goods should not be confiscated under Section 111(m) of the Customs Act, 1962, why penalty should not be imposed under Section 112 of Customs Act, 1962. Further, Shri Angelo Joseph Gomes and Shir Nitin Manak, Director of M/s ANM Electronics Pvt. Ltd. were called upon show cause as to why penalty should not be imposed on them under Section 114AA of Customs Act, 1962.

3. On contest above stated show cause notice dated 22.03.2017 was adjudicated through impugned Order-in-Original No. 11/Pr. Commr./Noida-CUS/2017 dated 21.07.2017. As per the directions of Hon'ble Allahabad High Court in Writ Tax no. 266 of 2017 M/s G. Source (HK) International participated in the adjudication proceedings claiming to be the owner of the seized goods. The Original Authority has recorded in his finding that container pertaining to said Bill of entry was received at CMA-CGM CFS, ICD Dadri for transshipment to Arshiya FTWZ, Khurja.

The Custodian M/s CMA-CGM Logistics (P) Ltd. Dadri had complained that some unscrupulous elements attempted to gate out the said container by presenting fake gate passes purported to have been issued by Custodian/Customs, to the security official. He further recorded that movement of goods from ICD Dadri to Arshiya Free Trade Warehousing Zone, Khurja could not take place as the officer proposed to examine the cargo at Dadri CSF after obtaining permission from the Competent Authority. He further recorded that declared value of mobile phones was US$ 2.0 to US$ 3.5 which was found to be grossly undervalued. Therefore, as provided under Customs Valuation Rules, 2007 he has ordered enhancement of value to Rs.7,46,28,450/-. Further the goods having Samsung brand mark were found to be counterfeit, therefore, they were ordered to be confiscated under Section 111(d) of Customs Act, 1962, the remaining goods were found to be mis-declared in terms of value and, therefore, they were confiscated under Section 111(m) ibid. In view of the same he has passed the order which is reproduced below:-

"7.1 I reject the declared assessable value amounting to Rs. ***1,07,83,253/- (One Crores Seven Lakhs Eighty Three Thousand Two Hundred Fifty Three only)*** *in terms of Rule 12 of the Customs (Determination of Value of Imported Goods) Rules, 2007 read with provisions of Section 14 of the Customs Act, 1962 & re-determine the same at Rs.* ***7,46,28,450/- (Rs.***

Seven Crore Forty Six Lakh Twenty Eight Thousand Four Hundred Fifty only) *in terms of Rule 7 of the Rules ibid read with Section 14 of the Customs Act, 1962.*

7.2 I order that the counterfeit goods imported by M/s ANM Electronics Pvt. Ltd., from M/s G Source (HK) INT'L, Hong Kong at re-determined value of Rs.75,00,000/- (Rs. Seventy Five Lakhs only) are hereby absolutely confiscated under Section 111(d) of the Customs Act, 1962.

7.3 I order that the remaining mis-declared goods not found corresponding to the declaration given in Bill of Entry regarding value and quantity imported M/s ANM Electronics Pvt. Ltd. at re-determined value of Rs.6,71,28,450/- (Rs. Six Crores Seventy One Lakhs Twenty Eight Thousand Four Hundred Fifty only) are hereby confiscated under Section 111(m) of the Customs Act, 1962. However, I give an option to the owner of the goods to pay in lieu of confiscation a redemption fine of Rs.1,00,00,000/- (Rs. One Crores only) under Section 125 of the Customs Act, 1962 alongwith appropriate customs duty and interest. The fine & duty is to be paid within 30 days of the issue of this order.

7.4 I impose a penalty of Rs.50,00,000/- (Rs. Fifty Lakhs Only) on M/s ANM Electronics Pvt. Ltd. under Section 112 (a)(v) of the Customs Act, 1962.

7.5 I impose a penalty of Rs. 5,00,000/- each (Rs. Five Lakhs each) on Shri Angelo Joseph Gomes and Shri Nitin

Manak, Directors, M/s ANM Electronics Pvt. Ltd. under Section 112(a)(v) of the Customs Act, 1962.

7.6 I impose a penalty of Rs.5,00,000/- (Rs. Five Lakhs each) on Shri Angelo Joseph Gomes and Shri Nitin Manak, Directors, M/s ANM Electronics Pvt. Ltd. under Section 114AA of the Customs Act, 1962."

4. Aggrieved by the said order appellant is before this Tribunal. Heard Shri Priyadarshi Manish Advocate on behalf of the appellants. He submitted that said goods were imported for self-use. Subsequently, he submitted that said goods were imported for re-export to Dubai. Further he submitted that Bill of entry under Section 46 of Customs Act, 1962 was not filed, therefore, they were not liable for examination by Customs authorities. Further on being asked by the Bench as to who the importer was and he replied that M/s ANM Electronics was the importer. On being asked as to in that case why M/s Arshiya Supply Chain Management (P) Ltd. filed the Bill of entry who was not the owner of the goods, he could not reply anything.

5. Heard the learned AR who has submitted that the counterfeit goods were imported by M/s ANM Electronics and that there was an attempt to remove the container from the custodian without custom formalities by presenting fake documents and that the attempt was that the goods should not be examined and should be removed to FTWZ, Khurja. He

submitted that the entire case was an attempt to import into India counterfeit goods and mis-declare the same to avoid its examination and clear at value lower than the required value to evade customs duty.

6. Having considered the rival contention and on perusal of record the above stated brief facts of the case very clearly indicate that the impugned Order-in-Original is sustainable. Further, the counsel for the appellant could not give any justifiable reasons as to why we should interfere with the impugned Order-in-Original. We, therefore, dismiss all the appeals filed by Appellants and uphold the impugned Order-in-Original.

(Dictated in and pronounced in Court on 05/03/2018)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

प्रमाणित प्रति/Certified True Copy
19/03/18
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38 M. G. MARG,ALLAHABAD-211001

Ankit