CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 26697 of 2013

[Arising out of Order-in-Appeal No. 164-181/2013 dated 08/03/2013 passed by the Commissioner of Customs (Appeals), Bangalore]

IBM India Pvt Ltd ......**Appellant**
Subramanya Arcade, No. 12,
Bannerghatta Main Road,
Bengaluru, Karnataka 560029

VERSUS

Commissioner of Central Excise & Customs, Bangalore-I ......**Respondent**
C R Building Queens Road,
P B No. 5400,
Bengaluru, Karnataka 560001

APPEARANCE:

Present for the Appellant: Sh. B.V. Kumar, Advocate

Present for the Respondent: Sh. Rajesh Shastry, AR

CORAM:
HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21331/2023

DATE OF HEARING: 01.12.2023
DATE OF DECISION: 01.12.2023

PER D. M. MISRA

This is an appeal against Order-in-Appeal No. 164-181/2013 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the appellant have imported parts and accessories of computers in respect of the bills of entry providing the description of the goods and classifying the same under the respective Tariff Headings. Also, they have availed the benefit of Notification No. 06/2006-CE dated 01.03.2006. Later, the classifications declared by the appellant are disputed by the Revenue and the products were re-classified denying the benefit of Notification No. 06/2006-CE dated 01.03.2006. Consequently, differential duty of Rs.93,622/- was confirmed along with interest of Rs.16,388/- and penalty of Rs.93,622/- imposed under 114A of the Customs Act, 1962. The appellant paid the entire amount of duty, interest and penalty. The Revenue filed the appeal before the ld. Commissioner (Appeals) disputing the determination of the quantum of penalty. The ld. Commissioner (Appeals) allowed the Revenue's appeal observing that the quantum penalty under Section 114A of the Customs Act, 1962 be equivalent to the amount of duty plus interest payable. Hence, the present appeal.

3. The ld. Advocate for the appellant submits that interest amount added to the duty by the ld. Commissioner (Appeals) in computing the penalty under Section 114A of the Customs Act, 1962 is contrary to the principle of law and laid down by the Hon'ble Karnataka High Court in the case of ***CC & ST, Bangalore vs. Sony Sales Corporation – 2021 (376) ELT 472 (Kar.)*** and also by the Tribunal in the case of ***CC (Export), Mumbai vs.***

Styale Corporation – 2020 (371) 772 (Tri. Mumbai). He submits that the impugned order is bad in law and not sustainable.

4. The ld. AR reiterates the findings of the ld. Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that the short issue involved in the present appeal is whether the penalty under Section 114A of the Customs Act, 1962 be equivalent to the duty or interest or it should be duty and interest. This issue has considered by the Hon'ble Karnataka High Court in the case of ***CC & ST, Bangalore vs. Sony Sales Corporation (supra)***. Their lordship at para 12 is as follows:

> *"12. The aforesaid rule statutory interpretation was referred to by Constitution Bench of the Supreme Court in Indore Development Authority v. Manohar Lal and Others, AIR 2020 SC 1496. From perusal of the relevant extract of Section 114A, it is evident that the language employed by the Legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative condition. The expression used is 'or' which is disjunctive between duty or interest and further use of expression as the case may be clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provisions that in both the situations the person liable to duty would be liable to penalty equal to duty and person liable to interest would be liable to penalty equal to interest. Therefore, in view of law laid down*

by Constitution Bench of Supreme Court, the word 'or' cannot be interpreted as 'and'."

7. Following the aforesaid judgment of the Hon'ble High Court, we find that interpretation recorded by the ld. Commissioner (Appeals) in computing the penalty under Section 114A of the Customs Act, 1962 is unsustainable in law. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, in any, as per law.

(Dictated and pronounced in the open court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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