CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20122 of 2019
With
Memorandum of Cross Objection No. 20212 of 2025

(Arising out of Order-in-Appeal No. 341/2018 dated 09.10.2018 passed by Commissioner of Customs (Appeals), Bangalore.)

Commissioner of Customs (Appeals),
TTMC, 4th Floor, BMTC Building,
Old Airport Road, Domlur,
Bengaluru – 560 071. **....Appellant(s)**

VERSUS

M/s. Apple India Pvt. Ltd.
19th Floor, Concorde Town C,
UB City No. 24,
Vittal Mallya Road,
Bangalore. **....Respondent(s)**

Appearance:

Mr. Maneesh Akhoury, Asst. Commr. (AR) for the Appellant
Mr. Sumeet Khurana, Chartered Accountant (CA) for the Respondent

CORAM:

Hon'ble Mr. P. A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 20864 /2026</u>

Date of Hearing: 12.12.2025
Date of Decision: 11.06.2026

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the goods imported by the respondent which were re-exported as per the request of the respondent are liable for confiscation and whether redemption fine and penalty imposed by Lower authority is sustainable.

2. The brief facts are the Respondent had imported iPhones on 05.03.2017 and also on 17.03.2017 by paying the import duty. During pendency of clearance, Respondent vide letter dated 07.07.2017 submitted that due to introduction of GST implemented from 01.07.2017, there has been a change in tax structure for import of goods. The changes in tax structure require the respondent to re-price the goods and alter the Maximum Retail Price (MRP) of these iPhones. Thus, to carry out such activities, the Respondent requested for permission to re-export the goods and for affixing the MRP labels. The Appellant herein considered the request and as per the letter dated 31.03.2018 informed that the request for re-export is allowed. However, since the goods are liable for confiscation, directed the Respondent to redeem the goods on payment of redemption fine of Rs.70 lakhs under Section 125 of the Customs Act, 1962 and also imposed penalty of Rs. 30 lakhs. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) set aside the order of confiscation and imposition fine and penalty and allowed re-export without redemption fine and penalty. In the meantime, the Respondent-importer paid redemption fine and penalty under protest for re-export of the impugned goods. The Order of the Commissioner (Appeals) was reviewed by the Committee of Commissioners on 29.01.2019 and as directed, appeal is filed before this Tribunal.

3. When the appeal came up for hearing, Learned Authorized Representative (AR) submits that the Respondent-Importer herein has imported the goods and since the importer was not able to produce the IMEI certificate, clearance was denied and due to failure of the importer to produce such IMEI certificate, goods are liable for confiscation. Since it is in violation of DGFT Notification No.107(RE-2013)/2009-14 dated 16.01.2015) which prohibits import of Mobile Handsets without valid International Mobile Equipment Identity (IMEI for short) number, duplicate IMEI, fake IMEI or those with all zeroes. Further the Security Wing of the Department of Telecommunication (DOT) vide letter Ref.13-11/2014/S-II dated 29.05.2015 has issued a SOP for implementation of

the prohibition of the mobile handsets without valid IMEI numbers. The said SOP clearly brings out the modalities for issue of IMEI certificate and brings out the role of all the stake holders including the industry as well as Customs. SOP therein states that the importer has to submit the consignment-wise (Bill of Entry wise) IMEI certificate to Customs along-with the other import documents. In the instant case, the importer has not produced the IMEI certificate for the 2(two) consignments. As per the Order of the Joint Commissioner communicated vide letter C. No. VIII/48/04/2014 BACC Gr 5A dated 31.03.2018, the goods were held liable for confiscation under Section 111(d) of The Customs Act, 1962 and the importer was held liable for penalty under Section 117 of the Customs Act, 1962. An option was given to the importer to redeem the goods only for the purpose of re-export on payment of Redemption Fine of Rs.70,00,000/-(Rupees Seventy Lakhs only) and penalty of Rs.30,00,000/- (Rupees Thirty Lakhs only) was also imposed under Section 112 of the Customs Act, 1962.

4. However as per the impugned order, the main issue of non-production of the IMEI certificate has not been discussed. Production of IMEI certificate is mandatory and in view of the serious security implications and DGFT Notification No. 107(RE-2013)/2009-14 dated 16.01.2015, the consignment sought to be imported was hit by prohibition and was liable for confiscation. As regards the ground that it is not a case of improper import as the appellant himself requested for re-export is concerned, Learned AR submits that the Board vide Circular No.745/61/2003-CX dated 16.09.2003 has clarified that penalty is imposable for improper importation even when re-export of goods is allowed after confiscation, following the rationale laid down by the Apex Court in the case of **Collector of Customs, Bombay Vs. M/s. Elephanta Oil and Industries Ltd., Bombay** in judgment dated 31.01.2003-**[2003 (152) E.L.T. 257 (S.C.)].** In the instant case, the violation of the prohibition is clearly established and the ground that the importer himself has sought for re-export of the goods does not absolve him of the responsibility of possession of valid IMEI certificate before importation. As far as the ground that the matter was decided without

issue of any Show Cause Notice or Personal Hearing, the importer vide letter dated 13.03.2018 had stated that they did not want any Show Cause Notice / Personal Hearing in the matter and requested to take a lenient view of the matter. As regards reliance on the case law of **Guru Ispat Ltd. Vs. Commissioner of Customs (Ports) Calcutta [2003 (151) ELT 384 (Kol)],** Learned AR submits that it is clearly distinguishable as the issue involved therein was with reference to wrong goods and the wrong goods have been shipped because of the mistake of the supplier, which is not the case here. The issue here is clearly importation of goods in contravention of law i.e., without possession of valid IMEI certificate having serious security implications. Learned AR also relied on the decision in the case of **K & K Gems Vs. Commissioner of Customs, Mumbai -l [1998 (100) ELT 70 (Tri)],** held as under:-

> *"8. The rival contentions have been carefully considered. The main contention is that redemption fine levied for re-export in this case is without jurisdiction as Section 125 of Customs Act, 1962 does not empower such a levy. The relevant portion of Section 125 reads:*
>
> > *"whenever confiscation of any goods is authorised by this Act, the officer adjudicating it may, in the case of any goods the importation or exportation w hereof, is prohibited under this Act....... and shall, in the case of any other goods, give the owner of the goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit."*
>
> *It is also laid down in Section 125 that the fine shall not exceed market price of the goods less duty chargeable in respect of such goods. The fine is to be paid apart from the duty and charges payable on such goods. Section 126 of the Customs Act, 1962 lays down that when any goods are confiscated under the Customs Act, 1962 such goods shall thereupon vest in the Central*

Government. Thus when goods are found to be offending goods and an order of confiscation is passed, then the goods shall vestin Central Government. If they are to be restored to the owner, the adjudicating authority can do so only under provisions of Section 125 which prescribes the option of a fine in lieu of confiscation. Thus Section 125 does not have a nexus with how the goods are dealt with after payment of fine in lieu of confiscation. The fine envisaged thereunder is only to get over the order of confiscation irrespective of whether the goods are cleared for home consumption or for re-export. When the importer makes a request for re-export it has been a general practice in Custom Houses to consider such a request having regard to the bona fides of such request. By re-exporting the goods the importer can avoid the payment of duty but not the fine in lieu of confiscation.

9. In the Padia Sales Corporation decision of the Tribunal (supra) also it is noted that the Tribunal did not set aside the redemption fine, but only modified its terms, making it a fine in lieu of confiscation simplicitor, which is in consonance with the object of Section 125 as seen above. As for the Tribunal decision in the case of Allen Bradley India (supra) the facts, as pointed out by Id. SDR, are different from the present case. There the Collector has given a clear finding that wrong goods had been shipped because of suppliers mistake and the importer had disclosed the fact to the department even before the examination of the goods. The Tribunal therefore, held that the goods need not have been subjected to confiscation and to levy of fine in lieu of confiscation. So also in the case of Tribunal decision in Skantrons (supra), the Tribunal was of the view that the goods need not have been confiscated at all under Section 111(d) when the importer offered to produce other valid licence for the goods in the place of licence originally presented for the clearance of the goods which was found to have forged endorsement. The Tribunal observed that simultaneous imposition of two conditions namely imposition of fine in lieu of confiscation and directing re-export cannot co-exist.

Here also redemption fine under Section 125 as a condition for re-export has been held to be not tenable and not fine in lieu of confiscation per se.

10. In the order portion in the present case the Commissioner, after coming to the conclusion that the over invoiced rough emeralds and the concealed undeclared worked emeralds are liable for confiscation, has ordered such confiscation under Section 111 (d), (1) and (m) of Customs Act, 1962. It is followed by the option given under Section 125 of the Act to pay fine in lieu of confiscation. The goods are thereafter allowed to be re-shipped. Personal penalty has also been imposed on the Appellants. Therefore it is clear in this case that the fine in lieu of confiscation has been imposed fully in consonance with the provisions of Section 125 of Customs Act, 1962 as an option to the importer to redeem the goods which have been confiscated. It is not made a condition for re-export, which has been allowed apparently in response to Appellants request therefor recorded in the order. Such re-export, as per the plain wording of the order, is a post redemption facility allowed to the importer at his request and hence the case law cited by the Appellants does not advance their case".

4.1. Similarly, in the case of **Hemanth Bhai R. Paterl Vs. Commissioner of Customs, Ahmedabad [2003 (153) ELT 226 (Tri-LB)],** the larger Bench has held as under:-

"8. In the light of the above discussion, we have no hesitation to agree with the view expressed in the K & K Gems, Escorts Herion Ltd., Smt. Kusumbhai Dhyabhai Patel and Kothari Filaments. Section 111 of the Customs Act empowers the Customs authorities to confiscate goods imported if any of the provisions contained under the sub-clauses is satisfied. Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication

proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above.

4.2 Thus, in both the above case laws, it has been clearly held that permission for re-export does not negate the taint of violation of law and that Redemption Fine and Penalty are imposable for violation of the rules even when permission to re-export is considered.

5. Learned AR also draws our attention to the decision of this Tribunal in the matter of **M/s. Saint Global Crystals Dictators Eye India Ltd Vs. CC, Bangalore (2018 (364) E.L.T 1055 (Tri. Bang**) wherein it is held that such letter issued by Deputy Commissioner cannot be considered as valid order to challenge the same before the Commissioner (Appeals) and it is only an administrative order. Hence the order of the Appellate authority is liable to be set aside."

6. Learned Chartered Accountant (CA) appearing for the Respondent -Importer submits that the appeal is prima facie unsustainable since the first Appellate authority has issued the order after considering the entire issue. As regarding non-production of IMEI certificate for imported mobile phones is mandatory as per DGFT Notification as claimed by the Appellant, Learned CA draws our attention to the DGFT Notification No. 107/RE/2013/2014 and submits that this ground was not raised in the Order-in-Original dated 31.03.2018. The IMEI certificate was not in question at any earlier stages of adjudication.

7. As regards the contention that the goods are liable for confiscation under Section 111(d) of Customs Act, 1962 due to violation of prohibition, Learned CA draws our attention to the DGFT Notification No.107 (RE-2013)/2009-14 and submits that when no specific contravention or mala fide intent is established, confiscation order is non-speaking and vague and no evidence of improper importation. Learned CA also relied on the following decisions:-

(i) State of Punjab Vs. Bhag Singh [2004-(164)-E.L.T.-137 (S.C.)]

(ii) Tata Engineering & Locomotive Co. Ltd. Vs. CCE, Pune [2006-(9)-TMI-185 (SC)];

(iii) CC Vs. BPL Ltd [1992 (58) ELT 268 (CEGAT)];

(iv) Guru Ispat Vs. CC [2003 (151) ELT 384 (CEGAT)]

8. As regards the contention that importer's request for re-export does not absolve responsibility for compliance with import conditions, Learned Counsel draws our attention to the CBEC Circular No.745/61/2003-CX and submits that Respondent is agreeable to the legal proposition that mere re-export does not absolve taxpayer of the consequences. However, contravention has never been communicated to the respondent and current appeal goes beyond Order-in-Original. SCN was not issued, Adjudication is non-speaking; therefore, contravention not established and hence, this judgment is not relevant in current scenario. Learned CA relied on the following decisions:-

(i) S S Gupta Vs. CC – 2001 (132) ELT 441 (Tri. – Del.)

(ii) M M Exports Vs. CC- 2002 (141) ELT 428 (Tri. – Cal.)

(iii) Bedmutha Industries Ltd. Vs. CCE&ST Nashik – 2019-TIOL-445-CESTAT-MUM

(iv) CC Vs. BPL Ltd. – 1992 (58) ELT 268 (CEGAT)

(v) Guru Ispat Vs. CC – 2003 (151) ELT 384 (CEGAT)

9. As regards the matter decided without issuance of Show Cause Notice or personal hearing, Learned CA draws our attention to the Importer's letter waiving Show Cause Notice /Personal Hearing dated 13.03.2018 and submits that Respondent requested for waiver of Show Cause Notice /Personal Hearing only in relation to re-export proceedings, not to waive an SCN for penalty or redemption fine as the Respondent was not aware of any such proceedings. Principles of natural justice violated, Section 124 of the Customs Act, 1962 mandates a three-stage process which cannot be by-passed, which is as follows:

(a) Notice of proposal

(b) Opportunity for written representation

(c) Opportunity of personal hearing

9.1 Consent cannot confer jurisdiction, i.e. even if SCN is waived, the authority is obliged to follow the law and issue SCN. Learned CA relied on the following decisions:-

(i) Section 124 of Customs Act, 1962

(ii) Onkarmal Nathmal Trust [1975 (5) TMI 86-SUPREME COURT)

(iii) Kartik Sahdev Vs. Commissioner of Customs [(2025) 29 Centax 253 (Del.)]

(iv) Naina Chopra Vs. Comm. of Cus., ICD, New Delhi [2018 (359) E.L.T. 235 (Tri. -Chan.)]

10. Learned CA submits that Joint Commissioner's order which forms the basis of the proceedings in dispute were not provided to the Respondent. In this regard, Learned CA relied on the decision in the matter of **M/s. Andaman Timber Industries – 2015 (10) TMI 442 – Supreme Court**. Learned CA further submits that demand cannot be treated as acceptance and relied in the case of **Aryan Chemicals Vs. CC-2025-VIL-668-CESTAT-SM-CU** and '*Nemo Repente fuit Turpissimus*' no one become defaulter all of a sudden and Learned CA

relied on the decision of Hon'ble Supreme Court in the matter of **M/s. M. S. Bindra Vs. Union of India (UOI) and Ors. (MANU/SC/0565/1998) vide Civil Appeal No.5583 /1993 order dated 01.09.1998** and in the matter of **M/s. Zunjarrao Bhikaji Nagarkar Vs. Union of India (1999 (112) ELT 772 (SC))**. Learned CA also submits that authorities be well versed with legal provisions. Any remissness would be cost to national exchequer and relied on the matter of **M/s. Parashuram Pottery Works Co. Ltd -[1976 (11) TMI 1-SC]**. As per the intimation letter issued by Ld. Deputy Commissioner giving option to pay penalty and redemption fine, it is evident that confiscation order, itself was not passed by Ld. Joint Commissioner. Redemption fine cannot be levied without passing confiscation order and concluding that goods were liable for confiscation. In this regard, Learned CA placed reliance in the matter of **Fortis Hospital Ltd. Vs. Commissioner of Customs, Import – 2015 (318) ELT 551 (SC),** Section 124 of the Customs Act, 1962 and also Explanation to Section 125 of Customs Act, 1962. Learned CA submits that iPhones are not available to verify if IMEI numbers mentioned are fake /duplicate or not. Since, the verification was not carried out during the confiscation proceedings, the benefit of doubt is to be given to the Appellant that the phones were not prohibited goods and relied in the case of **Gastrade International Vs. Commissioner of Customs, Kandla – [2025) 29 Centax 8 (SC)]**.

11. Heard both sides and perused the records.

12. We find that as per the impugned order, the Learned Commissioner (Appeals) has considered the issue in detail and relevant para of the impugned order is reproduced below:-

> *"9. I have gone through the case laws, defense of the appellant in writing and during personal hearing. The delay of 15 days is condoned as appellant substantiated it with sufficient cause. I find that letter dated 31.03.2018 of Deputy Commissioner of Customs (GR 5A) communicating the decision of Joint Commissioner of Customs is totally specious and violates all cannons of*

jurisprudence. The imposition of redemption fine under Section 125 and penalty under Section 112 of the Customs Act, 1962 without any issuance of Show Cause Notice; personal hearing seriously impedes right of defense of the appellant. The decision of Department is bereft of invocation of nature of contravention which leads to confiscation of goods under Section 111(d) and imposition of penalty under Section 112 of the Customs Act, 1962. Also the quasi-judicial authority/ the proper officer himself not signed the decision but let it communicate through his subordinate which entails huge plenary consequences is clearly ultra vires.

10. On merit also, I find that impugned goods which remained uncleared were asked for re-export on ground of GST being implemented on 1st July 2017 vide appellant letter 07.07.2017 primarily for refixing the price. The factum of any contravention or malafide intent if any of appellant is not established. This is also not a case of improper import as appellant himself requested for re-export. The goods purported to be confiscated under Section 111(d) without any charge of contravention of prohibition and imposition of penalty under these circumstances is not justifiable, hence not survive. Further the Joint commissioner is also not the proper officer to decide the case as value of confiscated goods exceeds Rs 50 lakhs. Hence, I find that decision as communicated vide letter dated 31.03.2018 suffered from vices of non-specificity of misconduct /contraventions /audi alteram partem and jurisdiction. Hence liable to set aside.

11. Quite independently, Redemption fine and penalty is not imposable in such circumstances as held in CESTAT in CC vs BPL Ltd vs CC 1992 (58) ELT 268 (Cegat), Guru Ispat vs CC 2003 (151) ELT 384 (Cegat) as neither misconduct /nexus of importer is established or improper import established.

> *12. In view of foregoing, I set aside the letter C..No. VIII/48/04/2014 BACC dated 31.03.2018 of the Deputy Commissioner of Customs, ACC, Bangalore and uphold the appeal filed by M/s Apple India Pvt Ltd, 19th Floor, Concorde Town C, UB City No. 24, Vittal Mallya Road, Bangalore. The appellant are allowed to re-export their goods without any imposition of redemption fine and penalty coupled with all consequential relief"*

13. In view of the above discussion, we find that there is no reason to interfere with the finding in the impugned order and the Commissioner (Appeals) rightly held that the goods are not liable for confiscation and the set aside fine and penalty, hence the impugned order is sustainable.

14. The memorandum of cross objection filed by the Respondent is disposed off.

15. Accordingly, the appeal filed by the Revenue is dismissed.

(Order pronounced in open court on 11.06.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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