CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/22007/2018-SM

[Arising out of No. 333-2018 dated 01/10/2018 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Alfa Click Innovations
No 1803 3rd Cross 3rd Stage Prakesh Nagar
BANGALORE
KARNATAKA
560021

Appellant(s)

Versus

-Commissioner Of Customs, Bangalore
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
Bangalore
Karnataka
560001

Respondent(s)

Appearance:

Shri PRADYUMNA G.H. ADVOCATE
NO.371, 8TH MAIN
SADASHIV NAGAR
banglaore
Karnataka
560080

For the Appellant

Shri Gopa Kumar, Jt. Commissioner(AR) — For the Respondent

Date of Hearing: 21/03/2019
Date of Decision:29/03/2019

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20295 /2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 01/10/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant had filed a self assessed Bill of Entry No.4020784 dt. 16/11/2017 for the clearance of (i) Remote control toy Quadcopter and (ii) Remote Control Toy Monster Truck and declared them as toys and classified them under CTH 95030090. The value of the imported goods was Rs.2,77,761/- involving duty of Rs.83,756/-. The said Bill of Entry was subjected to open examination on 16/11/2017. During the examination of imported goods, Remote Control Toy Monster Truck was allowed to be cleared and other item viz. Remote Control Quadcopter / Drone was subjected to further scrutiny. On verification of the product description, it is observed that the imported items are operated by a radio controlled remote control and are capable of flying at low altitude. The Director General of Civil Aviation, New Delhi (DGCA), being the competent authority, has issued a Public Notice from File No.05-13/2014-AED dt. 07/10/2014 on use of unmanned Aerial Vehicle (UAV) / unmanned aircraft systems (UAS) for civil use (both commercial and recreational) and has stated that they are in the process of formulating regulations for certification and operation for use of UAS in the Indian Civil Airspace and till the regulations are issued, no non-government agency, organization, or an individual will launch an UAS in India Civil Air space for any purpose whatsoever. Further, the Directorate General of Foreign Trade (DGFT) has issued a Notification No.16/2015-20 dt. 27/07/2016 to introduce Policy condition No.3 under Chapter 88 of ITC(HS), 2012 under which import of UAS / UAVs / Remotely Piloted

Aircraft (RPAs) / Drones is stated as ‘restricted’ requiring prior clearance of the DGCA and import licence from DGFT. As the importer had not furnished prior clearance from DGCA and import licence from DGFT, the adjudicating authority absolutely confiscated the impugned goods valued at Rs.1,69,787/- and imposed penalty of Rs.17,000/- vide Order-in-Original dt. 22/05/2018 after following the principles of natural justice. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner(Appeals) who rejected the said appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the items imported are Quadcopters and not drones; they are light weight flying objects having very limited flying capabilities and similar goods can be purchased across the counter as well as online portals like Amazon, Flipkart. He further submitted that drones and quadcopters are often used interchangeably and may appear to the layman as the same. But there is a clear distinction between a drone and quadcopter. Drone is a broad term used to describe any kind of UAV and as such, it can be used to describe both UAVs that are remotely controlled and those that are controlled by onboard computers. These types of aerial crafts can look either like a small airplane or like a helicopter. They are engine controlled and they can

fly for long period of time. He further submitted that the Department has described them as drones. He further submitted that the goods imported by the appellant weigh less than 250 grams and hence fall in the category of Nano in respect of which no Unmanned Aircraft Operator Permit as per Para 7 of the DGCA Guidelines is required. He fairly conceded that the DGCA being the competent authority has issued a Public Notice dt. 07/10/2014 on use of UAV /UAS for civil (both commercial / recreational) and has stated that they were in the process of formulating regulations for certification and operation for use of UAS in the Indian Civil Airspace and till the regulations are issued, no non-government agency, organization or an individual will launch UAS in Indian Civil Airspace for any purpose whatsoever. He also admitted that DGFT had issued a Notification No.16/2015-2020 dt. 27/07/2016 to introduce policy condition No.3 under Chapter 88 of ITC (HS), 2012 under which "import of Unmanned Aircraft System (UAS) / Unmanned Aerial Vehicle (UAVs) / Remotely Piloted Aircraft (RPAs)/ drones is stated as restricted requiring prior clearance of DGCA and import licence from DGFT. He also submitted that after public deliberations on the draft guidelines, the DGCA vide F.No.05-13/2014-AED Vol.IV dt. 27/08/2018 has issued Civil aviation requirement under Aircraft Rules, 1937 for operation of Civil Remotely Piloted Aircraft System. In the said Civil Aviation Requirement(CAR), the UAV has been defined and categorized for the regulation of the same in the Indian Civil Airspace. Further they have categorized them under 5 categories. But as per CAR, Nano, Micro category of RPA/UAV have been exempted from obtaining

Unmanned Aircraft Operator permit and Unique identification Number and can be operated without licence from DGFT. Learned counsel further submitted that after the guidelines by the DGCA permitting the import of Nano without any restriction and without permit / licence shows that he can now freely import the same. He also submitted that the appellant imported the impugned goods under the bona fide belief that there is no requirement to take the permission from DGCA or licence from DGFT. He also submitted that the original authority has wrongly confiscated the goods and imposed fine of Rs.17,000/- without any justification and reasons.

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner(Appeals) has given detailed reason for confiscation of the goods. He further submitted that the Commissioner(Appeals) has relied upon the decision of the High Court of Kerala in the case of Jagdev Damodaram Vs. Deputy Commissioner of Customs, Cochin [2017(352) ELT 5 (Ker.)] wherein it has been held that drones are restricted and permission / licence by DGCA / DGFT is required and if not produced, they are treated to be prohibited. He also referred to the letter issued by the DGFT dt. 27/07/2016 wherein DGFT has provided that drones is restricted and it would require prior clearance of the DGCA and licence to import from DGFT. The learned AR fairly conceded that DGCA after public deliberations has come out with the guidelines and as per those guidelines, Nano and Micro category of RPA/UAV have been exempted from obtaining unmanned aircraft operator permit. But he

submitted that those guidelines are applicable w.e.f. 01/12/2018 whereas the impugned import was in 2017. Therefore these guidelines are not helpful.

6. After considering the submissions of both sides and perusal of the material on record, I find that at the time of import of drones in the year 2017 by the appellant, there was restriction by DGCA and DGFT and as per the restriction permission of the DGCA and licence from the DGFT was required whereas the appellant did not have the permission from the DGCA and also did not have any licence form DGFT for import of the impugned goods. Further I find that at the time of import, DGCA was in the process of finalizing the guidelines and the same was finalized on 27/08/2018 wherein the impugned goods are now can be imported without any permission from DGCA and without obtaining any licence from DGFT. But during the period of import, there was a restriction for import of drones. Further I find that since the appellant did not have the permission of DGCA and licence from DGFT, the original authority confiscated the goods and also imposed a fine of Rs.17000/- for contravention under Section 112(a) of the Customs Act, 1962. Further I find that learned counsel during the course of argument has prayed that the appellant may be permitted to reexport the goods. Since the goods have been confiscated being restricted during the time of import but the same is allowed to import after the guidelines of DGCA without any licence. In view of this, I am of the view that let the confiscated goods be allowed to be exported by the appellant and I order accordingly.

Further as far as imposition of penalty of Rs.17000/- for contravention under Section 1129a) of the Customs Act, 1962 is concerned, I find that there is absolutely no justification and reasons given in the Order-in-Original for imposition of the said penalty and the same was upheld in the impugned order without any justification. Therefore in my view, the said penalty is not imposable and the same is set aside.

7. In view of my discussion above, the appeal is accordingly disposed of in above terms.

(Order was pronounced
in Open Court on **29/03/2019**)

S.S GARG
JUDICIAL MEMBER

Raja...