CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/429/2009-DB

[Arising out of Order-in-Original No. 04/2009-Cus. dated 06/03/2009 passed by the Commissioner of Customs, Bangalore]

Si2 Microsystems Ltd.
Plot No.84, EPIP, S No.150,
Whitefield Industrial Area,
Bangalore – 560 066

Appellant(s)

VERSUS

Commissioner of Customs
Bangalore
C.R. Building, Queens Road,
P.B. No. 5400,
Bangalore – 560 001
Karnataka

Respondent(s)

Appearance:

Mr. B.G. Chidananda Urs, Advocate
#520, Amruth Nivas, 7th Main,
13th Cross, RMV II Stage, Dollars
Colony, Bangalore -560 003

For the Appellant

Mr. P. Gopakumar, Jt. Commr.
(AR)

For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20740 / 2019

Date of Hearing: 20/09/2019
Date of Decision: 20/09/2019

Per : P. ANJANI KUMAR

The appellants have imported a machine declared as "Used Equipment Module 1-2200" and filed a Bill of Entry dated 12.09.2007. The declared value was 2,50,000 US Dollars. The Department contended, on the basis of a Chartered Engineer certificate to examine the machine, that the machine is not a used one but a brand new one and the value should be 5,83,775/- USD. A show-cause notice was issued and was confirmed by Order-in-Original No. 4/2009 dated 25.02.2009. Hence this appeal.

2. Learned counsel for the appellants submits that they are a 100% EOU and there is no implication of any duty in the instant case. Moreover, they have shown a series of correspondence between the manufacturer and the importer which indicate that the machine was not manufactured in 2007 as contended by the Department but actually it was manufactured in 2005. He further contends that the official letter issued by Datacon Technologies Gmbh who are the manufacturer of the machines it is evident that they have a system of changing the serial no. whenever the machine is refurbished. From the certificate, it is clear that the original date of construction was 18.01.2005 which can be seen as per the documents. The learned counsel further submits that the importer being an EOU, there is no duty liability on the import and therefore as held by the Tribunal in the case of ***Commissioner of Customs (Import) V. ASB International Private Limited 2016 (344) E.L.T. 1046 (Tri.-Mum.),*** no penalty can be levied when there is no duty implication in the imports made by the EOU.

3. Learned AR for the Department submits that the case is made at a strong footing and the Department has evidence in the form of a tag attached to the machine showing the year of construction to be 2007 and there is a quotation also to support this contention. He reiterated the findings of the Order-in-Original. He contends that as the value of the goods

is mis-declared they are liable for confiscation under Section 111(m) of the Customs Act, 1962 and consequently penalty under Section 112 is leviable on the importer.

4. Heard both sides and perused the records of the case. We find that the importers are an EOU and as such there is no duty liability whatsoever on the importer. Under the circumstances as per the case-law cited by the learned counsel for the appellant, we find that no penalty can be imposed where there is no duty implication as the basic issue of *mens rea* is not established. Under such circumstance undervaluation of imported machine, if any may have a bearing on the export liability and not certainly on the import duty to be collected by Customs. Export obligation is decided by DGFT and not Customs. Therefore, as far as the violations of Customs Act is concerned, we find that no *mens rea* is established and it is also not the case of the Department that there is any payment made to the foreign supplier over and above the invoice price. In the result, we find that the appellants have a strong case in their favour. Accordingly, the appeal is allowed.

(Order was pronounced and dictated
in Open Court on **20/09/2019**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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