

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 20149 of 2022

(Arising out of Order-in-Appeal No. 688/2022 dated 02.03.2022 passed by the Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Domlur, Bangalore – 560 071)

M/s. G.V. Foundation

IEC: AACTG9881F

No. 1510, 19th Main, Sector 1,

HSR Layout, Bangalore – 560 102

: Appellant

VERSUS

The Commissioner of Customs,

City Commissionerate, Bengaluru – 560 001

: Respondent(s)

The Joint/Additional Commissioner of Customs,

Inland Container Depot, Bengaluru – 560 066

APPEARANCE:

Shri G.B. Eswarappa, Advocate for the Appellant

Shri K. B. Nanaiah, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 20199/ 2022

DATE OF HEARING: 01.04.2022

DATE OF DECISION: 20.04.2022

Order :

The appellant had filed a Bill-of-Entry No. 5277475 dated 02.09.2021 for the import of used medical equipments and other medical items. It is the case of the appellant that the supplies of medical equipments were second-hand, used materials and objects in the proper working condition and the same were donated medical and hospital equipments for humanitarian relief by M/s. SOS International Inc., USA.

2. The supplier had issued a non-commercial invoice indicating that the items were donated for relief or charity only, not for exchange for profit or gain and that the same did not have any commercial value. In the Sea Waybill issued by the supplier/donor, it was also indicated as "NO LICENCE REQUIRED". In the Bill-of-Lading issued by the donor/supplier, the goods were described as "DONATED RELIEF CARGO" with no commercial value.

3. Upon receipt of the Bill-of-Entry, the same was initially sent to the Faceless assessment and then taken up at the local port for assessment. The Revenue sought for examination by the Chartered Engineer. The Panel-Chartered Engineer vide certificate dated 06.10.2021 reported, after considering his observations during visual inspection of the goods and databased on his experience in the field, using suitable means/ aids/technical reference material, etc., that the residual life was above 80% of the original part and that the equipment inspected were not E-Waste and not hazardous in nature. Suspecting the report of its own Panel-Chartered Engineer, the Assessing Officer obtained examination report from the Shed Officer, which report is apparently not furnished to the appellant.

4. The Adjudicating Authority has thereafter concluded the adjudication proceedings wherein he has *inter alia* enlisted some of the items as E-Waste and hazardous and that import of some of the items were prohibited and thus, ordered for confiscation of some of the items with an order to re-export the goods on payment of redemption fine, apart from fastening the appellant with duty liability and penalty under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

5. The appellant preferred appeal before the First Appellate Authority since the imported consignments were for the purposes of its charitable activities, to be used when the COVID-19 pandemic was at large, free of

cost. The First Appellate Authority, however, vide impugned Order-in-Appeal No. 688/2022 dated 02.03.2022, having simply upheld the findings of the Adjudicating Authority, the appellant has filed the present appeal before this forum.

6. Heard Shri G.B. Eswarappa, Learned Advocate for the appellant and Shri K.B. Nanaiah, Learned Assistant Commissioner (Authorized Representative) for the Revenue. At the outset, the representative for the appellant admits that there is no interpretation or classification issue involved nor is there any challenge other than:

- (i) Against declaring some of the items as prohibited;
- (ii) Against the finding as to the mis-declaration by the appellant;
- (iii) Redemption fine on items at Tables 7 and 11 of the Order-in-Original; and
- (iv) The penalty levied under Section 112 of the Customs Act, 1962.

7. In view of the above submissions, the case was taken up for hearing. I have considered the rival contentions and have gone through the documents as well as the orders/judgements referred to during the course of arguments.

8.1 The examination report of the Chartered Engineer, which is part of the records, is not by a private party or the one who was engaged by the appellant; he is on the panel of the Revenue because of being an expert in the relevant field since neither the importer nor the Revenue authority is the expert in that field. Hence, the opinion of an expert which is relevant (under Section 46 of the Indian Evidence Act, 1872) requires consideration. When

such an expert clearly opines that the inspected equipments were not E-Waste and hazardous, the same is binding on the Revenue as well as the appellant herein, in the absence of any direct documentary evidences to the contrary.

8.2 The Government of India had relaxed certain conditions regarding the import of used / new medical equipments in its efforts in controlling and providing treatment, during the COVID-19 pandemic. As a result, Notification No. 28/2021-Cus.dated 24.04.2021 was issued providing exemptions, exempting Basic Customs Duty (BCD) and Health Cess on certain medical equipments. Further, Notification No. 31/2021-Cus.dated 31.05.2021 was issued, which was subsequently amended by Notification No. 41/2021-Cus. dated 30.08.2021.

9. Admittedly, the appellant-importer is neither the end-user nor the trader since it is claimed that it would only pass on the imported medical equipment to other charitable organizations, for the use of the needy. The supplier/donor confirms the donation; the importer, who is not the end-user, confirms that the same would be given to the needy, either directly or through some charitable organization; and the Government, through the Ministry of Finance, has also issued Notifications from time to time relaxing the import conditions, which facts are undisputed.

10.1 Surprisingly, when the appellant claimed that the medical equipments in question were for the treatment of affected persons due to the outbreak of the pandemic, without suspecting the same, the Adjudicating Authority still proceeds to hold, without examining the same in the context of the above Notifications, that some of the items were E-Waste and hazardous and that some of them were prohibited, which is not in the proper perspective.

10.2 In the Order-in-Original, the Adjudicating Authority refers to the meeting of the Technical Review Committee (TRC) held on 25.05.2017, but has ignored the subsequent COVID-19 pandemic and the relaxations issued from time to time by the Government of India through the Ministry of Finance, relaxing the import conditions. The Adjudicating Authority, without any further reference, holds that the items at Table-6 of the Order-in-Original were prohibited items in terms of the HW Rules, 2016, but it is not forthcoming whether the items listed at Table-6 are really hazardous in terms of the relevant rules. Hence, the said items were held to be hazardous mainly because of the decision taken by the Technical Review Committee, which is much prior to the outbreak of the pandemic, at which point of time no import relaxation was available.

11.1 Further, the Revenue has not placed on record as to how the appellant had benefited monetarily from the import of the medical equipments in question and also nothing is placed on record to suspect the *bona fides* of the appellant in contributing towards the control of the outbreak of the pandemic by sacrificing its time, men and material, etc. Moreover, the statute under Section 111 *ibid.* makes goods liable for confiscation subject to the satisfaction of the conditions laid down thereunder and hence, unless the relevant sub-sections of Section 111 *ibid.* is/are satisfied, no order as to confiscation could be made.

11.2 Here, in the case on hand, I have observed that there is an expert opinion, who has reported that the goods imported were not E-waste or hazardous, which is not disputed. Further, since no other reason is given by the Adjudicating Authority to hold that the items at Table 6 of the Order-in-Original are prohibited, the said finding is not sustainable. In view of the above, therefore, the order of confiscation under Section 111(d) *ibid.* is not

sustainable, for the above reasons and needs to be set aside, which I do so.

11.3 Insofar as the confiscation of items at Table-10 of the Order-in-Original is concerned, it is observed by the Adjudicating Authority that the said items required import licence; but, as observed elsewhere in this order, there is no finding given by any of the authorities below that when the Government itself had issued Instructions / Notifications from time to time, thereby relaxing the import policy, that itself would be sufficient to hold that the said goods were not improperly imported. This, by itself, therefore, carves out an exception to sub-section (d) of Section 111 of the Customs Act, 1962 and hence, the very order of confiscation of these items as well, is not well-founded.

12. Hence, it is held that the items at Table-6 and Table-10 of the Order-in-Original were not liable for confiscation, since there was nothing improper in the import made by the appellant. When the Adjudicating Authority himself has ordered amendment of bill and re-assessment insofar as items at Tables 7 and 11 of the Order-in-Original are concerned, the order of confiscation on the allegations of improper importation cannot survive. By virtue of the re-assessment, the Bill-of-Entry stands regularized and so would be the import. Consequently, Section 125 *ibid.* will have no effect and hence, imposing redemption fine on the alleged confiscation is meaningless and the same is set aside.

13. In view of the above discussions, I find that since there was no improper importation of goods and hence, there was no scope to levy any penalty under Sections 112(a)(i) and 112(a)(ii) *ibid.*, hence, the penalty of Rs.2,00,000/- imposed on the appellant-importer cannot also be sustained; the same is set aside and the appeal to this extent is allowed.

14. The impugned order is set aside to the extent of:-

- (i) Allegation of mis-declaration by the appellant, is set aside.
- (ii) There is no improper importation of any goods.
- (iii) Redemption fine on items at Tables 7 and 11 of the Order-in-Original is set aside.
- (iv) Penalty levied under Section 112 *ibid.* is set aside.

15. The appeal stands allowed, as indicated above. All the other grounds urged in the appeal memorandum, which are not pressed by the Learned Advocate for the appellant, are not considered.

(Order pronounced in the open court on **20.04.2022**)

(P. DINESHA)
MEMBER (JUDICIAL)