

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal Nos.C/274/2011 & C/281/2011

[Arising out of Order-in-Original No.433/2011-CAU-AIR dt.
02.09.2011 passed by Commissioner of Customs (Airport), Chennai]

1. Quick Systems
2. Masha Allah Agencies Appellants

Versus

Commissioner of Customs (Airport & Aircargo)
Chennai Respondent

Appearance :

Shri A.K. Jayaraj, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 02.04.2018

FINAL ORDER No. 41048-41049 / 2018

Per Bench

The facts of the case are that on intelligence that consignment of cell phones had been imported and cleared out of customs charge in violation of provisions of Customs Act, 1962, a consignment imported by M/s.Quick Systems (appellants in Appeal No.C/274/2011) under Bill of Entry dt. 14.7.2011 was intercepted by officers of DRI. During the course of examination, it was found that the packages in the consignment contained Chinese brand mobile phones of different make and models. The following discrepancies were also emerged. In respect of 400 nos. of cell phones their descriptions were found to be 'SOLY ELISOM' and 'SUNY ERICSSOM' which resembled international brand name of a cell phone viz. Sony Ericsson and appeared to have been imported in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (IPR Rules). In respect of the 3950 cell phones, retail packages had been imported without mandatory labelling requirement as required under Legal Metrology (Packaged Commodities) Rules, 2011. The importer had not registered with Legal Metrology Department as required within 90 days of Rule 27 (1) of the Legal Metrology (Packaged Commodities) Rules, 2011. Appellants have submitted that 400 nos. of cell phones were not

ordered by them and they abandoned the said 400 nos. of cell phones. A show cause notice dt. 24.08.2011 was issued to Shri A. Sheik Mohammed, Proprietor of Quick Systems and Shri M.S. Mohammed Adam, the proprietor of M/s.Masha Alla Agencies, CHA. This SCN culminated in an adjudication order dt. 2.9.2011 (importer) wherein the authority has (i) confiscated 400 nos. of cell phones in contravention of IPR Rules and abandoned by importer under Section 111 (d) of the Customs Act, 1962 (ii) confiscated remaining 3950 cell phones valued at Rs.63,53,279/- under Section 111 (d) of Customs Act,1962. An option was given to the importer to redeem the goods on payment of a fine of Rs.12,75,000/- under Section 125 of the Act. (iii) Penalty of Rs.7 lakhs under Section 112 (a) was imposed on Quick Systems (iv) Penalty of Rs.50,000/- was imposed on Masha Allah Agencies. Aggrieved, Quick Systems (Appellant in C/274/2011) and Masha Allah Agencies (appellant in C/281/2011) have filed these appeals.

2.1 Today, when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri A.K. Jayaraj submits that he is not contesting the confiscation of 400 cell phones abandoned by the importer. However, in respect of remaining 3950 nos. of cell phones, Ld. Advocate submits that the goods had not been cleared by them

out of customs charge when they were intercepted; that they were already having MRP stickers to be affixed on retail packages ; that they were waiting for affixing the same after examination of the goods; that hence they have not violated any of the provisions requiring labelling of the goods; that they have subsequently registered with the Director, Legal Metrology Department and hence that discrepancy has been made good. In the circumstances, Ld.Advocate contends that the imposition of redemption fine of Rs.12,75,000/- in respect of confiscation of 3950 nos. of cell phones and imposition of penalty is unjustified. He also submits that for the same reasons, penalty of Rs.7 lakhs imposed on M/s.Quick Systems cannot be sustained.

2.2 With regard to appeal filed by M/s.Masha Allah Agencies, imposition of penalty of Rs.50,000/- (C/281/2011) Ld. Advocate submits that nowhere in the SCN or in the impugned order is there any allegation that the CHA had connived or abetted or was in a conspiracy to cause violation of Customs Act and rendered the goods imported liable to confiscation. In fact, when the goods itself are not liable for confiscation as argued earlier, there cannot be any penalty imposable on the CHA.

3.1 On the other hand, Ld. A.R Shri A. Cletus supports the impugned order. He points out that out of charge order had been

issued in respect of the impugned goods. The appellants had therefore sought clearance of not only of 400 nos. of cell phones with alleged IPR regulations but also remaining 3950 cell phones without any MRP labels affixed on them as required by law. For these reasons, the confiscation of the goods, imposition of penalties on Quick Systems was very much in order.

3.2 With regard to penalty on the CHA, Ld. A.R submits that CHA should have informed the department about the impugned goods not having mandatory labels and in this manner has actively connived with the importer in improper import of the cell phones.

4. Heard both sides and have gone through the facts.

5. With regard to 400 nos. of cell phones with allegedly used brand name imported in violation of IPR Rules, as the appellants themselves are not contesting the same, we do not interfere with that part of the order confiscating 400 nos. of cell phones under Section 111 (d) of the Customs Act, 1962.

6. In respect of 3950 nos. of cell phones, from the facts on record, it emerges that the imported goods had obtained customs clearance and out of charge order, however they had been intercepted before they had been removed for home consumption. From this crucial fact, it well-nigh appears to reason that had the DRI officers not accepted

the consignment, the impugned cell phones would have been removed as such including the 3950 cell phones without, any labelling as required under Legal Metrology Rules. In the event, the averment of the appellants that they were ready with the MRP stickers to be affixed after examination does not wash. They had to be either imported with the necessary affixation or permission had to be sought from the customs immediately after import to cause affixation of the stickers in the docks/CFS premises.

7. Viewed in this light, we do not find any infirmity with the order of confiscation of the 3950 cell phones under Section 111 9d0 ibid. However, taking all aspects of the matter and taking note that the main infraction related to only because of affixation of M.R.P stickers, we are of the opinion that interest of justice would be served by causing reduction of the redemption fine imposed under Section 125 of the Act from Rs.12,75,000/- to Rs.6,00,000/- (Rupees six lakhs only). So ordered.

8. For the same reason, we order reduction of penalty imposed under Section 112 (a) ibid on Quick Systems imposed from Rs.7 lakhs to Rs.3,00,000/- (Rupees three lakhs only). So ordered.

9. Coming to the penalty of Rs.50,000/- imposed on CHA, Masha Allah Agencies, we find merit in the arguments of the Ld. Advocate

that there is no evidence has been brought forth to substantiate any wilful abetment or causing of any act or omission on the part of the CHA so as to have rendered the goods liable for confiscation. There well may be acts and omissions on the part of the CHA which may render them liable for proceedings under Customs House Licensing Regulations (CHALR) but that definitely cannot be a reason to impose penalty under Customs Act. The penalty under Section 112 (a) imposed on the CHA is therefore cannot sustain and is set aside.

10. In the result, Appeal No.C/274/2011 is partly allowed and appeal No.C/282/2011 is allowed on above terms.

(operative part of the order dictated and
pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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