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

Appeal No. C/234/2011

(Arising out of Order-in-Original No. 1/2011 dated 28.4.2011 passed by the Commissioner of Customs, (Airport & Air Cargo) Chennai)

Basheer Ahmed Appellant

Vs.

Commissioner of Customs (Airport), Chennai Respondent

Appearance

Shri B.Satish Sundar, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

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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. **41050 / 2018**

Per Bench

Brief facts are that on the basis of specific intelligence that the appellant Shri S. Basheer Ahmed arriving at Singapore Airlines on 9.6.2010 would be attempting to smuggle electronic goods in the guise of personal baggage and attempt to clear the same the same without declaring to the customs authorities or without paying appropriate duty, the officers of

DRI intercepted the appellant when he arrived from Singapore. It was seen that he was in possession of 1100 numbers of 1 GB RAMs, 201 numbers of 2GB RAMs, 50,227 numbers of Kingston 2 GB SD Micro Memory cards and 7097 numbers of PQ1 2 GB SD memory cards. He did not have any documents for the purchase of the above mentioned electronic items. The officers arrived the value of the goods on the basis of NIDB data and on reasonable belief that the said goods was imported in commercial quantity without declaring was liable for confiscation under the provisions of Customs Act, 1962, seized the same along with other documents like flight ticket, boarding card, baggage tags etc. A statement was recorded from Shri Basheer Ahmed. Further investigations were conducted by search of the residential premises of the appellant. Show cause notice dated 22.11.2010 was issued to the appellant and after due process of law, the original authority ordered absolute confiscation of electronic goods totally valued at Rs.1,40,19,940/- and imposed penalty of Rs.15 lakhs under section 112(a) of the Customs Act, 1962. Aggrieved, the appellant is before this Tribunal.

2. On behalf of the appellant, ld. counsel Shri B. Satish Sundar submitted that these goods were not prohibited goods and hence they cannot be absolutely confiscated. He placed reliance on the decision of the Tribunal in the case of Syed

Jalal Ifteqar Vs. Commissioner of Central Excise, Hyderabad reported in 2000 (117) ELT 266. He also submitted that in an identical matter, the Commissioner of Customs, Bangalore in Order-in-Original dated 26.7.2011 while ordering confiscation of similar electronic goods, granted option to redeem the goods on payment of redemption fine. Ld. counsel submits that in the present case they had sought for re-export of the goods which was denied by the adjudicating authority. He prays that the confiscated goods may be allowed to be redeemed on payment of redemption fine as may be considered proper or the good may be allowed to be re-exported.

3. On the other hand, ld. AR Shri A. Cletus supports the impugned order. He adverted to para 12 of the impugned order to point out that the goods brought by the passenger cannot be considered as bonafide passenger baggage and hence the same would amount to prohibited goods under section11 of the Customs Act and Foreign Trade (Development & Regulation) Act, 1992.

4. Heard both sides.

5. There can be no doubt that the quantity of 1100 numbers of 1 GB RAMs, 201 numbers of 2GB RAMs, 50,227 numbers of Kingston 2 GB SD Micro Memory cards and 7097 numbers of PQ1 2 GB SD memory cards can by any stretch of imagination be considered as a normal personal baggage brought by a

passenger into India. This in our mind would be more related to commercial import made through air cargo or seaport. This being so, such quantities imported by the passenger can have only to be treated as trade quantities, hence the impugned goods cannot be considered as a bonafide passenger baggage. We also find that these goods are listed in the notified goods for the purpose of section 123 of Customs Act, 1962, hence they would take on the colour of prohibited goods. This is the very import of the case law relied upon by the ld. counsel himself in the case of Syed Jalal Ifteqar (supra). The Tribunal in that case held as under:-

> "5. We have carefully considered the rival submissions as well as the facts of this case. With respect to the decision of the Government of India as a Revisionary Authority, cited by the learned DR, while we are in agreement that substantial pieces of items, in that case 3000 pieces of Key rings and in this case 3260 pieces of spectacle frames, are goods in commercial quantities and therefore, are not *bona fide* baggage, however, we do not find ourselves in agreement that simply because they were not *bona fide* baggage and they should be absolutely confiscated under the Act. We find on a perusal of the said decision that the Government have relied on the decision of the Hon'ble Delhi High Court in the case of *Smt. Jasvir Kaur* v. *U.O.I.* in CW/1399/91-Del. dated 25-11-1991. However, we find that in that case the Hon'ble High Court had examined the question of import of smuggling of gold into the country. We find that the gold then, as now, was an item which was notified under Section 123, therefore, if the gold was absolutely confiscated those facts would not be *pari materia* to the facts of the case in this case, where it is not disputed that spectacle frames are not notified under Section 123 of the Customs Act. Even under the ITC Policy they are not absolutely banned goods, therefore, we are of the opinion that the decision of the Hon'ble Supreme Court in the case of *Hargovind Das K. Joshi & Others* cited supra is more relevant to the facts of the present case. Therein the Hon'ble Supreme Court had noted that when an item can be imported freely not being absolutely banned, then the Additional Collector of Customs was directed to reconsider the issue towards the availability of the redemption of the goods on payment of fine in lieu of confiscation. The Hon'ble Apex Court had thus set aside the order of absolute confiscation, even upheld by the CEGAT and had remanded the matter to the said Additional Collector of Customs with the above directions. We find that the said decision of the

> Hon'ble Apex Court is clearly applicable to the facts of this case, inasmuch as that the spectacle frames were -
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> (a) declared approximately upto half the quantity found;
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> (b) neither notified under Section 123 of the Customs Act nor absolutely banned for import under the Import Trade Control Policy.
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> Therefore, since no ITC licence was produced by the importer appellant, though the goods would be liable to confiscation, the absolute confiscation thereof does not appear to be legally correct, in view of the aforesaid Judgment of the Hon'ble Apex Court."

6. In the event, we are unable to find any infirmity with the order passed by the adjudicating authority for absolute confiscation of the impugned goods totally valued at Rs.1,40,19,940/- under section 111(d), (l) and (m) of the Customs Act, 1962 r/w Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. For the same reasons, we find that the imposition of penalty of Rs.15 lakhs imposed on the appellant under Section 112(a) are very much in order and does not require any interference. The impugned order is upheld and the appeal is dismissed.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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