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

Appeal No. C/42588/2017

(Arising out of Order-in-Appeal SEA. C.Cus II No. 565/2017 dated 05.09.2017 passed by the Commissioner of Customs(Appeals – II), Chennai)

Commissioner of Customs (Appeals – II) Chennai : Appellant

Vs.

City Office Equipments : Respondent

Appearance

Shri A. Cletus, ADC (AR) for the Appellant

Shri N. Viswanathan, Advocate for the Respondent.

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Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing / Decision: 06.06.2018

Final Order No. **41760 / 2018**

Per Shri Madhu Mohan Damodhar,

Brief facts of the case are that M/s. City Office Equipments, the respondents herein, had imported 108 units of "Old and Used Multifunction Print & Copying Machines with standard accessories" with a declared value of USD 9720/- (Rs. 6,57,072/-). The goods were subjected to first check examination, after which, an inspection by an independent Chartered Engineer, pursuant to which the value was proposed to be enhanced to Rs. 17,29,784/-. In adjudication, the original authority, vide an order dated 03.01.2017, inter alia, held that the goods fall within the purview of Rule 15 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, (hereinafter referred to as "the HW Rules"), to confiscate these goods under Section 111(d) of the Customs Act, for contravention of provisions of imports, stipulated in para 2.31 of FTP 2015-20 and Rules 13(2) & 13(4) of the Hazardous Wastes Rules, allowed re-export of the goods on payment of fine of Rs. 3,46,000/- under Section 125 of the Customs Act, 1962, imposed penalty of Rs. 1 lakh under Section 112(a) ibid.

2. On appeal, the Commissioner (Appeals), vide an order 321/2017 dated 05.04.2017 ordered that the goods could be allowed for home consumption on payment of redemption fine and penalty, however, remanded the matter to the adjudicating authority for the limited purpose of verifying the genuinity of the country of origin certificate and then allow the clearance for home consumption on payment of Redemption Fine and Penalty. In de novo application, the Additional Commissioner, vide an order 55832/2017 dated 08.06.2017, has held that the goods imported are "other wastes" in terms of Rule 3(23) of Part D of Schedule III of the Hazardous Wastes Rules, ordered confiscation of the impugned goods and re-export the same at the cost of the importer, on the payment of fine of Rs. 3,46,000/- for the limited purpose of re-export. Penalty of Rs. 1 lakh was also imposed

on the importer under Section 112(a) ibid. In appeal, the Commissioner (Appeals), vide the impugned order dated 05.09.2017, has held that the Country of Origin of the goods, mentioned as “CHINA” in the certificate issued by Sharjah Chamber of Commerce and Industry, UAE, is not disputed in the chartered engineer’s report otherwise, and, hence, there is no reason to doubt the genuineness of the certificate, and also placing reliance on the Tribunal’s Final Order No. 21592-21594 of 2017 dated 09.08.2017, in the case of M/s. Parag Domestic Appliances and, thus, set aside the de novo adjudication order and directed clearance for home consumption on payment of redemption fine and penalty, as imposed by the original authority.

3. Aggrieved, Revenue has filed this appeal. Today, when the matter came up for hearing, the Ld. AR took us through the chronology of the matter, reiterating the grounds of the appeal. He also points out that with respect to the Tribunal decision relied upon by the Commissioner (Appeals), the Department has initiated the process of appeal.

4. On the other hand, Ld. Advocate for the respondent points out that the first order of the Commissioner (Appeals) dated 05.04.2017, which had set aside the original authority order and had ordered for release of goods for home consumption on redemption fine and penalty, subject only to verification of Country of Origin certificate, had not been appealed against by the Department. This being so, the adjudicating authority, in the de novo adjudication, has gone beyond

the scope of the remand directions. Secondly, the confiscation of the goods was effected by the adjudicating authority in the de novo order, only holding that the goods are confiscable on the basis of contravention of Section 111(d) of the Customs Act, read with Para 2.31 of the FTP 2015-20, and not for violation of Hazardous Wastes Rules. Therefore, the order for re-export of the goods for violation of Hazardous Wastes Rules was incorrect. For this reason, the Commissioner (Appeals) order is legal and does not call for interference.

5. Heard both sides.

6. Learned Advocate is correct in his assertion that the Department, not having appealed against the first order of Commissioner (Appeals) dated 05.04.2017, the adjudicating authority in de novo adjudication, was legally bound to follow only the remand directions and not go beyond that. As a corollary, the Revenue also cannot now raise any appeal to this forum on issues which had been decided in the first order of Commissioner (Appeals), but not appealed against. Such non-appeal will have the effect of that earlier order having been accepted by Department. The ratio laid down by the Hon'ble Apex Court in Marsons Fan Industries 2008(225) E.L.T. 334(SC), Jayaswals Neco Ltd. 2006(195) E.L.T. 142(SC) and Narayan Polyplast 2005(179) E.L.T. 20(SC) will apply on all fours to this situation.

7. Be it as it may be, we find that in the impugned order, the lower appellate authority has arrived at a well analysed and reasoned

decision as to the correctness of the Country of Origin declared by the importers.

8. The grounds of appeal also have raised the issue of requirement of BIS registration. However, we note that the said inadequacy was not part of the original proceedings and it cannot be raised at this stage.

9. In the circumstances, no infirmity is found in the Commissioner (Appeals) order, for which reason, the Department appeal is dismissed.

(Dictated and pronounced in open court)

(P Dinesha)	**(Madhu Mohan Damodhar**)
Member (Judicial)	Member (Technical)

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