CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.C/42298/2017

[Arising out of Order-in-Appeal C.Cus. II No.681/2017 dt. 10.10.2017passed by Commissioner of Customs (Appeals-II), Chennai]

Value Marks Traders Pvt. Ltd. Appellant

Versus

Commissioner of Customs (Sea)
Chennai-II Respondent

Appearance :

Shri S. Murugappan, Advocate
For the Appellant

ShriB. Balamurugan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision :11.05.2018

FINAL ORDER No. 41864 / 2018

Per Bench

The facts of the case are that appellants had imported used Digital Multifunction Printing Machine(MFD) vide Bill of Entry dt. 30.01.2017. Based on a Chartered Engineer Valuation report, the value was re-determined under Rule 9 of the Customs Valuation (Determination of Price of Imported goods), Rules, 2007 (hereinafter referred to as Valuation Rules). It further appeared to the department that the impugned goods are covered under Schedule VIII of the Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as HOW Rules); that country of origin certificate mentioned the country as New Zealand whereas the Chartered Engineer certificate mentioned it as China and Japan and shipped from New Zealand; that the goods were restricted for import as per para 2.31 of the Foreign Trade Policy 2015-2020, however no valid authorization was possessed by the appellants for import of the subject goods. Proceedings were initiated against the appellants which culminated in the order of original authority re-determining the value under Rule 9 of the Valuation Rules, confiscating the goods under Section 111 (d) of the Customs Act, 1962 with option to re-export the goods on payment of redemption fine of Rs.3,20,000/- under Section 125 of the Customs Act Ibid and imposition of penalty under Section 112 (a) ibid. The Original authority also held the goods imported as “other wastes” in terms of Rule 3 (23) as included in Part-D of Schedule III of the HOW Rules. On appeal, the Commissioner (Appeals) vide the impugned order dt.

10.10.2017 held that the country of origin certificate was in order, however held that used MFDs on import would require registration under BIS and rejected the appellant's plea for allowing import of the goods for home consumption on payment of redemption fine. Hence this appeal.

2. When the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri S. Murugappan made the oral submissions and written submissions which can be summarized as under :

i) Restrictions imposed in terms of Electronics and IT Goods (requirements for Compulsory Registration) Order, 2012 will not apply to the impugned goods. This plea was raised by them for the first time before the Commissioner (Appeals).

ii) 2012 order refers only to printers, plotters and scanners separately. However, Multi Function Device as a product is not at all covered in the schedule to that order. Further, notification dt. 07.11.2014 issued by the Ministry of Communications and Information Technology had added Copying Machines/Duplicators to the said schedule.

iii) From the above it is therefore clear that Multi Function Device which is a combination of printer, scanner and copier etc.is not covered as “printer” in that order issued in 2012 or in the subsequent order issued in 2014. In respect of the finding that the goods are falling as Hazardous Waste, Ld. Advocate submits that Schedule VIII of the said HOW Rules at the foot note states that policy for free trade for “multi function print and coping machine” is to be reviewed, once the MFD is domestically manufactured. Hence it is clear that as of now there are no standards made available by the Government for such MFDs.

iv) ITC(HS) Schedule-I to the import policy under Heading 8443 refers to BIS standards only for printers like Dotmatrix printer, Laser jet printer and Ink jet printer. However, there is no BIS standard referred to for “Multi Function Devices” which falls under the residuary heading ‘Other’ which areallowed for import as “free”. For these reasons, Ld. Advocate prays for setting aside the impugned order and allowing the goods to be cleared for home consumption.

3. Heard ld. A.R who supports the impugned order.

4. In the first place, we are not able to fathom how at the stage of appeal before Commissioner (Appeals), the appellant chose to raise an issue of requirement of compliance under the Electronic & IT Goods (Requirement for Compulsory Registration) Order, 2012 in respect of used MFDs when the said issue had not been raised in the

SCN or in the adjudication order. Be that as it may be, having raised up the issue, the Commissioner (Appeals) has analyzed the matter and arrived at a finding that the impugned goods would definitely require to be registered under the said 2012 order. During the hearing, Ld. Advocate was at pains to argue to the contrary. We find merit in this contention. From the facts on records, we find from records that, the Ministry of Communications and Information Technology, Department of Electronics and Information Technology vide two communications dt.06.12.2016 &10.03.2017 had informed the CBEC that import of second hand Multi Function Printers are neither registered with BIS nor having permission from the Ministry for their import. Such imports would be a violation of the said 2012 order. However, a perusal of the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 at page 32 onwards of the paper book, brings out that although printers, plotters find a place at Sl.No.7 & 8 respectively of the Schedule to the Notification, there is no reference to Multifunction Devices. Even in the notification dt. 07.11.2014 wherein Sl.No. 16 to 30 was added to the earlier list, only Copying Machine / Duplicators have been found at Sl.No.26. Evidently, the MFDs which is a combination of printers, scanners, copiers etc. and a separate genre of machines do not find a specific entry in the schedule to the said notification. Ld. Advocate has also drawn our attention to the order dt. 06.04.2018 of High Court of Telangana and Andhra Pradesh in WP No.2728/2018 preferred by M/s.R.R.Marketing where inter alia, the Hon'ble Court held that 2012 order would not apply to MFDs. The relevant portion of the High Court's order is reproduced as under :

> "As regards the applicability of the 'Electronics and IT Goods (Requirement for Compulsory Registration) Order (CRO), 2012', the communication dated 06.12.2016 makes it clear that only repaired/refurbished/second hand items, if notified, would require registration. The learned Assistant Solicitor General could not produce before us any notification issued thereunder relating to the MFD (Multi Function Devices) printers and photocopiers, wherebysuch registration would be a condition precedent prior to their import. In the absence of such a notification, it is not open to the Customs Authorities to blindly apply the directive of the Department of Electronics and Information Technology, Ministry of Communications and Information Technology, under the letter dated 06.12.2016, to the petitioner firm's goods."

In this event, the finding of the lower appellate authority that the impugned goods suffers from non-registration under BIS is flawed and is set aside.

5. One of the main grounds on which the original authority has held that the goods cannot be cleared for home consumption is on his conclusion that the goods are ''Other Wastes'' in terms of Rule 3 (23), as included in Part-D of Schedule III to the HOW Rules 2016. We note that even during the proceedings before the original authority, appellants had drawn attention to the report of the Technical Review Committee under the HOW Rules held on 18 & 19th October

2016.The relevant portion of this decision taken therein as found in para- 7 (iv) on page 4 of the original order is as under :

> *"The Committee noted the concern of producers regarding clearance of consignments by customs from1.10.2016 in the absence of EPR authorization from CPCB under E-waste Rules, 2016. As per the Rules the process of EPR authorization stipulates up to 90 days for submission of the application and up to 120 days for processing the application by CPCB to grant EPR authorization Thus, the grant of EPR authorization could go up to April 30th, 2017. Therefore, it would be reasonable that the implementation of EPR starts from 1st May 2017.* ***Accordingly, Customs may be informed to permit clearance of imported consignments without EPR authorization till 30th April 2017****. However, what is stated above would notbe applicable to the new producers or importing entities for their consignments. Accordingly, taking into consideration the time frame for grant of EPR authorization as mentioned above, the Committee recommended that the implementation of the EPR authorization conditions including targets will be effective from 1st May 2017 for existing producers. However, in case of new entities who are planning to carry out their business from October 2016 onwards have to obtain EPR authorization before commencing their business. For new entities, the above stated timeline (90 days plus 120 days) for requirement of EPR authorization will beon the basis of date of registration of the company. The calculation of targets for the year not coinciding with financial year, shall be on pro-rata basis."*

The goods have been imported vide Bill of Entry dt. 03.01.2017. As per the above decision relied upon by the appellants, for the imports made till 30.04.2017 no EPR authorization is necessitated. We also find merit in the Ld. Advocate's contention that foot note at Schedule VIII of HOW Rules states that in the Policy, free trade for "Multi Function Printer" and copying machine is to be reviewed once the MFD is domestically manufactured. This would evidently mean that there is no bar of import on such MFDs on account of HOW Rules. Viewed in this light, refusal to allow home consumption for this impugned goods on this score cannot sustain and is set aside.

6. However, it remains undisputed that the impugned goods are restricted for import as per 2.31 of FTP 2015-2020 and hence will become liable for confiscation under Section 111 (d) of the Customs Act, 1962. Nonetheless, as there is no absolute prohibition on import of these goods and but only a restriction brought about by para 2.31 of the FTP, there is no reason why appellants should not be given an option to redeem the goods for home consumption as per provisions of Section 125 ibid. Hence, that part of the impugned order denying their clearance for home consumption and instead ordering re-export on redemption fine cannot sustain and is set aside.

7. In the event, while upholding the order of confiscation for not having authorization as per the FTP, we however, order that they should be allowed to be cleared for home consumption on imposition of suitable redemption fine under Section 125 ibid and payment of duties as applicable. Only for the limited purpose of determining the appropriate quantum of such redemption fine, the matter is being remanded to the adjudicating authority.

Appeal allowed by way of remand on above terms.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(SulekhaBeevi C.S.)
Member (Judicial)

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