

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 41149 of 2015

(Arising out of Order-in-Appeal C.Cus. II No. 180/2015 dated 26.02.2015 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Tata Sky Limited,

3rd Floor, C-1, Wadia International Centre,
Padurang, Budhkar Marg,
Worli, Mumbai – 400 707

: Appellant

VERSUS

The Commissioner of Customs,

Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001

: Respondent

APPEARANCE:

Shri. Ganesh Arvind, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 41185 / 2019

DATE OF HEARING: 28.10.2019

DATE OF DECISION: 28.10.2019

PER SULEKHA BEEVI C.S. :

Brief facts are that the appellants namely, M/s. Tata Sky Limited, imported Set Top Boxes. They filed Bills-of-Entry and paid CVD on the basis of transaction value. The Department did not accept the same and re-assessed the Bills-of-Entry under MRP method, which was arrived as 1.75 times of the transaction value in terms of

Section 4A of the Central Excise Act, 1944. The appellants paid CVD as assessed by the Department under protest. Subsequent to the clearance of the goods, they contested the assessment and demand of CVD.

1.2 The Commissioner (Appeals) vide order impugned herein upheld the order passed by the Adjudicating Authority, re-assessing the Bill-of-Entry on MRP basis. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 Ld. Counsel Shri. Ganesh Arvind appeared and argued on behalf of the appellant. He referred to the agreement entered between the appellant and the subscribers for Tata Sky Services and argued that as per the agreement, the Set Top Box will always remain the property of M/s. Tata Sky Ltd. The Set Top Box is not sold to the subscribers and since there is no intention for retail sale of the Set Top Boxes, the RSP/MRP is not required to be affixed on the Set Top Boxes. The Department has demanded duty without any legal basis since there is no sale of the Set Top Boxes. That the quantification of demand is also arbitrary.

2.2 Besides the subscription agreement, the Financial Statement of the company would also show that the value of the Set Top Boxes are shown as capital assets. Thus, the documents would indeed show that the Set Top Boxes remain the property of the appellant and therefore, the demand of CVD cannot sustain.

2.3.1 He relied upon the decision in the case of ***M/s. Bharti Telemedia Ltd. Vs. Commr. of Cus. (Import), Nhava Sheva reported in 2016 (331) E.L.T. 138 (Tri. - Mumbai)*** to argue that on a similar set of facts when the Set Top Boxes are not sold, the Tribunal had held that the demand of CVD on RSP/MRP basis under Section 4A of the Central Excise Act cannot sustain. He referred to the Board Circular No. 1020/8/2016-CX dated 11.03.2016 and submitted that the Board has accepted the said decision in *M/s. Bharti Telemedia Ltd. (supra)* in the said

Circular stating that in identical circumstances, CVD is not leviable.

2.3.2 It is also submitted by him that though the Department had filed an appeal against the above order of the Tribunal, the same was dismissed by the Hon'ble High Court of Bombay.

3. Ld. Authorized Representative (A.R.) Ms. K. Komathi appeared on behalf of the Department. She supported the findings in the impugned order.

4. Heard both sides.

5.1 On perusal of the facts of the case, it is seen that in the agreement entered by the appellant with the subscribers, it is clearly stated that the hardware (Set Top Box) will always remain the property of M/s. Tata Sky Ltd. and the ownership cannot be transferred. It is also stated that such hardware cannot be moved from the address without prior written consent of the appellant. This would go to show that there is indeed no sale of the Set Top Boxes to the subscribers. Further, it has been submitted by the Ld. Counsel for the appellant that the value of the Set Top Boxes is shown as capital assets in their Financial Statements.

5.2 Ld. Counsel for the appellant has also submitted that they only collect Activation Service and such other service charges and the price of the Set Top Box is not collected from the subscribers. The decision in *M/s. Bharti Telemedia Ltd. (supra)* categorically holds that the levy of CVD cannot sustain when there is no sale of Set Top Boxes. The Board Circular (*supra*) has accepted the said decision and clarified that in identical circumstances, CVD cannot be demanded.

6. Following the same, the impugned order is set aside.

7. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

Sd/-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Sdd