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

Appeal No.C/40295/2017

[Arising out of Order-in-Appeal No.322/2016 dt. 29.09.2016 passed by the Commissioner of Customs (Appeals-I), Chennai]

Flipkart India Ltd. Appellant

Versus

Commissioner of Customs, Chennai-VII Respondent

Appearance:

Ms. R. Balakumari, Consultant
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM:

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

Date of hearing/decision : 26.12.2017

FINAL ORDER No. 43383/2017

The facts of the case are that appellant had filed Bill of Entry DT. 03.02.2016 for clearance of goods declared as 9200 pieces of mobile phones. The Bill of Entry was facilitated under RMS, however, it was picked up by shed officers for open and examination. After payment of duty of Rs.88,79,493/- and on completion of customs procedures, goods were given out of charge on 04.02.2016. However, the importers submitted a letter on 27.2.2016 stating that they have received 2800 number of phones in excess; that they have checked up with their supplier who has confirmed that they had sent 12000 phones by mistake. Appellant also sought correction of documents under Section 149 of the Customs Act, 1962. Proceedings were initiated. In adjudication proceedings, the assessable value was enhanced to the extent of excess quantity of mobile phones; the excess quantity of phones was also confiscated, however no redemption fine was imposed. Penalty of Rs.77 lakhs was imposed under Section 112(a) / 114AA of the Customs Act. On appeal, Commissioner (Appeals) while upholding the order of original authority, reduced the penalty amount to Rs.25 lakhs. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of the appellant, Ld. Consultant, Ms. R. Balakumari draws our attention to Public Notice No.12/2010 dt. 9.2.2010 of the Commissioner of Customs (Import), Nhava Sheva to point out that with the approval of concerned Joint Commissioner/Additional Commissioner in cases where amendment of Bill of Entry is permissible under Section 149, the same may be allowed in cases of genuine mistakes. She submits

that in the instant case, this mistake was on account of wrong invoicing by the supplier. She draws attention to airway bill which refers to "30 billets of 400 pieces each, which resulted to a total 12,000 mobile phones, which have been correctly received. In the circumstances, she states that that notification allowed benefit of correction of documents under Section 149 of the Act. In any case, there was no case for confiscation of the goods and imposition of penalty under Section 112 (a).

3. On the other hand, Ld.A.R supports the impugned order.

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

5. This dispute arose only because of fact that the foreign supplier had given wrong quantity in the invoice. However, the airway bill does give correct number of pieces. It is also a fact that the consignment was subjected to open and examination at which time this discrepancy was not noticed. At the same time, an important aspect is that the appellant themselves came forward, after the goods had been cleared out of charge, to inform the customs authorities that they had in fact received excess quantity of goods. This attests to their bonafides. In the background of the airway bill having showed the correct quantity, they should have been allowed benefit of amendment under Section 149 ibid. This was not allowed and instead appellants were subjected to adjudication process and heavy penalties were

imposed on them. At this stage, I am of the opinion that justice should be accorded to the appellant by setting aside the order of confiscation as also setting aside the modified penalty amount of Rs.25 lakhs imposed on the appellant. It is clarified that in respect of excess quantity, appellant will be required to pay the differential duty liability with interest. So ordered.

Appeal is allowed on above terms.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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Customs, Excise & Service Tax Appellate Tribunal

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