CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.45 of 2012

(Arising out of Order-in-Appeal C.Cus.No.873/2011 dated 30.12.2011 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai)

The Commissioner of Customs (Imports) **Appellant**
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

VERSUS

M/s.Pankaj Electronics **Respondent**
15-1-751/13, 2nd Floor,
Haridas Market, Bank Street
Koti,
Hyderabad 500 095.

APPEARANCE :

Shri S. Balakumar, AC (AR)
For the Appellant

None
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER(TECHNICAL)

DATE OF HEARING : 10.08.2022
DATE OF PRONOUNCEMENT :12.08.2022

FINAL ORDER No. 40294 / 2022

PER : SANJIV SRIVASTAVA

This appeal is filed by Revenue against Order-in-Appeal C.Cus.No.873/2011 dated 30.12.2011 passed by the Commissioner of Customs (Appeals), Chennai. Vide the impugned order, the Commissioner (Appeals) has held as follows :

> "6. I hold that the impugned goods are not hazardous items and also the impugned goods do not require any licence for import into India. Accordingly, I allow the appeal by setting aside the impugned Order-in-Original."

2.1 The respondents had filed Bill of Entry No.4009612 dated 07.07.2011 for clearance of 183 units of used printers declaring the value at Singapore Dollars 11932 CIF.

2.2. The goods were examined by an independent Chartered Engineer who vide its report dt. 27.07.2011 finds as follows :

> "The goods offered for inspection were identified as Used printers; the said items are used, not reconditioned and found in good condition; that due to fast technological developments,

> the same model machines may not be in production; the said goods are used for printing and copying; the designated useful life is 10,00,000 copies and expected residual life is at least 2,00,000 copies; that YOM is not available for some items but they were of the opinion that the estimated year of manufacture is 1999-2006; the estimated new equipment value at the year of manufacture is as mentioned in Table-I to the said report, the assessed value is SGD 22,055 (CIF); the margin of profit is estimated to be 25% to 30%, the value assessed is reasonable."

2.3 Revenue was of the view that the imported goods namely old and used printers were very old and the year of manufacture was 1999-2000. Thus, they have very short shelf life and would be treated as hazardous wate as per Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008.

2.4 The case was adjudicated as the importer waived the requirement of show cause notice and personal hearing by the concerned Additional Commissioner of Customs who vide Order-in-Original No.17364/2011 dt. 20.09.2011 held as follows :

<u>ORDER</u>

(i) I hold that the said goods viz. used, obsolete and discarded printers imported under the Bill of Entry No.4009612 dt.07.07.2011 are hazardous waste as per rule 3(1) (iii) of the Hazardous waste (Management, Handling and Transboundary Movement) Rules 2008 read with sub-entry three of Basel entry No.B1110 of Part B of Schedule III to the said rules and para 1(b) of article 1, para 1 and 4 of Article 2 of Basel Convention.

(ii) I confiscate the hazardous waste i.e. used, obsolete and discarded printers imported vide Bill of Entry No.4009612 dated 07.07.2011 valued at Rs.8,10,521/- (CIF) under Section 111 (d) and 111 (m) of the Customs Act, 1962 read with rule 3 of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, Articles 1 and 2 of Basel Convention and Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992.

(iii) I reject the declared value SGD 11,932 (CIF) of the subject goods imported vide Bill of Entry No.4009612 dated 07.07.2011 under Rule 12 of Customs Valuation (Determination of Price of imported goods) Rules, 2007 and re-determine the value of the said goods at SGD 23,055 (CIF) EQUIVALENT TO Rs.8,10,521/- (CIF) under rules 9 of CVR 2007.

(iv) I order re-export of the said goods on payment redemption fine of Rs.1,50,000/- (Rupees One lakh Fifty Thousand only) under Section 125 of Customs Act, 1962 read with sub-rule 2 of rule 17 of Hazardous Waste (Management, Handling and Transboundary Movement) Rules 2008.

(v) I impose a penalty of Rs.80,000/- (Rupees Eighty thousand only) on the importer M/s.Pankaj Electronics, Hyderabad, under Section 112 (a) of the Customs Act, 1962, for having rendered the subject goods liable for confiscation."

2.5 Aggrieved by the order of Additional Commissioner, the respondents filed an appeal before Commissioner (Appeals) which was determined as per the Order-in-Appeal referred to in para-1 above.

2.6 Aggrieved, Revenue has filed this appeal.

3. We have heard Shri S. Balakumar, Asst. Commissioner (A.R) for the Revenue.

4. None was present for the respondents.

5. However, on perusal of records, we find that the issue involved is in a very narrow compass and determined by the Hon'ble High Court vide its order dated 17.09.2012 in W.P. No.23406 of 2012 and M.P. No.1 of 2012. Accordingly, the matter has been taken up for consideration and decision.

6. In the matter, we find that the Hon'ble High Court has vide its order referred to in para (5) above has in the same case determined the matter as follows :

> "2. At this stage of the hearing of the writ petition the learned counsel appearing on behalf of the petitioner had submitted that the issues arising for the consideration of this Court, in the present writ petition, have already been dealt with by this Court, in its order, dated 27.2.2012, made in W.P.No.21732 of 2011 etc. (batch). The said order had been followed by this Court in a number of writ petitions. One such order had been passed, on 11.7.2012, in W.P.No.13050 of 2012 etc. (batch). Further, paragraph 5 of the order, dated 9.4.2012, made in W.P.No.2401 of 2012 etc. (batch) reads as follows :

"Accordingly, the writ petitions are allowed with a direction to the authorities to release the goods in question which had already been inspected by the authorised engineers, on payment of the appropriate customs duty, subject to the adjudication process conducted as per the relevant provisions of law and in case relating to goods not been inspected by authorised chartered engineers, the customs authorities concerned shall direct the inspection of such goods before they are released and such goods may be directed to be released on payment of the appropriate customs duty and on the fulfilment of the conditions prescribed by law. No costs. Consequently, connected miscellaneous petitions are closed. It is also made clear that the impugned goods may be released as expeditiously as possible."

In such circumstances, the learned counsel appearing on behalf of the petitioner had submitted that a similar order may be passed in the present writ petition.

3. It has been further submitted that the Commissioner of Customs (Appeals) had passed an order, dated 30.12.2011, in C.Cus.No.873/2011, setting aside the order of the second respondent. In the said order the Commissioner of Customs (Appeals) had observed that the goods in question are not hazardous in nature and that no licence is required for importing the same. It had also been observed that the goods imported by the petitioner are printers and that it is not an item mentioned in Paragraph 2.17 of the Foreign Trade Policy, as they are digital multifunction machines and they cannot be termed as photocopiers, as held by the Income Tax Appellate Tribunal, Bangalore Bench. The learned counsel had further submitted that the order of the Commissioner of Customs (Appeals), dated 30.12.2011, made in C.Cus.No.873/2011, had become final, as the said order had not been challenged by the respondent customs department. However, the goods in question had not been released by the respondents, till date, in spite of the requests made by the petitioner for their release.

4. The learned counsel appearing on behalf of the respondents had not refuted the submissions made by the learned counsel appearing on behalf of the petitioner. However, he had submitted that writ appeals have been filed, in W.A.No.824 of 2012 etc. (batch), before this Court, challenging the order,

> dated 27.2.2012, made in W.P.No.21732 of 2011 etc. (batch) and the said writ appeals are pending before a Division Bench.
>
> 5. In such circumstances, this Court finds it appropriate to direct the respondents to release the goods in question, which have already been inspected by the authorized chartered engineers, on payment of the appropriate Customs duty and the other charges, if any, as per the relevant provision of law. The petitioner shall also fulfil the necessary conditions prescribed by law, before the release of the goods in question, on the petitioner fulfilling such conditions, the goods in question. On the petitioner fulfilling such conditions, the goods in question shall be released, by the respondents, as expeditiously as possible. The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed."

7. In our view, the issue raised before us with regard to the impugned goods have already been determined by the High Court. Once the goods have been released after inspection by authorized Chartered Engineer, as has been noted by the Hon'ble High Court, there cannot be any contrary view possible in the present appeal. Ten years down the time line after release of the goods per direction of the High Court in accordance with the order of Commissioner (Appeal) this appeal has become infructuous as the impugned printers if were to be considered as e-waste, and hazardous, then they were to be confiscated absolutely, or allowed re-export. However the goods as is evident have been allowed clearance in DTA on payment of appropriate Customs duty. Once the goods have been cleared for domestic consumption there could not be any question of absolute confiscation or re-export.

8. Thus, respectfully following the decision of Hon'ble High Court, we dismiss the appeal filed by Revenue. Impugned order of Commissioner (Appeals) is upheld.

(Pronounced in court on 12.08.2022)

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

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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