

REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 15/07/2015

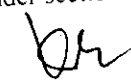
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/52173/2015-CU[DB] dated 01/07/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.


Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1 C/Stay/76/2010	C/12/2010	New Custom House, Near I.G.I. Airport, new Delhi 110037. Name and Address of Respondent BRIGHTPOINT INDIA PVT. LTD. 76, Okhla Industrial Estate, Phase-III, New Delhi,,

Copy To

3 Advocate(s) / Consultant(s):

Additional Party's Name & Address :

- 5 Bar Association, CESTAT, Delhi
- 6 Director Publications, Customs, Excise. I.P. Estate, Delhi
- 7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
- 8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
- 9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
- 10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
- 11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
- 12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
- 13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
- 14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing : 1.7.2015

Appeal No. C/12/2010-CU(DB)

(Arising out of Order-in-Appeal No. CC(A) CUS/I&G/234/09 dated 6.11.2009 passed by the Commissioner of Customs, (Appeals), New Delhi)

For Approval & Signature :

**Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

CC, New Delhi

Appellant

Vs.

M/s Brightpoint India Pvt. Ltd.

Respondent

Appearance:

Shri B.B. Sharma, D.R. - for the Appellant

None - for the Respondent

**Coram : Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

F. Order No. 52173 | 2015

Per R.K. Singh :

This appeal has been filed by Revenue against order-in-appeal dated 6.11.2009.

2. The brief facts of the case are as under.



The respondent filed Bill of Entry dated 24.2.2009 for the clearance of 300 numbers of Samsung dual SIM mobile phones valued at Rs.37,77,824/- imported from China. On examination by Customs in the presence of CHA, the imported goods were found as per the description. However, since the Mobile phones were with double SIM sockets, the import appeared to be in violation of the Intellectual Property Rights under patent No. 214388 dated 11.2.2008 granted to Shri S. Ramkumar by Patent office, Chennai. The said patent was registered in the office of the Commissioner of Customs, IPR Cell, Chennai Airport, Air Cargo Complex, Meenabakkam, Chennai-600027 and allotted registration no. UPR No. A01671NMAA4PR. Therefore, the import of 300 piece of mobile phones with dual SIM cards appeared to be in contravention of Section 11 of the Customs Act, 1962 read with Notification No. 47/2007-Cus.(NT) dated 8.5.2007 and the Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 and hence the clearance of these goods was accordingly suspended in terms of Rule 7 of IPR Rules, 2007.

3. Intellectual Property Right Cell (IPR Cell))/SIIB, I&G Commissionerate, New Customs House, New Delhi vide letter F. No. SIIB/Cus/I&G/IPR/15/2009 dated 12.3.2009 informed the importer regarding suspension of clearance of the above said goods, suspected to be infringing the said IPR. Accordingly, the Patent holder was also informed vide e-mail dated 12.3.2009 about the above said import of dual SIM mobile phones and asked to execute a consignment specific



Bond (equal to 110% of the value of infringing goods as specified in para 7 of Notification No. 47/2007-CUS(NT) dated 8.5.2007. The patent holder executed the required bond.

4. The proceedings initiated in respect of said Bill of Entry were eventually dropped and mobile phones imported by the respondents were ordered to be released. The primary adjudicating authority also ordered that the demurrage on the said goods was to be recovered from Shri S. Ramkumar by enforcing the security furnished by Shri S. Ramkumar to the extent needed. It also stated if the importer paid the demurrage charges to facilitate speedy clearance of the goods, the amount should be reimbursed to him by enforcing the bond executed by Shri S. Ramkumar.

5. Revenue reviewed the primary adjudicating authority's order on the grounds that:

(i) There was no provision in the Intellectual Property Right (imported goods) Enforcement Rules, 2007 for recovering demurrage charges in the event of release of goods.

(ii) The primary adjudicating authority has not indicated as to who is to recover and pay the demurrage charges.

(iii) As the security has been furnished in favour of the Commissioner of Customs, the Commissioner of Customs cannot enforce the security to reimburse the demurrage to the importer.



6. The Commissioner (Appeals) vide impugned order held that the condition of the bond executed by Shri Ramkumar makes it very clear that the incidental and ancillary liabilities to the act of suspension of clearance has to be borne by the right holder and that Rule 5 (a) and (b) of the said Rules, 2007 read with bond's conditions makes it amply clear that even in the case of release of the goods detention, demurrage and other ancillary liabilities are to be borne by the right holder. In view of these reasons the Commissioner (Appeals) upheld the order of the concerned Assistant Commissioner. The Commissioner (Appeals) further held that "it is also the case of the department that the said Rules do not provide any mechanism to recover said charges and their payment to custodian. Since, the bond is executed with the Commissioner of Customs, the authority to recover said charges from the right holder vests with the Commissioner. Absence of suitable mechanism cannot be a reason for right holder not to pay the demurrage and detention charges. Concerned Commissioner can devise a suitable mechanism in this regard."

7. The Id. DR is not able to explain as to how Revenue is aggrieved by ^{DE} ~~the order of~~ the impugned order of Commissioner (Appeals) which allowed enforcement of bond executed by the right holder for recovering of demurrage charges. The grounds of appeal are identical to the grounds advanced by Revenue in its appeal before the Commissioner (Appeals) and we find that those grounds



are adequately dealt with by Commissioner (Appeals). Revenue has no ground to be aggrieved by Commissioner (Appeals') order which only stated that the recovery of demurrage charges can be made from the right holder by enforcing the bond executed by him. Indeed setting aside the impugned order-in-appeal would mean that the Revenue cannot recover the demurrage charges by enforcing the bond executed by the right holder. In these circumstances, we are of the view that Revenue cannot be said to be aggrieved by the impugned order-in-appeal and consequently has ^{no} right to file an appeal there-against under Section 129A of the Customs Act under which only a person aggrieved by the impugned order can file appeal. The appeal is therefore dismissed as mis-conceived.



(Justice G. Raghuram)
President



(R.K. Singh)
Member (Technical)

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