

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

Dated: 18/11/2014

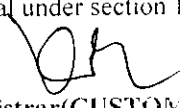
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/54422-54423/2014-CU[DB] dated 10/09/2014

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/237/2010	MORGAN TECTRONICS LTD. SH. P. V. KHULLAR, DIRECTOR, G-6A, S D F NSEZ, NOIDA (UP)

2	C/238/2010	PERTECH EXPORTS (PVT.) LTD. SH. P V KHULLAR, DIRECTOR, (AUTHORIZED SINGATURY), F-8A, SDF NSEZ, NOIDA(UP)
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Name and Address of
Respondent

3		-C.C. (EXPORT) NEW DELHI
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Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

J. M. Sharma
252, BASANT ENCLAVE,
(NEAR VASANT VIHAR),
New Delhi-110057

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 C.D.R. 17 Office Copy 18 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of hearing/decision: 10.09.2014

Customs Appeals Nos. 237 & 238 of 2010

[Arising out of Order-in-Original No.ACE/DDR/17/2010 dated 2.3.2010
and Order-in-Original No.ACE/DDR/18/2010 dated 3.3.2010 passed by
the Commissioner of Customs, New Delhi].

M/s. Morgan Tecronics Ltd.

M/s.Pertech Exports (Pvt.) Ltd.

Vs.

Appellants

CC, New Delhi

Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Rakesh Kumar, Member (Technical)

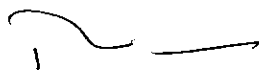
1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Appearance:

Rep. by Shri J.M. Sharma, Advocate for the appellant.

Rep. by Ms. Suchitra Sharma, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)



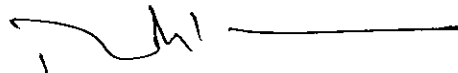
54422-23/2014

Final Orders Nos. /Dated:10.09.2014**Per Rakesh Kumar:**

The facts leading to filing of these appeals are, in brief, as under:-

1.1 Both the appellants – Morgan Tecronics Ltd. and M/s. Pertech Exports Pvt. Ltd. are the units located in Special Economic Zone and they have the LOP issued by the Development Commissioner for manufacture of consumer electronic goods for export. Both these units imported consignments declared to be containing Chinese Mobile Phones of Sigmatel brandⁱⁿ. SKD condition consisting of mobile phone cabinet, top, back, with Mounted PCB and speaker, Leads, Battery, connector and charger. The consignment imported by Morgan Tecronics Ltd. was of 1200 pieces in SKD condition, valued at Rs.27,05,384/- and for clearance of that consignment, bill of entry no.2099/09 dated 22.04.2009 was filed. The consignment imported by other appellants, M/s. Pertech Exports was of 2300 pieces of mobile phones in SKD condition valued at Rs.51,96,888/- and for clearance of that consignment, bill of entry no.2019/09 dated 20.04.2009 was filed.

1.2. Both the consignments were examined by the preventive officers. While in the consignment imported by M/s. Morgan Tecronics Ltd. out of 1200, sets, 1150 were found to be in fully-finished condition and only 50 pieces of mobile phones in SKD condition, in the consignment imported

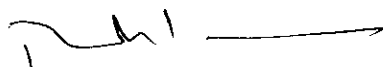


by M/s. Pertech Exports (P) Ltd., out of 2300 pieces, 1190 MP were found in finished condition and only 1110 pieces were in SKD condition. The Customs officers were, therefore, of the view that the description of the goods had been mis-declared. Both the consignments were, therefore, placed under seizure. After issue of show cause notice, the Commissioner of Customs, Air Cargo, New Customs House, New Delhi by two separate orders – No.ACE/DDR/17/2009 dated 2.3.2010 and No. ACE/DDR/18/2010 dated 03.03.2010 in the case of M/s Pertech Exports (Pvt.) Ltd. ordered confiscation of the consignments but since the goods had been released under bond, the Commissioner ordered that in case of M/s Morgan Tecronics Ltd. the bond is to be enforced to the extent of Rs.75,000/- towards redemption fine and in case of M/s. Pertech Exports (Pvt.) Ltd. , the bond is to be enforced to the extent of Rs.1 Lakh towards redemption fine. While penalty of Rs.50,000/- was imposed under Section 112 on M/s. Morgan Tecronics Ltd. and penalty of Rs.75,000/- was imposed on M/s. Pertech Exports (Pvt.) Ltd. In course of proceedings before the Commissioner in both the cases, the jurisdiction of the Commissioner of Customs to decide the show cause notice was challenged on the ground that the matter is covered by the SEZ Act and not by the Customs Act but the same was not accepted. Against these orders of the Commissioner, these appeals have been filed.

3. Heard both the sides.

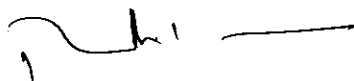
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4. Shri J.M. Sharma, Consultant, Id. Counsel for the appellant, pleaded that even the Commissioner in the impugned order has held that charge of under-valuation fails and that the argument that there was no motive behind mis-declaring the description of the goods seems to be logical enough, that in view of this, there was absolutely no justification for confiscation, that in both the cases, the goods were imported by the units located in Noida Special Economic Zone and, therefore, as per the provisions of SEZ Act, 2005 and the Rules made thereunder, the units are allowed to import the goods without payment of duty for use in the manufacture of the goods for export as well as trading activities, that assessment of the bills of entry is done by the Customs officers appointed under SEZ Act, and the SEZ Rules, that the goods are to be examined by the SEZ Customs officers and suitable follow-up action is taken up per the SEZ Act and the Rules made thereunder, that Section 53(1) of the SEZ Act provides that SEZ shall be deemed to be territory outside the Customs Territory of India, that the provisions relating to the offences by SEZ units are contained in Section 2 (t), 21 and 22 of the SEZ Act, that the specified officers to carry out Customs functions are defined in relation to SEZ as Joint Commissioner or Dy. Commissioner or Asstt. Commissioner of Customs, for the time being posted in the SEZ; that the SEZ law does not provide that the Commissioner of Customs, Air Cargo, New Customs House, New Delhi, as the specified officer in terms of Rule 2(zd) of the SEZ Rules, that Section 51 of SEZ Act provides that provisions of SEZ Act shall have effect notwithstanding anything in-



consistent therewith contained in any other law for the time being in force, that the aforesaid overriding provision clearly provides that investigations, seizures of goods, recovery of duty, etc. are required to be done as per provisions of SEZ Act and Rules made thereunder and not under the Customs Act, 1962, _____ that even in respect of the goods, which were in SKD conditions, certain activities are required to be done, which would amount to manufacture as per the definition ^{of} *manufacture* under the SEZ Act and the Rules made thereunder, that when the Commissioner himself has given a finding that it is not established beyond the reasonable doubt that mis-declaration was with intent to evade payment of any customs duty, and that even if there was intention to evade 4% ^{special} additional customs duty, _____, as alleged in the show cause notice, it would have been refunded to them fully on payment of VAT/ST on the sales of the goods, there was no justification for confiscation of the goods, imposition of redemption fine and imposition of penalty and that in view of the above submissions, the impugned orders are not sustainable.

5. Smt. Suchitra Sharma, Id. Jt. CDR defended the impugned orders by reiterating the Commissioner's findings and emphasized that even in respect of the goods imported by SEZ units, the Customs officers have jurisdiction to confiscate the same and impose penalty on the importer, if the goods are found to be mis-declared in respect of the quantity,



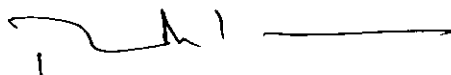
description or value or the goods have been imported in contravention of the prohibitions imposed under Section 111 of the Customs Act, 1962.

6. We have considered the submissions from both the sides and perused the records.

7. The only mis-declaration alleged is that while in both the cases the consignments were declared to be of mobile phones in SKD condition, on examination, bulk of the quantity were found to be in fully assembled condition. Since the goods had been imported by SEZ unit, there was no question of levy of customs duty and there was no duty involvement and for this reason only, in both the cases, the Commissioner has given a finding that in any case, it is not established beyond that the mis-declaration was intent to evade payment of any customs duty. The appellant's contention is that even the sets which were found in assembled condition, were to be subjected to certain further processes like feeding the IMEI number, checking the ^{blue tooth} ~~time~~, checking and adjusting the parameters of phones, ^{etc} before the same could be exported and these processes amount to manufacture in terms of definition of 'manufacture' ^{in SEZ Act,}

But this plea of the appellant has not been refuted. Therefore, without even giving into the question of jurisdiction, there was absolutely no justification for confiscation of the goods and recovery of the amount towards redemption fine and imposition of penalty on them.

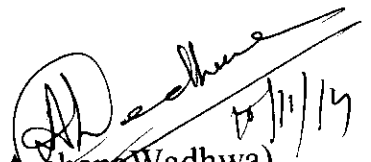
8. Moreover, in terms of the Section 53(1) of the SEZ Act, 2005, the SEZ is deemed to be territory outside the Customs Territory of India, and

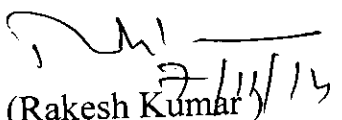


the goods imported were meant for the unit in SEZ Noida. In our view, the Commissioner of Customs, Air Cargo, New Customs House, New Delhi had no jurisdiction to confiscate these goods and impose penalty on the appellant and it is only the Joint/ Dy. Commissioner / Asstt. Commissioner of Customs, in Noida SEZ unit, who had the jurisdiction to take necessary action. For this reason also, the impugned orders are not sustainable.

9. In view of the above discussion, the impugned orders are not sustainable. The same are set aside. The appeals are allowed.

[operative portion already pronounced in open court]


(Archana Wadhwa)
Member (Judicial)


(Rakesh Kumar)
Member (Technical)

ckp