CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 50016 of 2022-SM
(Arising out of order-in-appeal No. CC(A)/Customs/D-II/ IMP/ICD/ TKD/277/2021-22 dated 17.06.2021 (25.06.2021) passed by the Commissioner (Appeals), New Custom House, New Delhi).

M/s Megh Meditech Pvt. Ltd., **Appellant**
E-2/39, 5th Pusia, Sonia Vihar
New Delhi-110094.

VERSUS

Commissioner of Customs **Respondent**
New Customs House
Near IGI Airport, New Delhi-110037.

APPEARANCE:

None for the appellant
Sh. Ishwar Charan, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. 51107/2022

DATE OF HEARING/DECISION: 21.11.2022

ANIL CHOUDHARY:

Appellant is absent on call.

2. Appellant was issued notice. On the last date, Sh. Megh Prakash, Prop./Owner had appeared and sought time to make submissions but is absent on call. Accordingly, the appeal is disposed of after hearing the learned Authorised Representative for the Revenue.

3. Brief facts of the case are that the appellant filed Bill of Entry No. 4561114 dated 27.12.2017 under self assessment scheme declaring the goods as "Old Hospital Bed & Old Hospital Cart with Standard Accessories". The said goods have been purchased from

Hope Foundation, New York vide Invoice dated 15.11.2017 having value USD 1650 (FOB). There was six set of old hospital bed having declared per unit value 200 USD and three old Hospital Cart with accessories – unit price 150. The declared price is Rs.2,08,317/-. The bill of entry was subjected to 100% examination under first check, that the examination order directing verification with invoice, packing list, Bill of entry, bill of lading and to report-

(i) Year of manufacture

(ii) Name of manufacturer and country of origin

(iii) Model No. make and serial number

(iv) Spares / accessories (optional/standard)

(v) Any other point relevant for valuation/ITC

(vi) Signed catalogue found in the packing to be forwarded to group

(vii) Whether the reconditioned/ refurnished and to check if the goods do not generate E-waste.

4. The Chartered Engineer certificate of load port was not available and accordingly a report from local Chartered Engineer was decided to be taken. Sh. Naveen Arora, Chartered Engineer was issued inspection reference dated 16.01.2018. He prepared a report giving details wherein the make of the goods, year of manufacture, price in the year of manufacture was considered. Most of the goods were manufactured of the year 2003 or earlier and all the goods were about more than ten years old. Thereafter, allowing 70% depreciation on the price in the year of manufacture, the valuation was done at 9978 USD or Rs. 6,47,572/- (FOB). Further, the Chartered Engineer was of the opinion that the inspected goods are not final disposal, rather the said equipments are destined for direct reuse, for installation in Hospitals/ Nursing Homes etc.

5. Further the goods were also inspected by the Customs Inspector who submitted his report as follows:-

> "O/e 100% of the goods in the presence of Party/CHA representative and found to contain old hospital bed as per packing list, bill of lading, bill of entry and invoice attached. As per CE certificate attached dated 16.01.2018 by Naveen Arora".

6. It appeared to Revenue that the goods involved is old hospital accessories are restricted in nature in terms of Sl. No. II (2.1) FTP 2015-20, which stipulates that import of Second Hand Goods other than capital goods are restricted in nature and can only be allowed subject to production of valid authorisation certificate issued by DGFT. As the importer failed to submit such certificate and further the declared price appeared to be low, as is apparent from the valuation report. The importer was asked to justify the value of the goods with documentary evidence, which they failed to produce. Accordingly, it appeared that the value of the goods is liable for rejection in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Act. The freight and insurance comes to Rs. 8,585/- on total CIF value Rs.6,56,155/- duty comes Rs. 1,97,857/-, and the differential duty amount comes to Rs.1,35,041/-. The appellant importer by letter dated 18.01.2018 requested for waiver of show cause notice and for a decision on merits. Thereafter, vide order-in-original dated 12.02.2018, the Joint Commissioner was pleased to reject the transaction value and re-determine the same at Rs. 6,56,155/- and was pleased to order confiscation of the goods under Section 111(d) and giving option to redeem the same on payment of redemption fine of Rs. 1,50,000/-.

Further, penalty of Rs. 1 lakh was imposed under Section 112(a)(i) of the Customs Act.

7. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) was pleased to dismiss the appeal on the ground that the appeal has been filed on the 91st day, counted from 16.02.2018 being the service of the impugned order.

8. Being aggrieved, the appellant is before this Tribunal inter-alia on the ground that they have filed the appeal on the 90th day from the date of receipt of the order-in-original and hence dismissal of the appeal on the ground of limitation is due to erroneous calculation. It is further urged that the appeal has been filed without providing adequate opportunity of hearing. It is further urged that the appellant has authorised M/s Krishna Logistics for clearance of their goods who have without their knowledge appointed M/s Prompt Air and Sea Cargo Pvt. Ltd., for clearing the goods. It is further urged that valuation has been rejected without finding the transaction value as untrue and against the provision of Section 14 of the Customs Act. Unless the valuation is rejected in accordance with law, no fresh valuation can be made. It is further urged that penalty imposed under Section 112(a)(i) is bad and fit to be set aside.

9. Learned Authorised Representative appearing for the Revenue relies on the order of Court below.

10. Having considered the rival contentions, I find that the appellant has definitely imported the restricted goods for use as capital

goods to be installed in their Hospital/ Nursing Home. Further, I find that the goods are not prohibited goods and as the goods are admittedly second hand goods, this falls under restricted goods under the FTP as noted hereinabove. I further find that as the goods are admittedly more than ten years old, and under Rule 3(5) of the Cenvat Credit Rules, depreciation of 2.5% is available for each quarter on straight line basis on the capital goods. Thus, the value becomes NIL after ten years of user of capital goods. Accordingly, I hold that rejection of transaction value is bad. Thus, the declared value is accepted. Thus, no differential duty is payable. However, the goods have been rightly held confiscable as the appellant did not have license to import.

11. In this view of the matter, I uphold the order of confiscation under Section 111(d). However, redemption fine is reduced to Rs. 50,000/-. Further, penalty under Section 112(a)(i) is reduced to Rs. 10,000/-.

12. Thus, the appeal is allowed in the aforementioned terms. The appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant