IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/56764/2013-CU[DB]

[Arising out of Order-in-Appeal No. 03/SU/Commissioner/2013, dated 14.01.2013 passed by the Commissioner of Custom, New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Dudahari Traders ....Appellant

Vs.

C.C.- N. Delhi ....Respondent

Appearance:

Shri V.S. Negi, Advocate for the Appellant
Dr. S.K. Sheoron, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 11.11.2016

Date of Pronouncement: 6/01/2017

FINAL ORDER NO. 50144 /2017-CU[DB]

Per V. Padmanabhan

The present appeal is directed against the order dated 14.01.2013 passed by Commissioner of Customs (Preventive), New Delhi. The appellant's are traders having their address in Karol Bagh, New Delhi. Customs Officers investigated an intelligence against the firm named M/s QNT operated by Mr. Mi Li Gang alias Steven, who is alleged have imported mobile batteries without proper documents. The appellant's premises were searched on 05.01.2012 in connection with the investigation and 3,950 pieces of DJV ULTRA brand mobile batteries were found, which were seized. In the statement recorded by Customs Officers, Shri Virender Kumar Ahuja, Proprietor stated that he had purchased 22,000 pieces of the above mobile batteries from Mr. Steven without bill and paid for it in cash. However, he could not produced any import documents under which M/s QNT had imported the said batteries. On the basis of above allegations, Show Cause Notice was issued to the appellant (along with M/s QNT and many others). In the Show Cause Notice, view taken by Revenue was that these mobile batteries were presumed to be smuggled and hence liable for confiscation under Section 111 of the Customs Act, inasmuch as the appellant could not provide proof of legal possession of seized goods.

2. With the above background, we heard Shri V.S. Negi, Advocate for the appellant. He submitted that Revenue is required

to establish that the seized goods were smuggled. Since Revenue has failed to do this, the impugned order should be set aside.

3. Ld. Departmental Representative reiterates the findings of the authority below.

4. From the Impugned order, we find that the only reason alleged against the appellant for confiscation of the mobile batteries seized at their premises is that the appellant could not produce any documentary evidence for their legal importation and possession of these goods.

5. Section 123 of the Customs Act, provides for notifying goods in respect of which the burden of proving that they are not smuggled goods shall be on the person from whom such goods are seized. However, from a perusal of the notifications issued under Section 123, we find that mobile phone batteries have not been notified. Consequently, it is not incumbent upon the appellant to prove that these goods seized from his possession are not smuggled goods. Therefore, the burden of proving that the seized goods are smuggled goods would lie upon the Customs authorities. No such evidence has been brought on records by Customs authorities to substantiate that the goods seized from the appellant are smuggled goods. Consequently, there is no justification for confiscation of such goods under Section 111 of the Customs Act,

1962. It follows that the appellant is also not liable for any penalty under Section 112.

6. In view of the above, the order for confiscation as well as imposition of penalties on the appellant would stand vacated.

7. The appeal is allowed.

[Pronounced in the open Court on 06/01/2017]

Archana Wadhwa
(Member Judicial)

V. Padmanabhan
(Member Technical)

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