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

Appeal No. C/53309/2014-Cus(DB)

[Arising out of Order-in-Appeal No. CC(A) Cus/82-83/2014 dated19.03.2014, passed by the Commissioner (Appeals), New Delhi]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

M/s. Jai International ....Appellant

Vs.

C.C.- New Delhi ....Respondent

Appearance:

Sh. Prabhjyoti Chadha, Advocate for the Applicants
Shri S.K. Sheoran, DR for the Respondent

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

Date of Hearing: 23.11.2016
Date of Pronouncement: 6/1/2017

FINAL ORDER NO. 50145 /2016-Cus[DB]

Per V. Padmanabhan

The appeal is directed against the order dated 19.03.2014, passed by the Commissioner (Appeals) IGI Airport, New Delhi. The appellant filed a Bill of Entry No. 8343806, dated 29.10.2012 and declared import of unbranded motorcycle parts. On the basis of prior intelligence, Customs Officers, on 100% examination of the imported goods, found that the imported goods were actually branded ones. "Roll On" brand motorcycle chains and "STEBEL" brand horns where found. Customs authorities took the view that the importer has mis-declared the imported goods and seized the goods under section 110 of the Customs Act, 1962. Subsequently, on the request of the importer, the goods were permitted to be warehoused under Section 49 of the Customs Act 1962. Further, on investigation, it was found that the imported goods "Roll On" brand motorcycle chain were counter-feit. Consequently, the original authority vide his order dated 17.12.2013, ordered confiscation of the imported goods and allowed redemption on payment of RF of Rs 1 lakh. The Original Authority also re-determined the value and demanded differential Custom duty as well as imposed penalties. When the order was challenged before Commissioner (Appeals), he did not interfere with the confiscation of counter-feit goods. However, in respect of horns, the redemption fine and penalties were reduced. He upheld the re-determination of value for the horns.

2. In the present appeal the appellant has submitted that the supplier has issued a certificate dated 16.2.2012, admitting that goods were dispatched wrongly with reference to the purchase order. Further, vide the letter dated 2011-2013, the supplier has requested the importer to return the wrongly supplied goods for which he offered to bear the shipping expenses. They further submitted that the payment to the supplier for the consignment has already been made by appellants. Accordingly, they prayed that

permission may be granted for re-export of the goods to the supplier.

They further relied on the following case laws, wherein the export of wrongly supplied goods has been permitted:

(i) Regal Impex vs. Commissioner of Cus. ICD, TKD. N. Delhi 2016(332) ELT 385 (Tri- Del)

(ii) Srikant Bagla vs. Commissioner of Customs (Port) 2016(332) ELT 525(Cal)

(iii) Farookh S. Todywalla vs. Commissioner 2015 (323) ELT A72 (SC)

(iv) Commissioner of Cus, C.Ex, S.T, Ghaziabad Vs. Met trade (India Ltd. 2015 (318) Ex 131).

3. Heard Shri Prabjyoti K. Chadha, learned Advocate, as well as Dr. S.K. Sheoran, learned Departmental Representative, for the Revenue.

4. The ld. counsel for the appellant prayed for permitting the re-export of the wrongly supplied goods. However, the ld. Departmental Representative opposed the appellant and submitted that the offence of mis-declaration stands established and hence the appellant should be penalized. He further submitted that motor cycle chains have been found to bear counter-feit brand name and hence these are to be confiscated absolutely for infringement of

Intellectual Property Rights, in terms of the Intellectual Property Rights (imported goods) Enforcement Rules 2007.

5. The appellant filed a Bill of Entry and declared the import goods as unbranded motorcycle parts. However, the goods were 100% examined by the Customs authorities. During such examination, the goods were found to bear a brand name. Consequently, mis-declaration of the imported goods stands established and the goods are liable for confiscation under Section 111(m) and 111(l) of the Customs Act, 1962. In this regard, the findings by both the authorities below merit no interference.

6. The appellant has submitted correspondence with the supplier, who has admitted that wrong consignment has been sent to the appellant with reference to purchase order placed on them. Further, it has been submitted that the supplier has requested to send setting back the wrongly consignment and has agreed to bear the shipping expenses. The appellant has also pleaded that the payment for consignment has already been made and they will be put to hardship if the goods are not re-exported.

7. We have gone through case laws relied upon the appellant and find that in these cases, re-export has been permitted in the cases of wrong consignment. In the present case, however, we find that the wrong supply has been made of goods baring counter-feit brand name. This involves not only mis-declaration of imported goods, but

also infringement of Intellectual Property Rights. We are of the view that since the exporter is willing to take back the wrongly supplied goods, the same should permitted. However, in the facts and circumstances of the case, we imposed a penalty of Rs 1 lakh on the importer under Section 112 of the Customs Act, 1962.

8. In view of the above, the appeal is disposed of in the above terms.

[Pronounced in the open Court on 06/1/2017]

Archana Wadhwa
(Member Judicial)

V. Padmanabhan
(Member Technical)

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