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

Appeal No. C/52736/2015-CU[DB]
[Arising out of Order-in-Appeal No. 1/2015/S.R.B./ COMMR dated10.04.2015, passed by the Commissioner of Customs, New Delhi]

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

Skum Trading ....Appellant

Vs.

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

Appearance:

Sh. Piyush Kumar, Advocate for the Appellant
Ms. Suchitra Sharma, DR for the Respondent

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

Date of Hearing: 08.11.2016
Date of Pronouncement: 6/1/2017

FINAL ORDER NO. 50147 /2017-CU[DB]

Per V. Padmanabhan

The present appeal is directed against Order dated 10.04.2015, passed by the Commissioner (Customs), Delhi. The appellant imported a consignment of mobile phones and filed a Bill of Entry No. 8802517 dated 4.04.2015, declaring the import goods as unbranded mobile phones. On examination of consignment by Customs. It was found to contain goods as below:

S. No.	Item Declared as per BE	Item found as per examination	Quantity Declared as per BE	Quantity Found as per examination
1.	Dual Sim Mobile Phone unbranded Model AX-120 BAR	SAATHI AX 120 Bar Mobile Phone bearing arise brand	9998	9998
2.	Dual Sim Mobile Phone Unbranded Model AL-11 Touch	AL-11 3G Touch Mobile Phone bearing TIGER brand	667	667

2. In view of the above, Customs authorities took the view that the importer mis-declared the goods. The goods which were declared as unbranded mobile phones were found with the brand names of "Arise" and "Tiger" brands. Marketing enquiry was made to determine the retail sale price of the Chinese mobile phones. The enquiry concluded that these goods were available locally at Rs 8oo/- for "Arise" brand and Rs 1600/- for "Tiger" brand. The values of the imported goods were enhanced and the importer has paid Custom Duty at the enhanced value. Further, the adjudicating authority took the view that the importer has mis-declared the import goods, and hence he ordered confiscation of the same under Section 111(m) of the Customs Act, 1962. An option to redeem was given on payment of redemption fine of Rs 8 lakhs. A penalty of Rs 2,12,632/- was imposed under Section 114 A of the Customs Act, 1962.

3. In the above background, we heard Shri Piyush Kumar, ld. Advocate for the appellant and Ms. Suchitra Sharma, ld. Departmental Representative for the Revenue.

4. The ld. counsel for the appellant submits that they are not contesting the enhancement in value and that their challenge is only to the extent of confiscation of the import goods and imposition of redemption fine and penalty. He submitted that the appellant had placed orders with the supplier in China for unbranded mobile phones. However, the overseas supplier had supplied mobile phones with the brand names of "Arise" and "Tiger". He further submitted that the brand names of "Arise" and "Tiger" were not registered with Customs IPR, 2007.He further submitted that the goods were supplied has stock lot and that the brand names were obscure and not well known.

5. Ld. Departmental Representative reiterated the findings of the Original Adjudicating Authority.

6. The enhancement of value has not been challenged by the appellant and hence the same is not being discussed in this order. The case of Revenue is that the import goods have been declared as unbranded mobile phones; however the goods on examination were found to be mobile phone bearing the brand names of "Arise" and "Tiger". Accordingly, the goods have been held to mis-declared and hence liable for confiscation under Section 111(m) of the Customs Act, 1962. The appellant has submitted that they have placed orders for supply of unbranded mobile phones. Accordingly, they filed a Bill of Entry declaring goods as unbranded mobile phones. However, the goods received were with a brand name. To

this extent mis-declaration stands established. However, we note that the mobile phones brands names of "Arise" and "Tiger" are not well known in the Indian market. These brand names are not even registered with Custom IBR Rules, 2007. The appellant has also submitted that these brand names are not even registered in China. Keeping in view, these facts, we are inclined to take a leant view. Accordingly, we reduce the redemption fine from 8 lakhs to 1 lakh and the penalty from 2,12,623/- to Rs 25,000/-.

7. The appeal is disposed off in the above terms.

[Pronounced in the open Court on 6/1/2017]

Archana Wadhwa
(Member Judicial)

V. Padmanabhan
(Member Technical)

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