CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing 23.01.2017
Date of pronouncement: 17/02/2017

Customs Appeal No. 54468 of 2015

(Arising out of order-in-appeal No. CC(A) CUS/D-I/Import NCH/1171/2015 dated 04.09.2015 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.)

M/s Magican Impex Pvt. Limited Appellant

Vs.

CC(I&G), New Delhi Respondent

Appearance:

Sh. Sumit Wadhwa, Advocate for the appellant
Sh. K. Poddar, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51872/2017

Per: **V. Padmanabhan**:

The appellant filed Bill of Entry No. 6756437 dated 15.09.2014 for clearance of three models of mobile phones imported by them from Hong Kong. The appellant had classified the goods under heading 8517 of the Customs tariff and claimed exemption from CVD. On examination of the consignment the customs authorities noticed that the MRP declared by the appellant in the Bill of Entry did not tally with the MRP found affixed on the goods:

Model No.	MRP as per BE	MRP on Box
JVX3270	1599	1799
JVX3450	1599	1799

JVX309	1599	1699

2. The original authority viewed above as misdeclaration on the part of the appellant and ordered for confiscation of the imported goods under Section 111(m) of the Customs Act, 1962. He gave option to redeem the same on payment of redemption fine of Rs. 11,50,000/- under section 125 of the Customs Act. He also ordered for imposition of penalty of Rs. 35,000/- under Section 112(a) ibid. Further, the value of the mobile phones was also enhanced to Rs.1799/- as well as Rs. 1699/- as found at the time of examination.

3. The appellant paid the duty, penalty, R.F. and cleared the goods. However, challenged the fine, imposition of penalty and redemption fine in the present appeal.

4. With the above background, we have heard Shri Sumit Wadhwa, ld. Advocate for the appellant as well as Shri K. Poddar, ld. AR for the Revenue.

5. Ld. Counsel submitted that it has been pleaded before the authorities below that the mistake in the MRPs detected at the time of examination was on account of a mistake made by the supplier. Consequently, he pleaded on behalf of the appellants that the redemption fine and penalty may be set-aside.

6. Ld. AR, on the other hand, supported the order passed by the lower authorities. He submitted that the claim made by the appellant is not justified inasmuch as the supplier would declare the MRPs on the imported goods only on the basis of advice of the importer. Consequently, the mis-declaration stands established and he prayed for upholding the impugned order.

7. The appellant has imported three types of mobile phones and declared the MRP for all the three models as Rs. 1599/-. However, at the time of examination of the goods the customs authorities found that the MRP declared on the packages were different from the MRP declared by the appellant for the three models. We note that the goods have been examined on second check i.e. after the Bill of Entry has been assessed on the basis of the declaration filed by the importer. Consequently, we are of the view that the charge of mis-declaration stands established. Consequently, the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Once the goods are confiscated, payment of redemption fine and penalty follows from the act of confiscation.

8. We find no reason to interfere with the impugned order. The same is upheld and the appeal of the importer is dismissed.

(Pronounced on 17/02/2017)

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant