IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 28/02/2017.
DATE OF DECISION : 28/02/2017.

Customs Appeal No. 50182 of 2014

[Arising out of the Order-in-Original No. 37/2013 dated 06/09/2013 passed by The Commissioner of Customs (I&G), New Custom House, New Delhi.]

M/s Ace Tel Linkers Pvt. Ltd. Appellant

Versus

CCE, Delhi – II Respondent

Appearance

Shri Prabhat Kumar, Advocate – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 52013/2017 Dated : 28/02/2017

Per. B. Ravichandran :-

The appeal is against order dated 06/09/2013 of Commissioner of Customs (I&G), New Delhi. The appellant imported mobile phones of Blackberry Brand (Model 8830 CDMA/ GSM). A dispute arose regarding the nature and status of the said imported phones. The Revenue entertained a view that these mobile phones were used and refurbished and accordingly the import is restricted in terms of para 2.17 of General Provisions regarding Import & Export in terms of Foreign Trade Policy 2009-2014. Accordingly, the goods were examined and samples were sent for testing by M/s Bright Point India Pvt. Ltd., authorized service station of Blackberry phones in New Delhi. The opinion, on testing, was received and thereupon the matter was adjudicated by the Commissioner. He held that the imported goods were old and refurbished. The mobile phones were earlier locked to telecom operator Verizon as can be seen from the software loaded in the handsets. In fact, physical examination of the phones indicated co-branding with telecom service provider Alltel/Verizon. Based on these facts, the Original Authority proceeded to hold that this import is in violation of Foreign Trade Policy and the goods are liable for confiscation under Section 111 (d) of Customs Act, 1962. The Original Authority valued the imported goods at Rs. 59,21,074.50 and ordered absolute confiscation of the same. He imposed a penalty of Rs. 3 lakhs on the importer under Section 112 (a) of Customs Act, 1962.

2. The learned Counsel for the appellant submitted that during the course of hearing of their stay application, the Tribunal vide order dated 10/03/2014, directed the appellant to cooperate with the Customs Department to get the sample of the goods tested by Ministry of Environment in accordance with law relating to environment. The importer alongwith officers approached the Ministry of Environment, who declined to accept the sample stating that they have no in-house laboratory for such testing. It

is the submission of the appellant that they are aggrieved by the original order as same has been passed without giving them the copy of test report of M/s Bright Point India Pvt. Ltd. Since, they were not given opportunity to put up their case effectively against the said test report, it is submitted that the impugned order was passed in violation of principles of natural justice. The same should be set aside on this ground alone.

3. The learned AR submitted that there was a delay in disposal of this appeal and the matter was listed but not heard on many occasions. The learned AR submitted that the contents of the test report are in the knowledge of the importer and they cannot claim any violation of principles of natural justice. Even otherwise, the appellants were fully aware that the imported phones were used and refurbished and were in fact used by telecom provider in another country. This fact is in the knowledge of the importer. As such, he submitted that the original order is legally sustainable. The learned AR also submitted that there is a written request from the importer not to allow the re-export of the goods.

4. We have heard both the sides and perused the appeal records. Admittedly, the Original Authority based his findings on the report given by M/s Bright Point India Pvt. Ltd. regarding the status and nature of the imported phones. On perusal of the appeal papers, we find that though the appellant waived the issue of show cause notice, there is nothing to indicate whether

the test report has, in fact, been made available to the appellant before the case was adjudicated by the Commissioner. Considering this, we find that there is apparently a violation of principles of natural justice and, as such, the impugned order is not sustainable on this legal ground. The said order is set aside and the matter is remanded back to the Original Authority with a direction to provide a copy of test report and any other materials on which reliance is sought to be placed, to the appellant, before a decision is taken afresh in this matter. The appellant shall be given adequate opportunity to present their case. We note that we are not recording any opinion regarding merits of this case. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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