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

Date of hearing: 17.03.2017
Date of pronouncement: **10.04.2017**

Customs Appeal Nos. 3513 to 3521 of 2012
(Arising out of order-in-appeal No. CC(A) CUS/I&G/111-119/2012 dated 31.05.2012 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Customs Appeal Nos. 56376 to 56403 of 2013
(Arising out of order- in- appeal No. CC(A) CUS/I&G/258 to 272/2012, & CC(A)/CUS/I&G/245 to 257/2012 dated 31.10.2012 & 30.10.2012 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

CC (I&G), New Delhi — Appellant - Revenue

Vs.

M/s Nanda Shastralaya — Respondent –assessee
M/s Nanda Arms Corporation
M/s Nanda Gun House
Sumeet Nanda
Namjeet Nanda
M/s SSS Sai Shipping Services Pvt. Ltd.
Rahul Bhardwaj,
Brij Bhushan tomar
Ajay Paliwal, Supdt. of Customs
Dashbir Singh
Vinay Kumar
Bhola Ram
Mohammad Tariq
M/s Karn Arm Corporation
Vishnu Narain Singh
Ravinder Kaur
Rahamat Elahi, Prop.
Tanveer Singh
Bharat Gupta
M/s Singh Gun House
M/s Lucknow Arms Corporation
Manider Pal Singh
Surinder Pal Singh
Dljit Singh
Puneet Tyagi
Vijay Khanna
Ravinder Kaur
Mohammad Jamal
Manmeet Kaur

M/s J. Biswas and Co.
Hemendra Kumar Banerjee
Joginder Pal Singh
M/s Capital Gun House
Joginder Pal Singh
Dinesh Chandra Shukla
Amir Amin
Surjit Singh

Appearance:

Ms. Suchitra Sharma, ld. Jt. CDR and Sh. K. Poddar, ld. AR for the Revenue

Shri Piyush Kumar, Sh. U. Srivastava, Shri G.S. Bisht, Sh. Jitender Singh, Advocates for the respondent –assessee.

Shri Ajay Paliwal, Supdt. of Customs appeared in person

Coram:

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

F. O. Nos. 52798 – 52834/ 2017

Per: **V. Padmanabhan**:

The appeal is against the Order- in-Appeal No. 111-119/2002 dated 31.05.2012 passed by the Commissioner (Appeals), New Delhi, in which the ld. Commissioner (Appeals) allowed the appeals filed by many persons. The dispute is with reference to certain gun cartridges imported by M/s Nanda Arms Corporation, Lucknow and M/s Nanda Shastralaya, Lucknow. The case which was investigated by DRI, is that the cartridges imported by the above two and cleared on the basis of the licence available with them were of a type not covered by the import licence. These cartridges were subsequently sold by the importers to various persons, a part of which was covered and seized from them. In the order passed by the original adjudicating authority, it was held that the goods imported by the above two persons were not covered by the import licence and hence these are to be considered as prohibited goods. The original authority, accordingly ordered confiscation of the entire consignment of cartridges imported without proper licence by extending an option for redemption on payment of redemption fine. Personal penalties were also imposed on totally 27 persons including the two importers above under Section 112 and 114AA of the Customs Act, 1962.

2. The original-in-original was challenged before the Commissioner (Appeals) by nine persons (out of the 27 who were penalised by the original authority). While allowing the appeals filed before him, the Commissioner (Appeals) held as follows:

(i) The imported .32 cartridges and declared as “S&B .32 Win cartridges” in the Bill of Entry, are usable both in rifles as well as in revolvers.

(ii) Para 2.4 of the Handbook of Procedures allows, with import licence, the import of .32 rifle cartridges. Since the imported .32 cartridges are usable both in rifles as well as revolvers the imported cartridges cannot be considered as prohibited goods.

(iii) For this purpose, the Commissioner (Appeals) has relied upon the certificate issued by the Authorised Armourer of the Police Department who has certified that the subject cartridges were successfully fired from .32 rifle. He has also relied upon the literature in the form of the book titled “Cartridges of the World” by Mr. Frank C. Branes.

(iv) With reference to the imported "S&B 7.65 bore Auto Pistol cartridges", imported vide Bill of Entry No. 940600, he held that 7.65 is the bore measured in metric system. When converted into inches, this transforms into .25 which is permitted for import as per para 2.34 of the Handbook of Procedures.

(v) He also placed reliance on the following case laws:

(i) M/s Capital Gun House vs. CC (Imports) Mumbai
2008 (223) ELT 492 (Tri. Mumbai)

(ii) CC (I&G) New Delhi vs. Nanda Gun House
2016 (344) ELT 283 (Tri. Del.)

3. Revenue has challenged the impugned order mainly on the following grounds:

(i) The importer has declared the imported goods as "S&B .32 Win Rifle cartridges". But the same, on examination, were found to be .32 Revolver cartridges. As can be seen from the record, the dimensions of the cartridges imported were different from that of rifle cartridges. The Handbook of Procedures allows import of only .32 rifle cartridges and the import license for the same cannot be used for import of revolver cartridges of the same size.

(ii) Ld. Commissioner in the impugned order has held that .32 rifle cartridges are the same as revolver cartridges by relying upon the certificate of the Authorised Armourer of the Police Department. However, since the subject goods seized by the DRI are within the custody of the Customs Department and no sample has been drawn from the said consignment, the cartridges tested by the armourer of the

Police Department are not from the lot of imported goods and hence such report cannot be relied upon to arrive at the findings.

(iii) In respect of imported Auto Pistol cartridges, the import documents have declared the same as “S&B .25 of Pistol Cartridge”. However, all the cartridges have been sold as “S&B .25 Auto Pistol cartridges” only. But the imported goods, on examination were found to be “S&B 7.65 cartridges” which cannot be considered as identical to “S&B .25 Auto Pistol cartridges”. Hence the import is to be considered as illegal.

4. With the above background, we have heard Ms. Suchitra Sharma, ld. Jt. CDR and Sh. K. Poddar, ld. ARs for the appellant-Revenue. Ld. AR reiterated the grounds of appeal. Shri Piyush Kumar, Sh. U. Srivastava, Sh. Jitender Singh, ld. Advocates appeared for the respondent –assessee. Shri G.S. Bisht, ld. Advocate appearing on behalf of seven persons filed written submission in support of his contention. Shri Ajay Paliwal, Supdt. of Customs appeared in person and filed written submissions.

5. The dispute pertains to the gun cartridges imported by M/s Nanda Armed Corporation as well as M/s Nanda Shastralaya, Lucknow. Both the importers were licenced armed dealers and were in possession of import licences. However, the case of the Revenue is that the import license produced by the importers did not cover the imported goods.

6. One of the items imported was described in the import documents as “S&B .25 Rifle Cartridges” On examination of the goods, the Customs authorities found that the imported goods were “S&B .32 revolver cartridges”.

The physical characteristics of both rifle as well as revolver cartridges, even though of the same .32 bore, were different. In the impugned order, a view has been taken by the Commissioner (Appeals) that the licence available with the importers for .32 rifle cartridges can be allowed to be utilised for import of .32 revolver cartridges. For such a conclusion, ld. Commissioner (Appeals) has relied upon the certificate issued by the Authorised Armourer of the Police Department. After verifying the sample of the cartridges submitted by the importer and conducting experiments thereon, the Armourer certified that .32 revolver cartridges were successfully chambered and fired from .32 rifle. The Revenue has contended that the reliance placed on such a certificate is mis-placed since no sample from the imported consignment has been examined by the Police Armourers before giving such a certificate.

7. The crucial issue on which the case can be decided is whether .32 rifle cartridges, which are permitted for import with import licence, will cover the .32 revolver cartridges imported in the present case. Such an issue can be laid to rest only by drawing a sample from the imported consignment and sending it for expert opinion from the Authorised Armourer of the Police Department or any other technical expert who is authorised to examine such goods and give opinion.

8. The second aspect of the present case is whether the goods described as S&B .25 Auto Pistol cartridges, in the Bill of Entry are the same as S&B 7.65 pistol cartridges, as found on physical examination of the imported goods. Commissioner (Appeals) has taken the view that 7.65 is the bore measured in metric system and when the same is converted into inches, it transforms into

.25 which is permitted for import. Ld. Commissioner (Appeals) has also relied upon the Tribunal's decision in the case of ***Nanda Gun House*** (supra).

It has been claimed that 7.65 in metric system is nothing but .25 in British system. When we go through the Tribunal's decision in the case of Nanda Gun House case we note that the dispute in that case was pertaining to .30 cartridges whether they are the same as 7.65 pistol cartridges. We are of the view that in this case also the controversy can be decided by getting a sample of the imported cartridges with 7.65 bore goods examined and certified by a competent authority such as the Armourer of the Police Department.

9. In view of the above discussion, we set-aside the impugned order and remand the case to the original adjudicating authority. He is directed to get samples of the imported cartridges drawn and get an expert opinion as discussed in the above paragraphs. The original authority, after obtaining the technical opinion, will pass denovo order on the subject, after extending an effective opportunity of hearing to all the parties. Additional evidence, if any, may be admitted as per law.

10. All the appeals are allowed by way of remand in the above terms.

(Pronounced on **10.04.2017**).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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