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

**Customs Appeal No. 58076 -58078 / 2013**

[Arising out of Order-In-Appeal No. CC(A) CUS/I&G/17-19/2013 dated 23.1.2013 passed by Commissioner of Customs(Appeals), New Delhi ]

**Commissioner of Central Excise** **Appellants**
**New Delhi (Import and General)**

**Vs.**

**M/s. Elahee Buksh and Co.,** **Respondent**
**Seeman Hai**
**Abdul Hai**

**Appearance:**

**Shri Yogesh Aggarwal, Advocate for the Appellants**
**Shri Piyush Kumar, DR for the Respondent**

**CORAM:**

**Hon'ble Mr S K Mohanty, Member (Judicial)**
**Hon'ble Mr. V Padmanabhan, Member (Technical)**

Date of Hearing / Decision: 11.05.2017

**FINAL ORDER NO . 53376-53378 /2017**

**Per V Padmanabhan**:

The appeals are filed by the Revenue against the order in appeal No. 17-19/2013 dated 23.1.2013. Vide the impugned order, the learned Commissioner (Appeals) allowed the appeals filed by these persons. The dispute is with reference to certain gun cartridges imported by M/s. Elahi Buksh & Co. The case which was investigated by DRI, is that the cartridges were imported and cleared on the basis of an import license available with the respondent which did not cover the goods. These cartridges were subsequently sold by the importers to various persons, a part of which was recovered and seized. In the order passed by the original adjudicating authority, it was held that the goods imported were not covered by the import license and hence these were to be considered as prohibited goods. Accordingly, the seized goods were ordered for confiscation. Personal penalties were also imposed. When the order in original was challenged before Commissioner (Appeals), while allowing the appeals, the learned 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.*

*(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."*

2. The Commissioner (Appeals) has also relied upon his own decision in the case of M/s. Nanda Shastralaya, Lucknow in which he has allowed the appeal on the basis of test of cartridges conducted by Authorised Armourer of the Police Department. However, appeal has been filed before the CESTAT against the decision in the case of M/s. Nanda Shastralaya. Further, there is no report of any testing of a sample of imported goods.

3. With the above background, we have heard Shri Yogesh Agarwal, learned DR appearing for the appellant/ Revenue and Shri Piyush Kumar, learned advocate appearing for the respondents.

4. Both sides however, agree that the facts in the present case are identical to the facts of the case made against M/s. Nanda Shastralaya by DRI. The learned Counsel appearing for the respondent further submits that the Tribunal has already decided the appeal filed by the Revenue in the case of M/s. Nanda Shastralaya vide Final Order No. 52798 -52834/2017 dated 10.4.2017 in which matter is remanded back to the original adjudicating authority for obtaining expert opinion after getting the samples of the imported cartridges tested.

5. While considering and deciding the issue in the case of M/s. Nanda Shastralaya, this Tribunal held as under:-

> *"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. .....*

*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."*

6. Since the present appeal is on identical facts, we consider it proper to follow the decision of the Tribunal in the case of M/s. Nanda Shastralaya and remand the matter in the present case also with similar directions to the original adjudicating authority to get the samples of the imported cartridges tested and get the expert opinion regarding the impugned goods. The original adjudicating authority will pass denovo order on the subject after extending an effective opportunity to all the parties.

7. The appeals are disposed of by way of remand.

( pronounced in the open court )

**( S K Mohanty )**
**Member(Judicial)**

**( V. Padmanabhan )**
**Member(Technical)**

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