(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066
Appeal No.C/53911,54434,54435,54464,54679,54680,55382-55387/2014 and 50729/2015(DB)

(Arising out of Order-in-Original No. 28/NLB/Commr./2014 dated 05.05.2014 and 32/NLB/Commr/2014 dated 16.05.2014 passed by Commissioner of Customs (I&G), New Customs House, New Delhi)

M/s Aricent Technologies Holdings Ltd
Hughes Comm. India Ltd
Hughes Network Systems India Ltd
Amit Mahajan
Jaspal Singh Chaudhary, ex Manager of
Sh Jaspal Singh Chaudhary
Anuradha Diwan, AM
Ashok Gupta, Director
Sanjay Sachdeva, Director
Sanjay Sachdeva, Director
Ashok Gupta, Director
Anuradha Diwan, AM
Amit Mahajan …Appellant

Vs

CC (I&G) New Delhi …Respondent

Appearance:
Present for the Appellant: Ms Nupur Maheshwari,Advocate (SN 10-12)
Sh VR Sethi, Advocate(SN 13 & 22)
Sh Himanshu Sharma,Advocate(SN 14-15)
Ms Reena Rawat, Advocate(SN 16-22)

Present for the Respondent: Sh Govind Dixit, DR

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR V. PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 03.08.2017
Date of decision: 18.08.2017

Final Order No.55965-55977/2017

Per V. Padmanabhan,

These appeals are filed against Order-in-Original No.28/2014 dated 05.05.2014 and 32/2014 dated 16.05.2014. The Directorate of Revenue Intelligence, investigated into the intelligence that wire less transmitting/receiving apparatus, satellite communication equipment etc were being imported against forged import licenses purported to have been issued by the Wireless Planning and Coordinating Wing (WPC) of the Ministry of Communications and Information Technology, Government of India. The notification No.71-Cus dated 25.09.1954, as amended, requires submission of such import licenses for import of wireless transmitting apparatus and trans-receivers. The intelligence further indicated that such forged import licenses were being fabricated by M/s Alliance Strategies Ltd,(ASL) New Delhi. Upon conclusion of investigation by DRI, SCNs were issued to various importers who were found to have imported such wireless transmitting equipments making use of forged import licenses. After the due process of adjudication, the impugned orders were issued in which the seized goods imported using the forged WPC licences were confiscated and penalties were also imposed on the importers. Penalties were also imposed on M/s Alliance Strategies Ltd as well as various employees of M/s Alliance Strategies, who were considered as involved in the commission of the offence. Aggrieved by impugned orders, the present appeals have been filed and are being decided through this common order.

2. With the above background, we heard Ms Nupur Maheshwari, Sh VR Sethi, Sh Himanshu Sharma, Ms Reena Rawat, Advocates for the Appellants and Sh Govind Dixit, DR for the Revenue.

3. During the course of investigation, the DRI recorded the statements of all concerned persons. The jist of important statements are given below:

i) Sh Jaspal Singh Chaudhary, Manager (Liaison), ASL, admitted in his statements dated 06.09.2011 and 16.09.2011 that they have prepared many forged import licenses in the name of ASL, Hughes, Aricent and Hutchison Essar South Ltd; that he had forged the import licenses of the following companies:

a) M/s Aricent Technologies (Holdings) Ltd
b) M/s Hughes Network Systems India Ltd
c) M/s Hughes Communication India Ltd
d) M/s Hughes Escorts Communication Ltd
e) M/s Hutchison Essar South Ltd. I Vodafone

He further stated that he used to type the import license on his laptop and stamp the license with the rubber stamp of DoT available with Shri Sanjay Sachdeva, CEO. He further stated that he forged the signature of DoT officers on the directions of Shri Ashok Gupta, Chairman and Shri Sanjay Sachdeva, CEO. He also identified the forged import licenses.

ii) Shri Sanjay Sachdeva, CEO (ASL) in his statement dated 06.09.2011 stated that if DoT did not issue the import license for which ASL had applied and in case of emergency, they have prepared the import license by forgery i.e. by typing the license in their office and stamping the same with the stamp of DoT which they made on their own; that such forged licenses were signed by Sh Jaspal Singh Chaudhary, Manager, as per the directions of Shri Amit Gupta, Chairman.

iii) Shri Amit Mahajan, ex-Manager, ASL in his statement dated 07.09.2011 stated that in 2007-08 at the time of release of equipments from customs, the CHA told him that Customs Appraiser was asking for WPC license for shipment meant for M/s ASL; that he immediately discussed this issue with Mr Sanjay Sachdeva (Director & CEO) of M/s ASL who was handling the Govt. liaisoning and regulatory issues; that he (Sanjay Sachdeva) told him that they would apply for the same with DoT and get the licence; that within 4-5 days, they provided the licence to the CHA for clearance of the equipment; that when he had seen the WPC import licence, he got suspicious as the signature and rubber stamps were different from some of the licences he had seen earlier; that to confirm this he took the whole file of import licences from Ms Anuradha Diwan who was assisting Shri Sanjay Sachdeva and Mr Ashok Gupta and noticed that many licences were having different stamps and varying signatures of the same officer; that he came to know from Sh Jaspal Singh, Manager (Liaison) that M/s ASL were Importing equipments which were under the restricted category by making use of import licences

iv) Ms Anuradha Diwan, AM (Regulatory) ASL vide her statement dated 18.07.2011, regarding data retrieved from her laptop stated that she used to prepare and type, the letters addressed to Wireless Advisers of DoT as per directions of Mr Sanjay Sachdeva, CEO. The clients used to print-out these letters, sign them and return to ASL who used to make the applications for import licence to DoT. Regarding print-outs of the unsigned import licences, purported to be issued by the DoT and other related correspondences/letters of DoT, retrieved from her laptop under panchnama dated 12.07.2012, she admitted that the licences in the name of various clients/companies except M/s Hughes were typed by her on the direction of Shri Sanjay Sachdeva as well as typed by Sh Jaspal Singh Chaudhary.

She further corroborated the statement of Jaspal Singh Chaudhary dated 06.09.2011 and 16.09.2011 except that she had typed the forged licences of M/s Hughes.

4. During the course of investigation, the WPC import licences available in the files recovered from the office of ASL were forwarded to DoT, WPC Wing to verify the genuineness of the same. The DoT confirmed that they had not issued such licences. Such verification reports revealed that M/s Aricent Technologies, M/s Hughes Communications and M/s Hughes Network System India, had used import licences for import of telecom equipments which were not issued by DoT.

5. Shri Inderpal Singh, Manager of Aricent Technology in his statement dated 20.10.2011 confirmed that for import of various equipment, WPC licences were procured by them through M/s ASL. He also admitted that M/s Aricent had used some import licences supplied by M/s ASL for import of equipments. After identifying the wireless transmitting and receiving apparatus imported using forged licences, DRI officers seized such equipments and allowed provisional release.

6. Shri Rajiv V.S., Sr Manager, M/s Hughes Communications in his statement dated 07.12.2007 also confirmed that they had procured WPC licences through M/s ASL. After identification, the equipments imported using fraudulent WPC licences DRI Officers seized such equipments, allowed provisional release thereof.

7. Show Cause Notices were issued to the appellants separately proposing confiscation of goods imported using forged import licences. These came to be decided through the impugned Orders-in-Original which are subject matter of present appeals.

8. It has been argued on behalf of M/s Aricent Technologies Holdings Ltd and M/s Hughes Communication India Ltd that no penalty can be imposed on them under Section 112(a) since they were not Involved in the activity of forging WPC import licences. They claimed that they were under the bonafide relief that the licences were genuine and submitted the same for import of goods.

We have carefully considered the statements made by the appellant. The goods imported by the appellants require an import licence from WPC Cell of DoT. The licence produced by them and on whose basis the goods were cleared, have been found to be forged and fraudulent. Even though M/s Aricent & M/s Hughes have no role to play in forging of the WPC licences, the fact remains that goods were imported without proper import licence which becomes a contravention of Section 111. In this regard, the ratio laid-down by the Hon’ble Apex Court in the case of Affloat Textiles (I) P Ltd reported in 2009(235) ELT 567 (SCV), wherein Hon’ble Apex Court held as under:

"19. It was for the buyer to establish that he had no knowledge about the genuineness or otherwise of the SIL in question.

20. The maxim caveat emptor is clearly applicable to a case of this nature. As per Advanced Law Lexicon by P.Ramanatha Aiyer, 3rd Edn. 2005 at page 721: Caveat emptor means "Let the purchaser beware. "It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing purchased, which is obvious, or which might have been known by proper diligence.

21. Caveat emperor does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care." (See Wallis V. Russell (1902) 21 R 585, 615).

22. Caveat emptor is t he ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist." (See William R. Anson, Principles of the Law of Contract 245 (Arthur L. Corbin Ed. 3rd. Am. Ed.1919) Applying the maxim, it was held that

23. Caveat emptor, qul ignorare non debuit qued jus allenum emit. A maxim meaning "Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another. Hob. 99; Broom; Co., Litl. 102 a : 3 Taunt, 439

24. As the maxim applies, with certain specific restrictions, not only to the quality of, but also to the title to land which is sold, the purchaser is generally bound to view the land and to enquire after and Inspect the title-deeds; at his peril if he does not.

25. Upon a sale of goods the general rule with regard to their nature or quality is caveat emptor, so that in the absence of fraud, the buyer has no remedy against the seller for any defect in the goods not covered by some condition or warranty, expressed or implied. It is beyond all about that , by the general rules of law there is no warranty of quality arising from the bare contract of sale of goods, and that where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere fact of sale from which a warranty may be implied. (Bottomley v. Bonnister, [1932] 1 KB 458 : Ward v. Hobbs, 4 App Cas 13). (Latin for Lawyers)

26. No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller

27. Whether the buyer had made any enquiry as to t he genuineness of he license within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the SIL which he was purchasing. If he has not done that consequences have to follow. These aspects do not appear to have been considered by the CESTAT in coming to the abrupt conclusion that even if one or all the respondents had knowledge that the SIL was forged or fake that was not sufficient to hold that there was no omission or commission on his part so as to render silver or gold liable for confiscation."

In view of the above discussions, we uphold the penalty imposed on (1) M/s Aricent Holdings Ltd (2) M/s Hughes Communication India Ltd and (3) M/s Hughes Network Systems India Ltd.

9. Now, we consider the appeals filed on behalf of various persons associated with M/s ASL.

i) It has been submitted on behalf of Mr Jarnail Singh Chaudhary, ex-Manager ASL that he was only a paid employee earning remuneration of Rs.25,000/- PM. Whatever was done in connection with this was done under the orders and instructions of his superior officers who were also the real beneficiaries of the fraud.

ii) On behalf of Sh Sanjay Sachdeva, Director, Ms Anuradha Dewan and Mr Ashok Gupta , Director, ASL, it has been submitted that they have not filed any document in the custom house including the impugned bills of entry or the WPC licences. Accordingly, they have submitted that no penalty is leviable on them. Moreover, the charges of abatement also were not sustainable as the fake licences were not filed by them with the customs.

iii) On behalf of Shri Amit Mahajan, ex-Manager, ASL, it has been submitted that he was in no way concerned with the forgery of licences, if any. He has further denied his role in any conspiracy to forge the import licences.

10. We have perused the records of the case. It stands established as per the investigation carried-out by DRI that WPC import licences required for import of certain telecom equipments were fabricated and forged by ASL in their offices. It is seen that S/Sh Ashok Gupta, Jarnail Singh Chaudhary, Sanjay Sachdeva and Ms Anuradha Diwan have played their part in fabricating WPC licences which were handed-over and used for import of equipments. The various individuals have also admitted their role in the fraud in their respective statements. The ld adjudicating authority have summoned up the role played by various functionaries of ASL as follows:-

> "It is clear that M/s ASL; S/Sh Ashok Gupta, Chairman; Sanjay Sachdeva, CEO; Amit Mahajan, ex-Manager, Business Development; Jaspal Singh Chaudhary, Manager and Ms Anuradha Diwan of M/s ASL, New Delhi had entered into a conspiracy to forge the WPC import licences for monetary consideration and projecting the efficiency of M/s ASL in providing services to their clients by supplying the WPC import licences purported to had been issued by DoT within a short span of time compared to their competitors in the trade. The forged WPC import licences were entirely prepared by them through forgery and were typed by Sh Jaspal Singh Chaudhary and Ms Anuradha Diwan on the behest/directions of Sh Ashok Gupta, Chairman and Sh Sanjay Sachdeva, CEO of M/s ASL. S/Sh Sanjay Sachdeva and Jaspal Singh Chaudhary in their respective statements rendered under Section 108 of the Customs Act, 1962 had admitted that such forged WPC import licences were signed by Sh Jaspal Singh Chaudhary on the behest/directions of Sh Ashok Gupta and Sh Sanjay Sachdeva. The examination of the laptop used by Sh Jaspal Singh Chaudhary and Ms Anuradha Diwan also resulted in retrieval of documents which contained the WPC jmport licences purported to be issued by DoT. Sh Sanjay Sachdeva was looking after the day to day affairs of the noticee no.2 and *two rubber stamps* were also recovered from his cabin which were used for forging the WPC Import licences on his directions. The WPC Import licences were also forged on the directions of Sh Ashok Gupta who was Chairman of M/a ASL. Sh Amit Mahajan, who was looking after the Customs clearance of the imported goods was aware of the requirement of WPC Import licences for the import of "Apparatus for Wireless Telegraphy" and was also aware about the forgery made by Noticee No.2. Noticee No.2 was the actual beneficiary of the above illegal activities. M/s Alliance, S/Sh Ashok Gupta, Chjairman, Sanjay Sachdeva, CEO, Amit Mahajan (Ex-Manager, Business Development), Sh Jaspal Singh Chaudhary and Ms Anuradha Diwan of M/s Alliance Strategies Ltd, New Delhi had committed an offence

> by forging the WPC import licences which had rendered the goods imported by M/s Aricent Technologies (Holdings) Ltd., Gurgaon (Har) under the aforesaid three bill of entries liable to confiscation under Section 111 (d) & 111 (m) of the Customs Act, 1962 and they are, therefore, liable for penal action under Section 112 and 114AA of the Customs Act, 1962."

11. After perusing the record, we find that for the reasons outlined in detail by the adjudicating authority, the penalties imposed on various functionaries of ASL are fully justified and are upheld.

12. In view of the above discussions, we uphold both the Orders-in-Original impugned before us and dismiss all the appeals.

(Pronounced in the court on 18.08.2017).

(Justice (Dr) Satish Chandra) President	(V.Padmanabhan) Member (Technical)

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