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

Customs Appeal No. 51842 of 2017

[Arising out of Order-in-Appeal No 847/2017 dated 04.09.2017 passed by the Commissioner of Customs (Appeals), New Delhi.]

M/s. Goodwill Imports **Appellants**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

None for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 08.02.2018

FINAL ORDER NO. 50571 /2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the goods have been absolutely confiscated by the authorities below. The facts of the case are that the appellant imported one consignment of 'off the road tyres' and 'run flat tyres' and filed a Bill of Entry for clearance of the imported goods i.e. off the road tyres and run flat tyres. The said consignment was examined. It was found that the run flat tyres were not in conformity with the requirement of Board's Instruction dated 30.01.2012 inasmuch as the said tyres were required to carry a security symbol with them, therefore, they were seized. Remaining goods were released but the said goods were absolutely confiscated. Against the said order, the appellant is before me.

2. Learned Counsel for the appellant in the grounds of appeal submits that as per the letter dated 30.1.2012, the run flat tyres are exempt from duty if RF is embossed on tyres and carrying the symbol ( ). Learned counsel for the appellant in the grounds of appeal submits that RF is embossed on the tyres, therefore it is not in dispute that tyres are run flat tyres but only the symbol is not there, which he undertook to put the sticker of that symbol on the tyres before clearance. In that circumstances, it is prayed that goods in question are required to be released. He took the support of decision in the case of ***Horizon Ferro Alloys Pvt. Ltd. vs. Union of India [2016 (340) ELT 27 (P&H)].***

3. On the other hand, the contention of the learned counsel were opposed by the learned AR and he submits that the conditions of Instructions of Board are to be complied strictly and these tyres were not having symbol as per the instruction dated 30.1.2012. Therefore, they were rightly confiscated. To support his contention, he relied on the decision of Hon'ble Allahabad High Court in the case of ***CCE vs. Aban Exim Pvt. Ltd. [2014 (308) ELT 641 (All),*** which has been

confirmed by Hon'ble Apex Court as reported in ***[2016 (336) ELT A 176 (SC)]*** . He also took support from the decision of Hon'ble Kerala High Court in the case of ***Jagdev Damodaran vs. Deputy Commissioner of Customs (ACC), Cochin [2017 (352) ELT 5 (Ker)]*** to say that the decision of the ***Horizon Ferro Alloys Pvt. Ltd.*** has been considered by Kerala High Court and after arriving at a decision that the goods are prohibited goods under section 11 of the Customs Act. As the symbol is not there, it is the violation of BIS. Therefore, they are required to be registered with BIS.

4. Heard the parties. Considered the submissions.

5. In this case, it is not disputed that the tyres in question having the embossed mark as RF which represent run flat tyre. Only dispute is with regard to marking of symbol as per the instruction dt. 30.1.12, is not there, which instructions are reproduced hereinunder:

INSTRUCTION

> **"Subject: Implementation of The Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order 2009 – reg.**
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> Attention is invited to CBEC instructions F.No.528/109/2011 – STO (TU) dated 29.11.2011, and 15.12.2011 on the issue of the implementation of the Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009. Further reference has been received in the Board from Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce,

clarifying that certain Commercial vehicles, Off the Road, Run flat and Collapsible types of tyres are not covered under the said Quality (Control) Order, 2009 (copy enclosed).

2. As such, in continuation to the above mentioned Instructions, it is clarified that in addition to pneumatic tyres covered by Clauses 3(a) to (f) of the Quality Control Order, 2009, the following types of tyres are also not covered under the said Order:

(i) Commercial Vehicle tyres – Certain types of tyres identified by Speed Symbols corresponding to speed below 80 km/h marked with speed Symbols as A (A1 to A8), B, C, D or E.

(ii) Off The Road Tyres – Certain types of tyres used for Off The Road (OTR) vehicles carrying Tyres Tread Code marking such as C (C1, C2), E (E1 to E4, E7), G(G1 to G4), L(L2 to L5, L3S to L5S), IND or NHS.

(iii) Run Flat Tyres – Tyres marked RF or similar marking and carrying the Symbol

(iv) Collapsible Mini Tyres

3. Thus, other than exempted pneumatic tyres, no person shall by himself or through any person on his behalf, import, store for sale, sell or distribute imported pneumatic tyres (which

include pneumatic tubes) that do not conform to the specified standards and that do not bear the BIS Standard Mark. ”

6. As the symbol is not there on tyres and the contention of the learned AR is that said symbol is strictly to be marked on the tyre which is not marked there. To support this contention, he took support from the decision of ***Aban Exim Pvt. Ltd.*** (supra). In the case of ***Aban Exim Pvt. Ltd.,*** the Hon’ble High Court has remanded the matter to the adjudicating authority to reconsider and to pass appropriate order. Therefore, said order does not give any conclusive result that the goods are restricted or prohibited. Therefore the said decision is of no help to Revenue. However, in the case of Jagdev Damodaran (supra), the Hon’ble High Court has considered the issue of drone which can be imported. To import the drone, the appellant is required to obtain the license and unless and until that license is there, the goods are prohibited goods. In that context, the Hon’ble High Court has observed that the goods can not be released. But in this case, there is no restriction on such goods. The only instructions are that run flat tyres, it should be embossed RF and a symbol as also marked on the tyres, the tyres can be imported.

7. I find that in this case, the appellant is willing to put the symbol on tyres before clearance. The appellant shall put the symbol on tyres . If symbol is put on tyres, the registration with BIS is not required, in

that circumstances, the goods can not be confiscated. Therefore, the appellant is directed to put the symbol as required as per instruction dated 30.1.12, before clearance of the goods and after doing the needful, the adjusting authority shall reconsider the issue of release of goods and thereafter pass an appropriate order in accordance with the law.

8. The appeal is disposed of in the above terms.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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