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

Date of hearing/decision: 28.05.2018

Cus. Appeal Nos. 50918 - 50919 of 2018
(Arising out of order No. VIII(HQ)10/IMP/Adj/ Excel Enterprises/ 14/17 dated 25.01.2018 passed by the Commissioner of Customs, New Delhi).

M/s Excel Enterprises Appellant
M/s S. G. International

Vs.

CC, New Delhi Respondent

Appearance:
Sh. Pradeep Jain and Sh. Aakarsh Srivastava, Advocates for the appellant
Sh. S. Nunthuk, AR for the Respondent

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Final Order Nos. 52038 – 52039/2018

Per: **Archana Wadhwa**:

Both the appeals are being disposed of by a common order as they arise out of the same set of facts and circumstances and the same impugned order denying provisional release of the imported goods, pending adjudication.

2. After hearing both sides, I find that the appellants filed Bills of Entry and made declarations about the imported goods being garment accessories, unbranded mobile phone accessories, footwear accessories etc. However, on the DRI examination it was found that out of 156 cartons, 49 cartons containing pen drives cosmetics, drones, branded smart phones etc. were not declared by the appellant M/s Excel Enterprises. In the appeal filed by M/s S. G. International the misdeclared items were iPhone, branded mobile

accessories, branded internal hard disk, memory cards, sports shoes of Nike, Adidas etc. The non-declared cartons were around 69 out of 177 cartons, so imported by the said appellant.

3. The appellant took a stand that such goods were sent by the foreign Chinese supplier, by mistake. Inasmuch as on account of Chinese New Year festival there was lot of rush, resulting in inadvertent mistake on the part of the supplier. They also produced the correspondence from the supplier to that effect. However, Revenue seized the goods including the declared as also non-declared.

4. Pending adjudication, the appellant made a prayer for provisional release of the goods, which stand rejected by the impugned order. It is also seen that the appellant approached the Hon'ble High Court of Delhi who vide their Order dated 29.01.2018 directed the adjudicating authority to pass an order on their request for provisional release, which stand rejected by the lower authorities and appeal there against stand filed before the Tribunal, again in terms of the High Court order.

5. On going through the impugned order, I find that the Commissioner has rejected the assesee's request for provisional release of the goods on the ground that the appellant is not the owner of the goods and one Sh. Amardeep is the actual owner of the goods. Inasmuch as the said fact needs investigation and verification, their request for provisional release cannot be entertained. He has further observed that some of the goods require BIS certification under Intellectual Property Rights Rules and such goods are

required to be absolutely confiscated. As such, he observed that at this stage, to release the goods provisionally is not in the public interest.

6. Ld. Advocate appearing for the appellants submits that Sh. Amardeep was only a financer of the goods and it is the appellant, who hold the IEC no. and filed Bills of Entry. As per the Customs law, one who files the Bills of Entry is the importer and the financer has no role to be examined by the Customs. As regards the non-declaration of the goods, both the importers admitted that whole consignment were not declared to the Customs. Further, ld. Advocate admits that some of the goods may be liable to absolute confiscation whereas the majority of the goods are required to be released on payment of redemption fine, in terms of provisions of Section 125 of the Customs Act. As such, he submits that there was no justification for not releasing the entire goods. He also submits that the Bills of Entry were filed in February, 2017 and a period of more than one year has passed damaging the goods. He further submits that the appellant incurred a lot of demurrage charges, being more than around Rs. 1 crore. He also brings to my notice that the show cause notice has since been issued on 26.02.2018 and is pending adjudication. Drawing my attention to the proposal made in the show cause notice especially in the case of M/s Excel Enterprises, he submits that the proposal is for absolute confiscation of drones only and in respect of other items the proposal is for confiscation only. This clarifies that only drones would get covered under the prohibited item requiring absolute confiscation. He also submits that in respect of other goods violating IPR Rules, the adjudicating authority could have allowed re-export of the same as the supplier is ready to take back including the drones.

7. After hearing ld. AR for the Revenue, I find that admittedly the show cause notice stand issued to the appellants, including many other noticees also. The fact that the goods are lying with the Customs for more than 1½ years and incurring detention charges is also to be appreciated. The best action in this case could have been early finalisation of the show cause notice. Accordingly, I deem it fit that the matter should be adjudicated within one month from today if possible.

If it is not possible to finalise the show cause notice within the above period the appellants request for release of the declared goods as also the other goods which may be redeemable on payment of some fine should be considered liberally, within a period of fifteen days on expiry of one month. The appellant undertake not to insist upon the provisional release of the goods which are either prohibited items or stands imported in violation of other rules like IPR. In this case also their request for re-export of the same may be considered by the adjudicating authority subject to the condition which he may deem fit to impose. Similarly, release of the other goods should be considered by imposing condition which the adjudicating authority may deem fit.

8. Both the appeals are disposed of by way of remand.

(Dictated and pronounced in the open Court).

(Archana Wadhwa)
Member (Judicial)

Pant