IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Customs Appeal No.C/52231/2018-CU [SM]

[Arising out of Order-in-Original No.02/2018/RNS/COMMR/IMP/ICD/TKD dated 07.02.2018 passed by the Commissioner of Customs (Import), New Delhi]

Shri Rohit Bhasin **...Appellant**

Vs.

C.C., New Delhi **... Respondent**

Present for the Appellant : Ms.Priyadarshi Manish, Advocate
Present for the Respondent: Mr. P.R.Gupta, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 07/02/2019

Final ORDER NO. 50278/2019

PER: RACHNA GUPTA

Present is an appeal preferred against Order-in-Original No.2 dated 7th February, 2018. The said adjudication is arising out of show cause notice No.5263 dated 25.09.2015 which was served upon the appellant as one of the noticee therein, on the basis of a specific intelligence as was received by the Directorate of Revenue Intelligence (DRI) about some importers being engaged in mis-declaration of LED TVs as LED

TV panels, which were being cleared through various Ports in India. It was observed that the parts were got removed from these LED TVs and were being separately imported. The LED TVs were separately imported as LED panels. Those imported panels were re-fitted with those imported parts and were sold in the domestic market as LED Tvs. In furtherance thereof, various searches were conducted by the Department including in the premises of the present appellant that is M/s. Gyani Electronics Repairs and M/s. Mania Enterprises, both at Saraswati Marg, Karol Bagh, New Delhi. The appellant being the proprietor of both the firms was present at the time of the search whereby 60 pieces of complete LED TVs were recovered being packed in their respective original cartons of LED TVs bearing details as that of brand-name, model No. etc. However, no valid documents were recovered or produced by the appellant establishing the legal procurement of the said 60 pieces of LED TVs. Thus, the Department got a reasonable belief that the TVs so recovered are liable to confiscation. Accordingly, the impugned show cause notice was served upon proposing the confiscation as well as the penalties upon the appellant and other two co-noticees. The said proposal has been confirmed vide the order under challenge. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms. Priyadarshi Manish, ld. Advocate for the appellant and Mr. P.R. Gupta, ld. D.R. for the Department.

3. It is submitted on behalf of the appellant that the order of absolute confiscation is absolutely erroneous as the confiscation has been confirmed on the ground not only of the TVS proposed to have been improperly imported but also on the ground that BIS certification was not available for the goods in question. It is impressed upon that all the LED TVs as recovered from the appellants' premises, the cartons thereof specifically mentioned that the TVs are of 80CMs i.e. 31.5 Inches. She impressed upon the RTI information as received from Ministry of Electronics and Information Technology to impress upon that the BIS is required for LED TVs where the screen size is 32 Inches and above. It is submitted that since the TV in Question were less than 32 Inches, the adjudicating authority has committed an error while still ordering confiscation of those TVs for want of BIS Registration. It is submitted that the appellant here is the small trader. The penalty imposed is not arising out of any of his fault and shall rather affect him adversely. The order under challenge is accordingly prayed to be set aside. Appeal is prayed to be allowed.

4. While rebutting these arguments, it is submitted on behalf of the Department that there was a specific intelligence

received by the DRI that the various searches including the one in both the premises of the appellant were conducted. It is impressed upon that during the search of any of those premises no authenticated document proving the proper import of the impugned TVs could have been produced. Rather the appellant himself admitted that the LED TVs were purchased from the market without any bills on cash payments but on hefty discounts from various agents. Same is sufficient to prove the improper import as has been held by the adjudicating authority. It is further submitted that all the recovered TV sets were of 32 Inches, as is clearly apparent from the model Nos. for these TVs as mentioned in the table annexed to the show cause notice. The another relied upon document by the adjudicating authority is the confirmation from M/s.Soni India and M/s.Samsung India Electronics that none of the seized LED TVs models are registered with these companies and that the TV in their own name are being imported directly. It is also clarified that their products have BIS Certification. It is impressed upon that thus there is no infirmity while confirming the proposal of the show cause notice based on the said two grounds. Appeal is prayed to be dismissed.

5. After hearing both the parties and perusing the entire record, I observe that the Department recovered the LED TVs

under question during search conducted in the premises of the appellant that too in his own presence and the Panchnama dated 27th September, 2014 was prepared that too in the presence of the appellant itself. After conducting raid in both of his companies detail of each of the LED TV recovered as far as the model, size, brand-name etc. were duly noted while seizing the same. It is thereafter that summon was served upon the appellant to get his statement recorded under Section 108 of the Customs Act. His statement got recorded on 14th November, 2014, though he failed to join the investigation at the first available opportunity. In the said statement, it is observed that there is a clear admission on part of the appellant that the LED TVs are purchased by him from the local sales without bills as the local sellers were offering the hefty discounts. These local sellers works through selling agents. Names of such few agents were disclosed by the appellant himself in the said statement. He again was summoned and a subsequent statement was recorded on 1st May, 2015, where he, after acknowledging the correctness of his previous statement dated 14th November, 2014, signed the same adding to the previous statement that the purchased TVs were cheaper as compared to those purchased against the regular bills. He clearly acknowledged that it was in his knowledge that these goods were smuggled in nature and the same were smuggled by the syndicates of those agents. However, he deposed that he purchased those TVs without bills with the motive of earning profits. The law of admission is absolutely clear that admissions needs no further proof unless and until contrary is proved or are withdrawn. I observe that despite being summoned for more than four times and despite being recorded twice there is no retraction on part of the appellant for the admission of impugned LED TVs to have been procured by way of improper imports. Rather the statement of the co-noticees goes on to further corroborate the admission of the present appellant. Thus, I do not find any infirmity in the order under challenge while directing the confiscation of goods being the result of improper import.

6. Now coming to the another ground taken about BIS Certification, I observe that it is an acknowledgement on the part of the appellant that BIS Certification is required for all such LED TVs, which are measuring 32 Inches and above, as is also apparent from the appellants emphasis about the information received from Ministry of Electronics and Information Technology dated 24th May, 2017. Though appellants defense is that the LED TVs recovered from their premises are of 80 CMs. i.e. 31.5 Inches, measurement being less than 32 Inches, no BIS registration is required. But seen from the Panchnama having the details of the TVs recovered from the appellant, as also got acknowledged by the appellant

himself in his defence reply, it is apparent that there is the complete details about the model No., the size of the panel and the brand as well. Perusal thereof shows that LED for Samsung brand as well as for Sony brand are mentioned to be of 32 Inches. The appellant could not produce any other document to support that the dimension thereof was 31.5 Inches. in absence thereof and in view of the above noticed acknowledgement on part of the appellant, I hold that adjudicating authority has committed no error while holding these LED TVs of 32 Inches for which mandatory BIS Certification is required as per Electronic and Information Technology goods (Requirement of Compulsory Registration) Order, 2012 as was notified on 3rd October, 2012.

7. In view of the entire above discussion holding no infirmity in the order under challenge, same is hereby upheld. Appeal stands dismissed.

[Dictated and pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita