

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Sl. No.	Appeal No.	Appellant (s)	Respondent (s)	Impugned order
1.	C/1249/2010	S.S. Enterprises	CC, Hyderabad - II	OIA Nos. 32 to 34/2010 (H-II) Cus dated 27.04.2010
2.	C/1250/2010	Prabhudayal Agarwal, Consultant		
3.	C/1251/2010	Ankit Agarwal		

Appearance

Shri Prabhudayal Agarwal, Consultant & Shri Umesh Sharma,
Proprietor for the Appellant (s).

Shri Bhanu Kiran, Assistant Commissioner(AR) for the Respondent (s).

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 12/11/2018
Date of Decision: 20/12/2018

FINAL ORDER No. A/31574-31576/2018

[Order per: P. Venkata Subba Rao]

These appeals have been filed against Order-in-Appeal No. 32-34/2010(H-II) Cus dated 27.04.2010. All these appeals arise out of a single Order-in-Appeal and hence are being disposed of together. Appeal No. C/1249/2010 has been preferred by the importer M/s S.S. Enterprises, while C/1250/2010 has been preferred by the consultant of the importer and C/1251/2010 has been preferred by the Ankit Agarwal of the importer.

2. The facts of the case in brief are that the importer imported goods and filed a bill of entry declaring the imported goods as two LCD Monitors of 42" and 2 LCD Monitors of 47" and 4 Tuner Boards claiming classification of the LCD Monitors under CTH

85255100 and TV Tuner Boards with remotes under CTH 84733030 claiming nil rate of basic customs duty under customs Notification No. 24/2005 dated 01.03.2005. On receiving information that they have actually imported LCD TVs but mis-declared them as LCD Monitors and Tuner Boards, officers of the Customs at Hyderabad investigated the matter and issued a show cause notice proposing to re-classify the imported goods as LCD TVs under CTH 85287219 and recover appropriate duties. It was also proposed to confiscate the LCD TV Monitors and TV Tuner Boards with remotes under Section 111(m) of the Customs Act, 1962 for the alleged acts of commissions and omissions. Further, it was proposed to impose penalties under Section 112(a) on the importer impose penalty under Section 114AA on the proprietor of the importer, impose penalty under Section 114AA on Shri Prabhu Dayal Agarwal, consultant of the importer and impose penalty under Section 114AA on Shri Ankit Aggarwal and impose penalty on M/s Big Apple, Secunderabad under penalty Section 114AA on Shri G. K. Murthy, Managing Director of M/s Skyline Shipping & Logistics. After following due process, the lower authority rejected the classification claimed in the bill of entry by the importer and reclassified the goods as LCD TVs and confirmed the demand of duty accordingly; he also confiscated goods and allowed their redemption on payment of fine and imposed penalties as proposed. Aggrieved, appeals were preferred before the First Appellate Authority who upheld the order of the lower authority. Hence these appeals.

3. The issues which fall for consideration in these appeals are as follows:

- a) whether the goods imported by the appellant M/s S.S. Enterprises are liable to be classified as LCD TVs or classified as LCD Monitors and TV Tuners Boards separately.
- b) whether the goods imported by the appellant are liable to confiscation under Section 111(m).
- c) whether penalties were imposable on the importer and others under Section 112(a) and 114AA of the Customs Act, 1962.

The appellants herein submit that there was no mis-declaration in the bill of entry and they had declared the goods 42" LCD Monitors & 47" LCD Monitors and TV Tuner Boards and this description is according to the purchase orders placed by them and the invoice raised by the supplier. The goods were also packed accordingly. They argue that similar consignments imported by M/s Big Apple, Secunderabad were held to be classifiable as LCD Monitors and TV Tuners cards separately by the Commissioner (Appeals) vide Order-in-Appeal No. 74/2008 (H-II) Cus dated 16.12.2008. They therefore argue that the classification made by them was correct and the show cause notice proposed to wrongly classify the products and demand duty. They further submit that at the time of adjudication they had submitted the case of Big Apple before the Adjudicating Authority, who, however, did not follow this ratio holding that the facts of the case were different in the case of Big Apple Manufacturers the Monitors and TV Tuners were considered as separate entities whereas in this case the goods are treated as parts of the same consignment. The adjudicating authority also relied on the Chartered Engineer's opinion and other material facts/documents available, to hold that the goods were classified as LCD TVs. No such opinion was sought in the case of M/s Big Apple.

Thus, he confirmed the demand. He also held that the importer has in the purchase order asked for packing of the goods separately to suppress the correct description of the goods. He confiscated the goods and allowed their redemption of payment of a fine of Rs. 25,000/- under Section 112 of the Act and also imposed penalties as proposed in the show cause notice. The first appellate authority concurred with the decision of the lower authority. The appellants argued that the report of the chartered engineer was relied upon by the lower authorities but the cross examination of the Chartered Engineer was not allowed without according any cogent reason and therefore the impugned order needs to be set aside on this ground alone. They also argued that the confiscation and consequential redemption fine and penalties also need to be set aside on this ground alone. They further argued that for identical set of goods imported by two importers, two different yardsticks were applied which is not correct. They further submit that Monitors and TV tuners can work as TV but the goods should be assessed in the state as they are presented at the time of import and their future use cannot determine the classification of the goods at the time of import. They further argue that the charge of suppression of mis-declaration with intent to evade payment of duty does not survive simply because they have claimed particular classification which was not agreed to by the assessing officer.

4. Learned Departmental Representative reiterates the findings of the lower authorities and explains that the Monitors in question were not computer monitors but are LCD monitors of 42" & 47" size with matching TV tuners boards with remotes. They are

televisions in a disassembled condition and hence they were classified as LCD TVs. He further argued that the appellant has deliberately mis-declared the goods as LCD Monitors and TV Tuners when in fact they should have been declared as televisions in their bills of entry. In order to suppress the correct description they got the packing the purchase orders prepared by the supplier in an incorrect way. Therefore the intention to evade payment of duty while importing the LCD TVs and Monitors is evident and therefore the confiscation of the goods the fine and penalty are need be upheld and the appeals may be rejected.

5. We have considered the arguments on both sides and perused the records. Insofar as the classification of the goods is concerned, we find that during examination of the goods it was found that the goods viz., two 42" LCD TVs contain model Nos. TL4291CS & TL4291CS and two 47" LCD TVs model numbers TL4791CS with brand name TECO printed on the label affixed on them. They also found TV tuner boards and remotes with the exact model numbers as well and as corresponding catalogues. On the first question of classification of the goods considering this factual matrix of import, we have no doubt that the goods in question were LCD TVs in partly disassembled condition inasmuch as the TV tuner boards were kept separately. Unfinished and semi-finished goods in such a disassembled stage are classifiable as LCD TVs of 42" & 47" size. We have also considered the arguments of the appellant that in the case of another importer the first appellate authority had classified similar goods separately as Monitors and Tuner Cards. However, the order of the first appellate

authority, if any, is not binding on the Tribunal and such decision, if made, cannot alter the classification of goods in question.

6. Insofar as the confiscation of the goods in question is concerned, it is evident that the appellant had declared the goods as per the invoice, packing list and purchase orders as LCD Monitors and TV tuners with remotes separately. Simply claiming the classification as such in their bill of entry does not amount to mis-declaration of the nature of the goods. Therefore, the charge of the mis-declaration of the goods is not sustained and consequently confiscation of the goods is liable to be set aside and we do so. Consequently, the penalties imposed on the importer and others in the impugned order also need to be set aside and we do so. We have also considered the argument of the appellant importer that they were not allowed to the cross examination of Chartered Engineer by the lower authority but this is immaterial at this stage since our decision regarding classification is not based on the report of the Chartered Engineer but based on the documents submitted by the appellant which show the nature of the goods imported. In conclusion, classification of the goods and demand of duty and interest if any in the impugned order is upheld and confiscation of goods, penalty include the personal penalties are set aside. The appeals are disposed of as herein above.

(Order pronounced on 20/12/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

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