

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

Single Member Bench - Court – I

Customs Appeal No. 1886 of 2011(Arising out of Order-in-Appeal No. 12/2011(H-II)Cus, dated 08.04.2011 passed by
Commissioner (Appeals-II) Customs, Central Excise & service Tax, Hyderabad)**Big Apple Life**1-8-167 to 179, S.D. Road,
SECUNDERABAD – 500 003.

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APPELLANT

VERSUS

**Commissioner of Customs,
Hyderabad Customs**Kendriya Shulk Bhavan,
L.B.Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

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RESPONDENT

AND

Customs Appeal No. 2635 of 2011(Arising out of Order-in-Appeal No. 25/2011(H-II)Cus, dated 14.06.2011 passed by
Commissioner (Appeals-II) Customs, Central Excise & service Tax, Hyderabad)**Big Apple Life**1-8-167 to 179, S.D. Road,
SECUNDERABAD – 500 003.

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APPELLANT

VERSUS

**Commissioner of Customs, Central Excise
& Service Tax, Hyderabad-II Commissionerate,**Kendriya Shulk Bhavan,
L.B.Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

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RESPONDENT**APPEARANCE:**

Shri Prabhu Dayal Agarwal for the Appellant

Shri A.V.L.N. Chary, Superintendent/Authorised Representative for the Respondent.

Coram:**Hon'ble MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30591 – 30592/2019DATE OF HEARING: 02.07.2019
DATE OF DECISION: 02.07.2019**[ORDER PER: MR. P. VENKATA SUBBA RAO)**

1. These two appeals are filed against Orders-in-Appeal as above. In appeal No. C/2635/2011, the facts are that the appellant imported 1107 P4 systems, 110 CRT Monitors and 240 pieces of 512 MB RAM goods which were old and used. Against the declared quantity of 110 CRT monitors, on examination, 112 CRT monitors were found and against the declared quantity of 240 pieces, only 177 pieces of RAM were found. Since the goods in question were old and used, they should not have been imported without a licence from the Director General of Foreign Trade as per para 2.17 of the Foreign Trade Policy 2009-2014. Admittedly, the appellant did not have any licence from the DGFT when they imported these goods. The representative of the appellants submits that they have been importing old and used goods like this for trade and it has been the practice for the Customs to confiscate them and allow redemption on payment of redemption fine and penalty. Thereafter, they would get the goods redeemed and sell them in the market. In this case, a show cause notice was issued alleging that the goods which were imported were hazardous waste and were covered by Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 and therefore the goods were confiscated and allowed to be redeemed on payment of redemption fine with a condition that the same should be re-exported by the appellants. Penalty under section 112 was also imposed upon the appellants.

2. In appeal No. C/1886/2011, they imported 430 old and used CRT Monitors from Canada. On examination, it was found that only 428 monitors of the total value of Rs. 60,984/- were present in the consignment. Even in this case, the allegation is that the goods are covered by the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008

and therefore were liable for confiscation in addition to the import being in violation of para 2.17 of Foreign Trade Policy 2009-14 inasmuch as the importer had no licence for the import. After following due process, the original authority ordered confiscation of the goods and allowed their redemption on payment of fine with a condition that the goods will be re-exported immediately at the cost of the importer. He also imposed a penalty upon the appellant.

3. Aggrieved, the appellant appealed to the first appellate authority who upheld the orders of the lower authority but reduced the amount of fines and penalty as follows:

Appeal No.	Fine imposed by original authority	Fine reduced by first appellate authority.	Penalty imposed by original authority	Penalty reduced by first appellate authority.
C/1886/2011	10,000.00	5,000.00	15,000.00	Rs. 5,000/-
C/2635/2011	2,20,000.00	1,10,000.00	1,10,000.00	No reduction.

4. The appellant submits that there is nothing on record to show that the goods which they have imported are hazardous either to the health or to the environment. In fact, these goods have been lying in the Customs premises for a very long time and they caused no hazardous whatsoever. Therefore, they are not hazardous waste. They also assert that there is no notification of the Ministry of Environment under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 specifying that the goods in question were covered by these rules. Merely because the goods are old and used and have a shorter shelf life, it does not mean that they are waste. In fact, if they were waste, they would not have imported these goods. They import these goods and re-sell them for use in the country. Therefore, they can only be termed as 'second-hand goods'. In the absence of any specific provision to assert that these are hazardous waste, the absolute confiscation of the goods was unwarranted. Similarly, the direction of the lower authority to re-export the goods after paying redemption fine is

also not justified by any provision of law. He concedes that the imports were done in violation of para 2.17 of Foreign Trade Policy.

5. Ld. DR reiterates the findings of the lower authority and asserts that the confiscation was done as the goods were hazardous in nature and they were rightly ordered to be re-exported as per the provisions of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, as required.

6. I have considered the arguments on both sides and perused the records. The goods which are imported in violation of any provision of the Act or Rules can be confiscated under section 111 of the Customs Act, 1962. In this case, undisputedly, there is a violation of para 2.17 of Foreign Trade Policy framed under the Foreign Trade (Development and Regulation) Act, 1992, inasmuch as the goods which were imported were old and used and could not have been imported without a licence from the Director General of Foreign Trade. The appellant has imported these goods in violation of Foreign Trade Policy and therefore the goods were liable for confiscation under section 111 and they were liable to penalty under section 112 of the Customs Act, 1962. The second question is whether the goods in question can also be considered as hazardous waste. In this regard, this determination can be made if there is a specific notification by the Ministry of Environment to the effect. Once the goods are notified as hazardous waste, Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 apply and as per Rule 17(2), the importer is legally duty bound to re-export that hazardous waste. The responsibility for ensuring that the goods are re-exported rests on the State Pollution Control Board. In these two cases, from the show cause notices, the Orders in original and the orders of the first appellate authority, there is nothing to show that the imported goods were covered by any notification stating that these are hazardous waste. Schedules I, II and III to the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 which list hazardous wastes do not include the imported goods. In view of the above, I find that no case has been made out by the Revenue that the

imported goods are hazardous waste. Therefore, I find that the goods cannot be termed as hazardous waste in the absence of any specific legal provision. However, they are liable for confiscation under section 111 of the Customs Act, 1962 for import in violation of para 2.17 of Foreign Trade Policy and the importer is liable for penalty under section 112 of the Customs Act, 1962.

7. In view of the above, the impugned orders are modified as below:

- (i) The importer is given the option to redeem and clear the goods on payment of redemption fines imposed and paying appropriate rates of duty. They may exercise this option of redemption within a period of two months from the date of this order. The direction to re-export them is set aside.
- (ii) The penalties imposed in the impugned orders under section 112 of Customs Act, 1962 are upheld.

8. The appeals are disposed of as herein above.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)