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

Division Bench - Court – I

CUSTOMS APPEAL No. 511 OF 2009

(*Arising out of Order-in-Original No. 12/2009-Adjn.-Cus, dated 26.03.2009 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II)*

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

Vs.

Integrated Broadcasting Pvt. Ltd. .. **RESPONDENT**
Evergreen House,
8-2-616/B/6/1, Road No.11,
Banjara Hills,
HYDERABAD – 500 003.
Telangana

AND

CUSTOMS APPEAL No. 628 OF 2009

(*Arising out of Order-in-Original No. 12/2009-Adjn.-Cus, dated 26.03.2009 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II)*

Integrated Broadcasting Pvt. Ltd. .. **APPELLANT**
Evergreen House,
8-2-616/B/6/1, Road No.11,
Banjara Hills,
HYDERABAD – 500 003.
Telangana

Vs.

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

APPEARANCE:
Shri M.S. Nagraj, Advocate for the appellant.

Shri N. Bhanu Kiran, Asst. Commissioner/AR for the respondent

CORAM: HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.A/30769-30770/2020

DATE OF HEARING: 22.01.2020
DATE OF DECISION: 22.01.2020

[ORDER PER: P. VENKATA SUBBA RAO)

1. These two appeals are filed by Revenue and the appellant against the same impugned order and hence are being disposed of together. The facts of the case in brief are that M/s Integrated Broadcasting Pvt. Ltd. had filed Bill of Entry No. 266716, dated 05.09.2008.

2. Customs appeal No. 511 of 2009 is filed by the Revenue seeking enhancement of the redemption fine on the imported goods from Rs. 2,50,000/- only imposed by the adjudicating authority in the impugned order. The second prayer in the Revenue's appeal is enhancement of the penalty of Rs. 30,000/- only imposed upon the importer. The assessee's appeal No. C/628/2009 is seeking setting aside of both the fine and penalty imposed upon them by the adjudicating authority in the impugned order.

3. As far as the Revenue's appeal No. C/511/2009 is concerned, we find that in terms of the litigation policy of Government of India Circular F.No. 390/Misc/163/2010-JC, dt. 17th December 2015, Customs appeals involving amounts of Rs. 10.00 lakhs should not be pursued by the Revenue. In this case, the redemption fine involved is Rs. 2,50,000/- and penalty of Rs. 30,000/-. Therefore, without discussing the merits of the appeal, we reject the Customs appeal in terms of the litigation policy.

4. As far as the assessee's appeal is concerned, it is on the following grounds:

a) The adjudicating authority failed to appreciate carefully that the goods were cleared by them as domestic cargo while they were indeed international cargo and the mistake was of the custodians i.e., M/s GMR Hyderabad International Airport Limited. On knowing the mistake, they had not only filed the Bill of Entry to clear the goods but also returned the goods in packed condition to the custodian. But for their bill of entry, the mistake could not have come to light.

They had declared the assessable value much more than what is proposed in the show cause notice. In view of the above, there is no ground for holding the goods liable for confiscation under section 111(m) of the Customs Act, 1962 for imposing a fine in lieu of confiscation under section 125 of the Act.

b) There is also no ground for imposing penalty under section 112 of the Customs Act, 1962 for the same reason.

5. Ld. DR opposes the prayers made by the importers appellants. He argues that the penalty and fine if any must only be enhanced.

6. We have considered the arguments on both sides and perused the records. It is not in doubt that the goods in question were removed from the Customs area by the importer appellant without filing bill of entry and without paying any duty whatsoever. In terms of Section 111(j) "*any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse, without the permission of the proper officer or contrary to the terms of such permission, are liable for confiscation."* In terms of Section 111(m) "*any goods which do not correspond in respect of value or in any other particular, with the entry made under the Customs Act are liable for confiscation".* The goods have been confiscated as per the impugned order under both sections 111(j) and 111(m). The confiscation of the improperly imported goods under section 111 does not require any intention to be proved. The intention to remove the goods from the customs area without the permission of the proper officer is not an essential element under section 111. The moment the goods are removed and they become liable for confiscation. The penalty under section 112 is imposable on any person "*who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act".* In this case, the appellant had indeed removed the goods without permission of the Customs Officers and in fact without even filing the required bill of entry or paying duty on the goods. After such removal, they filed bill of entry which, when ordered for examination, brought out the fact that the importer has removed the goods without payment of duty and the custodian had given them the goods. Therefore, both the importer and the custodian had committed directly those acts which rendered the goods liable for confiscation under section 111. Therefore, they are liable for penalty under section 112.

7. It is true that after removing the goods, the importer had, on his own, filed a bill of entry and when it was discovered that the goods were removed, has explained that they were removed by mistake as well as their own mistake because of which their importer goods were mixed up and taken out all along with some domestic goods from the custody of the custodian. It is also true that they have returned the goods to the customs after such discovery. These are mitigating factors in this case. The value of the goods declared was Rs. 83,13,505/-. The maximum redemption fine imposable on confiscation is equal to the market value of the goods. However, the adjudicating authority has imposed a fine of only Rs. 2,50,000/-. The penalty which is imposable under section 112 is equal to the value of the goods. However, the penalty which is imposed, is a small fraction of the value of the goods i.e. Rs. 30,000/- only. We, therefore, find that both fine and penalty are fair and not unreasonable. However, considering the totality facts of the case, we find that reduction of redemption fine from Rs. 2,50,000/- to Rs. 2,00,000/- (Rupees two lakhs only) and penalty from Rs. 30,000/- to Rs. 25,000/- (Rupees twenty five thousand only) would meet ends of justice.

8. In view of the above, Revenue's appeal No. C/511/2009 is dismissed under litigation policy. The assesee's appeal C/628/2009 is partly allowed by reducing the redemption fine from Rs. 2,50,000/- to **Rs. 2,00,000/- (Rupees two lakhs only)** and penalty from Rs. 30,000/- to **Rs. 25,000/- (Rupees twenty five thousand only).**

9. Both the appeals are disposed of as above.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(Dr. D.M. MISRA)
(MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Vrg