IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>EAST REGIONAL BENCH : KOLKATA</u>

<u>MA (EH)-75659/17</u>
<u>& Cus.Appeal No.76291/17</u>

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/711 dt.14.06.2017 passed by the Commissioner of Customs (Appeals), Kolkata)

M/s Enkon Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Port), Kolkata

Respondent (s)

<u>Appearance:</u>

Shri H. K. Pandey, Adv. for the Appellant (s)
Shri S. N. Mitra, Asstt. Commr. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C. J. MATHEW, TECHNICAL MEMBER

<u>Date of Hearing : 23.03.2018</u>
<u>Date of Pronoucement : 23.03.2018</u>

ORDER NO - **FO/C/A/76045/2018 & MO/75642/2018**

<u>Per C J Mathew :</u>

Application for early hearing is allowed and, with consent of both sides, the appeal of M/s Enkon Pvt Ltd against order-in-appeal no.KOL/CUS(PORT)/AA/711 dated 14th June 2017 of Commissioner of Customs (Appeals), Kolkata is taken up for disposal.

2. Appellant had filed bill of entry no.7836514/15.12.2016 for clearance of hardware components for P10mm LED display and the lower authorities held that 'industrial PCs' in the consignment was imported in contravention of Electronics Information Technology Goods (Requirement for Compulsory Registration) Order dated 7th September 2012 which specified that mandatory BIS (Bureau of Indian Standards) Certificate be produced which the appellant, admittedly, is not in possession of. Learned Counsel for the appellant submits that the impugned goods, being components of system, cannot be subject to restriction unless the system itself was intended to be so restricted. He placed reliance on decisions of the Tribunal in *Sandan Vikas (India) Ltd. v. Commissioner of Customs, New Delhi [2017 (357) ELT 893 (Tri.-Delhi)]* and *Commissioner of Central Excise, Chennai v. Soumag Electronics Ltd. [1999 (108) ELT 167 (Tribunal)]* which have held that components of system are classified under the heading relevant to the systems.

3. We have heard Learned Authorized Representative who reiterated the findings recorded in the impugned order.

4. On perusal of the records, we find that import of 'industrial PCs' requires certificates of Bureau of Indian Standards an essential and mandatory pre-requisite for clearance into the domestic market.

5. Though it is the claim of the appellant that the components being classifiable as the system, is not subject to the restriction on the basis of the cited decision, it is clear that such classification is undertaken to determine rate of duty for levy under Customs Act, 1962, and the impugned goods are accordingly treated as the system of which it is a component. Non-tariff

restriction are legislated by other statutes and, being a particular law, must be implemented for achievement of objectives of that law. As the objectives of duty levy and objectives of restriction are distinctly different, the decisions cited by Learned Counsel will not advance the case of the appellant. The confiscation and imposition of penalty cannot be faulted.

6. Lack of such certificate is admitted by the appellant despite which clearance into the domestic market is sought upon redemption on payment of fine in *lieu* of confiscation. The goods were ordered to be re-exported because of non-compliance with certification requirements. Many restrictions, especially those that are quantitative under the Foreign Trade Policy, may be overcome with redemption of goods on payment of fine. However, certificate of Bureau of Indian Standards is intended to protect the residents of the country from consequences affecting life and limb and to ensure quality standards. Any deviation therefrom cannot be treated lightly. The refusal to admit the impugned goods into the country cannot also be faulted.

7. In view of the above, we find no merit in the appeal which is dismissed.

(Dictated and pronounced in the open court)

Sd/	Sd/
(Justice Dr. Satish Chandra)	**(C. J. Mathew)**
President	**Member (Technical)**

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