IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. C/76547/2019

Arising out of Order-in-Appeal No. 05/Cus(A)/GHY/18 dated 28.06.2018 passed by the Commissioner (Appeals) of CGST, Central Excise & Customs, Guwahati.

M/s Pankaj Surana
M/s Kamal Futuristic Technology (P) Ltd.
P. B. Complex (Opp. Rupashree (Cinema),
A.T. Road, Guwahati-781001.

….Appellant (s)

Vs.

Commissioner of Customs (Prev.), Shillong
Customs House, 110, M. G. Road,
Shillong-793001.

….Respondent (s)

Appearance:
Mr. K. Sanyal, Consultant for the Appellant (s)
Mr. S. K. Naskar, A. C. (AR) for the Respondent(s)
CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: - 29.07.2019

Date of Pronouncement:- 13.08.2019

Order No…FO/A/75997/2019

PER SHRI P.K.CHOUDHARY:

The present appeal has been filed by Appellant Shri Pankaj Surana against Order-in-Appeal whereby confiscation and imposition of redemption fine of Rs.7,00,000/- on Micro SD Cards was upheld.

2. Briefly stated, the facts of the case are that the Customs Officers of LGBIA, Guwahati, intercepted a consignment of goods on 7.11.2012, which had arrived from Delhi by Spice Jet Flight. The consignment had bags containing 2GB/4 GB Micro SD cards with Tax Invoices issued by domestic Delhi based supplier M/s Deepak International, Hardhyan Singh Road, Karol Bagh, Delhi-5 in the name of the Appellant. Show Cause Notice dated 18.4.2013 was issued for confiscation of goods under Section 111 and imposing Penalty under Section 112 of Customs Act on the ground that the Appellant was selling, purchasing or dealing with goods that were illegally imported into India which culminated

into Order-in-Original dated 26.10.2013 ordering confiscation and penalty. In appeal, the Adjudication Order was set aside by order dated 28.10.2014. Thereafter, the Respondent herein filed an appeal before the Tribunal and the Tribunal remanded the matter to the Ld. Commissioner (Appeals) by Order No FO/75129/2018 dated 29.01.2018. By the impugned order, the Ld. Commissioner(Appeals) partially allowed the appeal by setting aside the Penalty imposed upon the Appellant but maintaining confiscation of goods and Redemption Fine plus appropriate customs duty initially imposed by Adjudication Authority. Being aggrieved, the Appellant is in appeal before the Tribunal.

3. The Ld. Counsel appearing on behalf of the Appellant states that the subject goods are not liable for confiscation under Section 111 of Customs Act as there is no proof to show that these goods are illegally imported as these are domestic goods purchased by the appellant from Delhi based trader for which VAT was paid through Tax Invoice Nos 152, 153, 154 for the entire quantity of 10,800 pieces of Micro SD Cards by supplier M/s Deepak International, Hardhyan Singh Road, Delhi and it is quite probable that these are domestically manufactured or that the packing on the boxes was changed by supplier, especially since the Appellant is not the Importer. Further, it is his submission that the Appellant is a bonafide purchaser since Ledger and Bank Statement of the Appellant shows that he paid the Supplier M/s Deepak International, an amount of Rs.20,00,000/- vide Cheque No 615401 on 27.06.2012, and Rs.40,000/- vide Cheque No 615402 on 15.10.2012. These transactions took place from the Appellant's SBI Account No 31059846818. He further states that there were lapses by the Department on seizure of goods as all packets have not been examined. The Inventory made by the Department shows all 10,800 pieces as "Taiwan Origin" and "Made in Taiwan". But on Joint Inspection, some goods were found of Korean Origin and some without any Country of Origin. Thus, it is possible that boxes could have been substituted while in custody of the Department as there is a wide discrepancy in goods between Panchnama and Joint Inspection Report.

Since it is not known whether the boxes were changed by supplier or in the custody of Department or if these were domestic goods, confiscation under Section 111 is only on the basis of presumption and assumption.

He also states that if the goods were actually smuggled, Department would have taken action against the supplier/importer/IEC holder but no such thing was done. This shows that the Department has taken two stands from the beginning and unnecessarily initiated proceedings against the Appellant despite it being unequivocally visible that Department has no proof that these are smuggled goods. He states that the goods are not notified under Section 123 of Customs Act and therefore onus to show that these are illegally imported, lies on the Department and by not taking any action against the importer, Department is trying to shift the burden of proof on the Appellant.

4. The Ld. Counsel vehemently argued that whether goods fall under CTH No 58235220 or 85235100, both are covered under Exemption Notification No 24/2005-Cus dated 1.3.2005, as amended, regarding the Customs Duty. Further, CBEC circular dated 20.7.2016 clarified that benefit of notification is extendable to Micro/Mini SD cards classified under 85235100. Therefore, the additional Basic Customs Duty is not made out on the goods. He relies on the decision of the Tribunal in the case of Pramod Kumar vs Commissioner of Customs, Delhi 2018 (363) ELT 411 (Tri.-Del.) and the judgement of Hon'ble Delhi High Court in Commissioner of Customs Vs. R. K. International as reported in 2018 (362) E.L.T. 770 (Del.).

5. The Ld. D.R justifies the findings of Ld. Commissioner (Appeals)and accordingly prays that the appeal be rejected.

6. Heard both sides and perused the appeal records.

7. In the instant case, the short issue that arises for consideration is whether the goods are liable for confiscation under Section 111, payment of Redemption Fine and consequent payment of duty. It is an admitted fact that these are goods purchased from Delhi by duly VAT paid bills through Tax Invoice Nos 152, 153, 154 for the entire quantity of 10,800 pieces of Micro SD Cards from the supplier M/s Deepak

International, Hardhyan Singh Road, Delhi. It is also an admitted fact that Ledger and Bank Statement of the Appellant shows that he paid the Supplier M/s Deepak International, an amount of Rs.20,40,000/- by two Cheques from his Bank Account. It is also an admitted fact that there was wide discrepancy in the Inventory List prepared by the Customs officers and findings of "Joint Inspection" where the Appellant also participated.

I find force in the contention of the Ld. Counsel for the Appellant that if Revenue had doubt about these goods being smuggled, they should have taken some action against the supplier but no such action was taken. I also find force in the contention of Ld. Counsel for the Appellant that these goods are not notified and do not fall under the ambit of Section 123, but even then the Department has sought to shift the onus on the Appellant to prove that the goods are legally imported by not taking any action against the supplier. The contention of Ld. Counsel for the Appellant that CTH 85235220 or 8235100 does not create any additional Customs Duty in view of the Exemption Notification No 24/2005-Cus dated 1-3-2005 read with CBEC Instruction F. No 528/43/2016-STO(TU) dated 20-7-2016 is to be considered. I find that the Custom Duty sought to be imposed after redemption under Section 125 has not been quantified when SCN was issued under Section 124 or the Customs Act. Similar view has been taken by Hon'ble Delhi High Court in the case of Commissioner of Customs vs R.K. International (supra). It is also not clear that whether the boxes were changed by the suppliers or if these where domestic goods.

8. In view of the above discussions and the decisions cited supra, the confiscation, redemption fine and demand of duty is therefore set aside and the appeal filed by the appellant is allowed with consequential benefits.

(Pronounced in the open court on…13.08.2019.)

Sd/-

(P.K.Choudhary)
Member (Judicial)

T.K.