

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Customs Appeal No.70671 of 2013**

(Arising out of Order-in-Original No.Kol/Cus/Port/15/Adjn/2013 dated 30.05.2013 passed by Commissioner of Customs, Kolkata)

**M/s Meenakshi Auto Machines**

New No.62, Old No.39/2,Aziz Mulk 2<sup>nd</sup> Street, Thousand Lights,Chennai-600006

**Appellant**

*VERSUS*

**Commissioner of Customs (Port), Kolkata**

15/1, Strand Road, Kolkata-700001

**Respondent**

**APPEARANCE :**

Shri Shouvendu Banerjee, Advocate & Shri S.C.Ratho,Consultant of the Appellant

Shri Fiaz Ahmed, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO...76062/2023**

DATE OF HEARING : 11 .07.2023

DATE OF DECISION : 11 .07.2023

**Per Ashok Jindal :**

The appellant is in appeal against the impugned order wherein it has been held that the import of Digital Multifunction Printers are restricted items and license is required for imports made on 28.02.2013 onwards.

2. The facts of the case are that the appellant imported old and used Digital Multifunction Printers and filed bill of entry on 28.02.2013. The goods were examined in the presence of Customs Officials, Chartered Engineer and representative of the appellant and found to be old and used having residual life of more than six years and the said machines were found to be minor reconditioning and values were assessed on

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the enhanced value as compared to declared value. The said value was arrived by Chartered Engineer after inspection and production of market value recommendations based on several aspects like useful life of machines/Make & Model/technology/country of origin/physical condition/comparison with similar goods imported in past/internet information/reconditioning etc.. It was held that the said consignment being second hand was restricted item in terms of Para 2.17 of Foreign Trade Policy, 2009 – 2014 and Para 2.33 & 2.33A of HBP and could be imported against valid license. Therefore, the goods in question are restricted items and import of the same was disallowed and it was held that being restricted items and has not been produced any license, the goods are liable to hold confiscation. Consequently, redemption fine and penalty were imposed on enhanced value on the appellant. Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that the issue has been settled in the case of Bhawani Enterprises reported in 2017 (353) ELT 234 (Tri.-Kolkata), wherein it has been held that prior to 28.02.2013, no license is required. Therefore, the goods are not liable for confiscation. Hence, redemption fine and penalty are not sustainable on the appellant.

4. On the contrary, the Id.A.R. for the Revenue, opposes the contentions made by the Id.Counsel for the appellant and submits that the goods have been imported by the appellant on 28.02.2013 and on that day as per DGFT Notification No.35(RE-2012)/2009-2014 dated 28.02.2013, the goods are restricted items and as on 28.02.2013, the

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Notification came into effect, therefore, the goods in question are restricted items.

5. In countering the said arguments of the Id.A.R. for the Revenue, the Id.Counsel for the appellant submits that the goods were handed over to shippers on 13.02.2013, therefore, the date of importation is 13.02.2013. Therefore, they are not required to obtain license.

6. Heard both the parties and considered the submissions made by both the sides.

7. In this case, the issue has been raised by the Id.A.R. for the Revenue that the date of importation is 28.02.2013 whereas the Id.Counsel for the appellant submitted that it should be 13.02.2013. The said issue has been answered by the decision of the Bangalore Bench of this Tribunal in the case of Rajesh Exports Ltd. Vs. Commissioner of Customs, Bangalore vide Final Order No.20078/2022 dated 03.03.2022 wherein it has been held that the date is when the goods left the last Port in the country from which the import is affected and the Tribunal has observed as under :

*"(a) What should be the date of the import of the gold in the facts and circumstances of the case?*

*The facts of the case are not in dispute that the appellant placed the order for import of the gold on 12/10/2017 and the seller issued the invoice on 15/10/2017, the goods were examined by the Indonesia Customs on 17/10/2017 and the transporter issued Airway bill on 17/10/2017 for transportation of the goods.*

*The relevant date for import of the goods by air is the date on which Airway bill is issued that on which date goods left the last airport in the country from which the import is affected. Admittedly, in this case the Airway bill has been issued on 17/10/2017 and thereafter there is no control of the importer or*

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*the seller of the goods. In that circumstance, in the facts and circumstances of the case, the relevant date for import by air is the date on which Airway bill has been issued i.e. 17/10/2017”.*

8. Therefore, we hold that the date of importation in this case is 13.02.2013, which is prior to issuance of DGFT Notification No.35(RE-2012)/2009-2014 dated 28.02.2013.

9. We further take note of the fact the said issue has already been settled by this Tribunal in the case of Bhawani Enterprises (supra), wherein this Tribunal has observed as under :

*"4. We find that the issue has already been settled by this Tribunal in the case of Bhawani Enterprises reported in 2017 (353) ELT 234 (Tri.-Kolkata), wherein the Tribunal has held as under :*

*"3. After hearing the Id. Counsel for the Department and on perusal of the case record, we find, that on the licensing aspect, the Commissioner (Appeals) has followed the order of Hon'ble Madras High Court in the Writ Petition Nos. 890 to 894, 949 to 961 and 1170 to 1188 of 2012, dated 14-3-2013 [[2014 \(302\) E.L.T. 212](#) (Mad.)] wherein it was held that upto 28-2-2013, there was no restriction on import of subject goods. Enquiring from the office of the DGFT, it was informed that in consultation with Law Ministry, they had decided not to file SLP against the said judgment of the Madras High Court. As for the question of confiscation of the goods for mis-declaration of value, we find that the appellants had declared the goods correctly in description/quantity/value and classified them under proper chapter heading of Customs Tariff. The value of the goods was enhanced on the basis of the Chartered Engineer's certificate which was accepted by both the parties. We agree with Commissioner (Appeal)'s findings that (i) mere enhancement of value on the basis of C.E. certificate cannot be a ground for treating declared value as mis-declared*

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*unless there is other corroborative evidence. (ii) except enhancement on the basis of C.E.'s Certificate, there is no other material on record to inform that declared value was mis-declared."*

*As in the case of Bhawani Enterprises (supra) for earlier import of identical goods, it was held that there was no restriction of import of the subject goods, we hold that no specific license is required for import of the impugned goods. We further find that for enhancement of value, the Chartered Engineer's Certificate cannot be relied upon unless there is corroborative evidence, we hold so."*

10. In view of the above relied upon decisions in the case of Bhawani Enterprises (supra) & Rajesh Exports Ltd. (supra), we hold that as the import has been affected prior to 28.02.2013, there is no restriction of import of the subject goods. Hence, no specific license is required for import of the impugned goods.

11. In that circumstances, we hold that for enhancement of value, the Chartered Accountant's Certificate cannot be relied upon unless and until there is no corroborative evidence. Therefore, we hold that that the goods are not liable for confiscation. No redemption fine can be imposed and no penalty on the appellant.

12. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

Dictated and pronounced in the open Court.

Sd/-  
**(Ashok Jindal)**  
**Member (Judicial)**

Sd/-  
**(K.Anpazhakan)**  
**Member (Technical)**