IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. C/102/08

(Arising out of Order-in-Appeal No. GOA/CEX/MP/130/2007 dated 12.11.2007 passed by the Commissioner of Custom, Central Excise Service Tax (Appeals), Goa).

M/s Teracom Pvt. Ltd.	Appellant

Vs.

Commissioner of Customs, Central Excise & Service Tax, Goa	Respondent

Appearance:

None	for Appellant

Shri Chatru Singh, Asstt. Commissioner (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 21.02.2018

Date of Decision: 21.03.2018

ORDER NO. **A/85764/2018**

Per: Ramesh Nair

This appeal is directed against Order-in-Appeal No. GOA/CEX/MP/130/2007 dated 12.11.2007 passed by the Commissioner of Custom, Central Excise Service Tax (Appeals), Goa, whereby the appeal of the appellant was dismissed and the Order-in-Original was upheld. Therefore, aggrieved by the said order, the appellant filed the present appeal only for waiver of penalty imposed under Section 114(A) of the Customs Act, 1962.

2. The fact of the case is that the appellant have imported the goods claiming that the same is meant for manufacture of Optic Fiber Cables (8544.70) and claimed the exemption Notification No. 24/2005-Cus dated 01.03.2005. For claiming this notification, the appellants have obtained registration certificate and duty exemption certificate by furnishing Bond as required under Customs (Imports of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1966, binding themselves to pay differential customs duty involved in the imported raw material for optical fiber cable.

3. The case of the Department is that the appellants have wrongly claimed the exemption as the goods imported was not meant for manufacture of optical fiber cable. Therefore, they are liable to penalty.

4. None appeared on behalf of the appellant.

5. Shri Chatru Singh, learned Assistant Commissioner (AR) appearing on behalf of the Revenue submits that since the appellants have wrongly claimed the notification, it amounts to mis-declaration, hence the penalty under Section 114(A) was rightly imposed.

6. We have carefully considered the submissions made by learned AR and perused the records. We find that though the

appellants have claimed the exemption Notification, but they have not mis-declared the description of the goods, the eligibility of the notification is based on interpretation, therefore, merely claiming the exemption notification does not amount to mis-declaration particularly when the goods were correctly declared.

7. Moreover, notification carries the condition of end use for which the jurisdictional officers have issued the certificate. Therefore, it cannot be said that the appellant could have mis-utilized the raw material imported by them other than the use in optic fiber cable. Therefore, in these circumstances, it cannot be said that the appellants had any *mala fide* intention of fraudulently claiming the benefit of exemption notification. As per our above discussions, we find that it is a fit case for waiver of penalty imposed under Section 114(A) of the Customs Act, 1962.

8. Accordingly, we set aside the penalty imposed on the appellant. The appeal is allowed.

(Pronounced in Court on 21.03.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha