**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: C/87904/2017

[Arising out of Order-in-Appeal No: MUM-CUSTIM-AXP-APP-501/17-18 dated 12/09/2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone – III.]

Jabil Circuit (India) Pvt Ltd …***Appellant***

versus

Commissioner of Customs (Export)
ACC, Mumbai ***…Respondent***

Appearance:

Ms Srinidhi Ganeshan for appellant

Shri C Singh, Assistant Commissioner (AR) for the respondent

Date of hearing	16/03/2018
Date of pronouncement	02/05/2018

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Hon'ble Shri M V Ravindran, Member (Judicial)

ORDER NO: A/86248 / 2018

This appeal is directed against order Order-in-Appeal No: MUM-CUSTIM-AXP-APP-501/17-18 dated 12/09/2017 passed by the Commissioner of Customs (Appeals), Mumbai Zone – III.

2. Heard both the sides and perused the records.

3. Relevant facts that arise for consideration are, appellant herein filed bill of entry for clearance of second-hand machines claiming benefit of Notification No. 52/2003 on attributable to EOU. During the first check examination it was noticed that one number of old and used 3D solder paste inspection machine was found in excess and the value of the said machine was also not covered in the procurement certificate of the appellant. The adjudicating authority, following due process of law, held that the appellant failed to declare the said second-hand solder based inspection machine and did not present proper procurement certificate for the clearance of goods. Accordingly, confiscated the same under the provisions of Section 111(l) and (m) of the Customs Act, 1962 with option to redeem the same on payment of redemption fine of ₹3 lakhs and penalty of ₹1 lakh was imposed under Section 112(a) of the Customs Act, 1962.

4. An appeal was preferred before the first appellate authority. The first appellate authority by the impugned order extended the benefit of Notification No. 52/2003 holding that subsequently the appellant produced procurement certificate, etc. but upheld the confiscation and the redemption fine imposed as also the penalties imposed.

5. Learned Counsel would draw my attention to the facts of the

case and taken me through the entire order-in-original and the impugned order. It is her submission that the appellant had procured the certificate but it was addressed to the Assistant Commissioner, JNCH and was filed with the authorities hence could not approach the jurisdictional authorities for issuance mandated or correct, procurement certificate, with the conditions of Section 149 of the Customs Act, 1962 and was sought to be fulfilled seeking amendment in the bill of entry which was not accepted. The penalty imposed and the confiscation order is totally incorrect as the provisions of Section 111(d) and (m) is not applicable.

6. Learned AR reiterates the findings of the lower authorities.

7. On careful consideration of the submission made, I find that the appellant is contesting the confiscation of the machinery and consequent penalty imposed. It is an admitted fact that in the bill of entry which was presented there was no mention of the imported machinery "3D Solder Paste Inspection Machine". Even assuming that it is for an EOU and there was change in transport mode still fact of non-declaration of the machinery in the bill of entry remains and in view of this I find that there is contravention/violation of provisions of Section 111(l) and (m) of the Customs Act, 1962 and the said machinery is liable for confiscation. I do not find any reason to interfere in such an order passed by the lower authorities. Considering

the value of the machine which was imported but not declared the redemption fine seems to be reasonable and does not require any interference. Since the confiscation of the machinery is upheld and the redemption fine in lieu of confiscation is also upheld the consequent penalty on the appellant also needs to be upheld.

8. In view of the foregoing I hold that the impugned order is correct and does not require any interference.

9. Appeal stands rejected.

(Pronounced in Court on 02/05/2018)

(M V Ravindran)
Member (Judicial)

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