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

Appeal No. C/258/12

(Arising out of Order-in-Original No. 76/2011-12-CC(I) dated 17.01.2012 passed by the Commissioner of Customs (Import), Nhava Sheva).

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| M/s Jyoti International | Appellant |

Vs.

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| Commissioner of Customs (Import), Nhava Sheva | Respondent |

Appearance:

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| Shri S.D. Pradhan, Consultant | for Appellant |
| Shri Manoj Kumar, AC (AR) | for Respondent |

CORAM:

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)**

Date of Hearing: 13.11.2018

Date of Decision: 13.11.2018

ORDER NO. **A/88038 / 2018**

***Per: Dr. D.M. Misra***

This is an appeal filed against Order-in-Original No. 76/2011-12-CC(I) dated 17.01.2012 passed by the Commissioner of Customs (Import), Nhava Sheva.

2. Briefly stated the facts of the case are that on the basis of intelligence that the importer/appellant had imported complete

Petroleum run generators set, but declared the same as LPG run generators; investigation was initiated against the appellant by undertaking examination of the container bearing No. CRSU 1154239 on 13.01.2010. On examination, it was found that the appellant had filed Bill of Entry No. 846526 dated 11.1.2010 declaring the said product as “LPG Generator”, but on examination it was found that various brands of generator set of gasoline (petroleum) run has been kept in a carton with its accessories and also a Gas conversion kit separately, in another carton. Consequently, the said consignment was seized and later released provisionally on execution of bond and bank guarantee. Later, further investigation revealed that the appellant had stored such type of generator situated at Vasai Godown and also cleared in the past. A show-cause notice was issued to them alleging violation of provisions of Customs Act, 1962 and Foreign Trade Policy Regulation etc. proposing confiscation of the said imported goods; goods already imported and seized from the premises of the importer also proposed to be confiscated and proposal for penalty on the appellant. On adjudication, the learned Commissioner directed confiscation of the goods imported against Bill of Entry No. 846526 dated 11.1.2010 valued at Rs.38,34,488/- under section 111(m) of the Customs Act, 1962 and imposed a fine of Rs.2.00 lakhs; also imposed penalty of Rs.1.00 lakh on the appellant; dropped the proceedings in respect of goods already imported and seized from Godown at Vasai valued at Rs.1,30,45,200/-. Aggrieved by the said order, the appellants are before this forum.

3. Learned Consultant for the appellant had submitted that they had imported DG sets, which are Dual fuel Genset i.e. the said Genset could run both in Gasolene (petrol) as well as in LPG. Even though the LPG kits were kept separately as Gensets were brought in CKD condition, the same should be considered as LPG run Duel fuel Genset in terms of Rule 2(1) of the interpretation prescribed under the First Schedule of Customs Tariff Act. It was his contention that there was no intention on the part of the appellant to mislead the Department and violate the provisions of Foreign Trade Policy or Customs Act in any manner. Further, he has submitted that the findings of the learned Commissioner is contradictory, which is unsustainable in law.

4. Per contra, learned AR for the Revenue reiterates the findings of the learned Commissioner. Learned AR has submitted that in the respective Bill of Entry No. 846526 dated 11.1.2010, the appellant had declared the consignment "LPG Generator" but in fact imported Gasolene (petrol) Driven Generator. Thus, they have violated the provisions of Foreign Trade Regulation Act, 1992 and Foreign Trade Regulation Rule, 1995 and consequently the Customs Act, 1962. Therefore, the learned Commissioner has rightly confiscated the goods under Section 111(m) of the Customs Act, 1962.

5. We have carefully considered the submissions of the learned Consultant for the appellant as well as the learned AR for the Revenue. We find that the Commissioner after analyzing the evidences observed that there was a violation of relevant Trade Regulation in declaring the imported goods as LPG Genset.

Learned Commissioner in para 15 of the order observed as follows: -

> "15. From the show-cause notice it is clear that importer were well aware of the policy provisions in respect of import of Gen set. Description in the invoice did not reflect the correct nature of the goods. The facts which were subsequently brought before department and adjudicating authority were not clearly spelled before assessing/ examining officer at the time of assessment and therefore these claims could not be verified beyond doubt. I find that the description in the invoice does not clearly represent the exact nature of goods imported and it is apparently an attempt to avoid the policy provisions."

The learned Commissioner reiterating the said finding in para 20 observed that even though there is no substantial violation of the Policy, however, the declaration furnished by the importer is not correct, therefore, the goods imported needs to be confiscated. Consequently, analyzing the gravity of offence, directed confiscation but imposed nominal fine and penalty under Sections 111(m) and 112(a) of the Customs Act, 1962 respectively. We do not find any justification advanced by the appellant to disturb the findings recorded by the learned Commissioner, which is based on evidence on record.

6. In the result, the impugned order is upheld and the appeal is dismissed.

(Operative portion of the order pronounced in Court)

**(S. Srivastava)**
**Member (Technical)**

**(Dr. D.M. Misra)**
**Member (Judicial)**

Sinha