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

Appeal No. C/985/2012

(Arising out of Order-in-Original No. CC/MJ/25/2010/ ADJ/ACC(IMP) dated 30.11.2010 passed by the Commissioner of Customs, ACC, Mumbai)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Shri Fichadia Jaykar G. — Appellant

Vs.

Commissioner of Customs (Import) ACC, Mumbai — Respondent

Appearance:

Shri Bharat Raichandani, Advocate for the appellant
Shri Dharmender Singh, Supdt. (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 13-03-2019
Date of decision : 13-03-2019

O R D E R No: **A/85488/2019**

Per: C J Mathew

Shri Fichadia Jaykar G was proceeded against under Customs Act, 1962 as post parcels consigned to him were, upon detailed examination, found to contain 'electronic components' and 'wrist watch hands' that were confiscated absolutely without offering option to redeem as it was held that the importer had not come forward to claim the goods. It is seen from order-in-original no. CC/MJ/25/2010/ADJ/ACC (IMP) dated 30th November 2010 of Commissioner of Customs, Air Cargo Complex, Mumbai, impugned before us that penalty was also not imposed for the very same reason.

2. Learned Counsel for appellant submits that they had not been placed on notice and that, despite it being on record that the address to correspondence was altered to that of Shri N K Tiwari, Consultant notices continued to be sent to the address in the appeal papers.

3. We have heard Learned Authorised Representative who contends that the appellant had not been diligent in informing of the change of address and that it cannot be now pleaded on his behalf that notice was not served.

4. Drawing attention to the decision of the Tribunal in *Sandeep Sehgal v. Commissioner of customs, New Delhi [2009 (248) ELT 228 (Tri-Del)]* it is his contention that notification no. 78-Cus dated 2nd April 1938 prescribed certain requirements in relation to parcel post which, not being complied with, rendered the goods to be prohibited for import under section 11 of Customs Act, 1962.

5. On perusal of the impugned order, it is seen that the original authority has erred in concluding that, in post parcel, the importer was required to declare himself to be so. Under the law relating to postal articles, the postal authorities are custodians till delivery at the address. Until that authority made efforts to deliver the parcel but were unable to do so, the presumption of there being no importer does not arise. It was, therefore, improper to deny the option to redemption by the person to whom the parcel was addressed and would be the recipient. Notwithstanding the provisions of section 82 of Customs Act, 1962 prescribing certain formalities for entry of post parcel and the decision in *re Sandeep Sehgal*, we find no justification for absolute confiscation as inability to identify of an importer does not suffice. The inability to deliver would automatically have rendered the confiscation absolute as option to redeem could not have been exercised.

6. In view of our findings, we set aside the impugned order and remand the matter back to the original authority for a fresh adjudication after giving due notice to the importer and to pass orders in accordance with the provisions of Customs Act, 1962. Appeal is accordingly disposed off.

(Operative part pronounced in Court)

(Ajay Sharma)	**(C J Mathew)**
Member (Judicial)	**Member (Technical)**

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