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

Customs Appeal No. 85124 of 2019

(Arising out Order-in-Appeal No. 1892 (CAC)/2018 (JNCH) APPEAL-II dated 06.12.2018 passed by the Commissioner of Customs (Appeals), Mumbai II)

M/s. Global Enterprises Appellant
Plot No. 8, 2nd Floor, LSC,
Furniture Block, Kirti Nagar,
New Delhi – 110 015

Vs.

Commissioner of Customs (NS-V) Respondent
Jawaharlal Nehru Customs House,
Nhava Sheva

Appearance:

Shri CM. Sharma, Consultant for the appellant
Shri A.P. Kothari, Addl. Commissioner(AR) for the respondent

CORAM: Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER No: A/85734 / 2019

Date of hearing : 28-03-2019
Date of decision : 15-04-2019

Per: C J Mathew

M/s Global Enterprises is aggrieved by the confiscation and the attendant condition imposed by adjudicating authority for exercise of option to redeem the confiscated goods that was upheld in order-in-appeal no. 1892 (CAC)/2018 (JNCH) APPEAL-II dated 6th

December 2018 of Commissioner of Customs (Appeals), Mumbai II on their challenge to the application of norms prescribed by the Bureau of Indian Standards for 'electric irons' to the import of 'parts of electric iron' by them. According to Learned Consultant for the appellant, the goods imported by them against bill of entry no. 6517432/21.05.2018 cannot be sold in the domestic market as 'electric iron' without the base receptacle and the power supply unit whereas the assessing officer proceeded on the erroneous presumption that these constituent parts had been imported separately with intent to evade the prohibition, under the Foreign Trade Policy, on import of 'electric iron' that was bereft of approval of Bureau of Indian Standards. It is the claim of the appellant that the test of compliance with standards under another law cannot extend to parts of goods merely because the General Interpretative Rules in Customs Tariff Act, 1975 enables such wider prism for classification as the final product solely for the limited purpose of ascertainment of appropriate rate of duty and that enforcement of compliance with standards prescribed for imports, mirroring the requirements for domestic manufacture, should be visited at the point of retail offering and not on them as a trader of the parts even if their traded parts could be assembled to be the whole.

2. It is contended by Learned Consultant that the decisions of the Hon'ble High Court of Punjab & Haryana in *Horizon Ferro Alloys Pvt Ltd v. Union of India [2016 (340) ELT 27 (P&H)]*, of the Hon'ble Supreme Court in *Sewpujanrai Indrasanarai Ltd v. Collector of Customs & Others [1983 (13) ELT 1305 (SC)]* and of the Tribunal in *Oetiker India Pvt Ltd v. Commissioner of Customs (Import), Nhava Sheva [2016 (340) ELT 226 (Tri-Mumbai)]* firmly establish that the impugned order is not legal and proper. It is his further contention that the Tribunal in *Xing International v. Commissioner of Customs,*

New Delhi (Import & General) [2016 (339) ELT 283 (Tri-Del.)] has held that the parts of product intended to be covered would not be subject to the same standard as for the whole. It is contended that the decisions in *Wipro Ltd v. Commissioner of Customs, Chennai [1999 (107) ELT 398 (Tribunal)]* and *Elsimate Electronic Industries P Ltd [2002 (141) ELT 126 (Tri-Chennai)]* have stamped approval to the mutual exclusivity of determination under the import tariff and the prescription in the Foreign Trade Policy.

3. The case of Revenue, as narrated by Learned Authorized Representative, is that the appellant imported 'Euroline' brand of 'electric iron', comprising the main component and certain other parts, excluding 'power supply' and 'base', in the impugned transaction and the excluded parts were imported separately with intent to evade compliance with the norms of the Bureau of Indian Standards.

4. On perusal of the decisions cited by Learned Consultant to justify the claim that imported goods, even if not compliant with norms prescribed by Bureau of Indian Standards, are not prohibited, we are unable to agree that the decision of the Hon'ble High Court of Punjab & Haryana in *re Hindustan Ferro Alloys Pvt Ltd,* on the issue of absolute confiscation of prohibited goods, applies to the present dispute which is on confiscability and condition of redemption. In *re Sewpujanrai Indrasanarai Ltd,* it was held that conditions that are impossible to comply with could not be attached to release of goods and that, without proper examination of dutiability, the burden cannot devolve on noticee.

5. The decision of the Tribunal on the difference in treatment to parts and the whole, in relation to norms prescribed by Bureau of Indian Standards, should also be considered. The mutually exclusive

situation elaborated upon in *re Xing International*, dealing with LED panels, is not relevant here as LED panels are a separate and distinct article unlike the impugned import which is not sold in that form. The Tribunal, in *re Oetiker India Pvt Ltd*, has held that such prescriptions are intended for ensuring public health and safety and, to the extent that these objectives are not compromised, parts themselves are not required to meet the standards. However, it is on record that the impugned goods, upon examination and not by the mere reliance on legal fiction in the interpretative rules, were found to be the most vital component of 'electric iron' and that the goods were so packed as to easily integrate the other two parts which, admittedly, had been imported separately but concurrently, to support the finding that the goods are, indeed, 'electric iron.' Indubitably, the prescriptions of Bureau of Indian Standards, made available by Learned Consultant, applies to the finished product and not to the parts but the most essential component that is impugned in this dispute, if allowed to remain non-compliant, would not be conducive to public safety. As held in *re Oetiker India Pvt Ltd*, the potential of compromise to public safety and health would require ascertainment of compliance of the impugned goods with the standards. It is admitted by Learned Consultant that the importer is not a manufacturer and would not, thereby, be liable for non-compliance with standards of Bureau of Indian Standards norms. Faith in post-importation monitorial safety value can, often, be misplaced. The goods in the dispute in the decision in *re Oetiker India Pvt Ltd* also did have the privilege of obtaining exemption from the norms of Bureau of Indian Standards. No such exemption can be sought for the goods now impugned. It was incumbent on the appellant to obtain necessary certification before affecting the imports. In these circumstances, we find no merit in the submission of Learned Consultant that the goods are not liable to confiscation and that the prescription in, and requirement to, comply with the Foreign Trade Policy can be ignored.

6. As the imported goods, though required to be, are not compliant with the standards, they fail to overcome the bar of prohibition at the threshold. Hence the question of duty liability, differential or otherwise, will not arise. This is in conformity with the decision of the Hon'ble Supreme Court in *re Sewpujanrai Indrasanarai Ltd* that requirement to discharge duty liability will have to be established before it can be demanded. However, failure to comply with the norms prescribed by Bureau of Indian Standards would render the goods liable to confiscation. Such liability to confiscation does not necessarily have to be consummated by confiscation under section 111 of Customs Act, 1962. There is a dangerous consequence to such confiscation. If the option of redemption is not offered, or even exercised, possession of confiscated goods vests with the Central Government which will have to bear the consequence of such possession with attendant cost to the exchequer. On the other hand, if the option of redemption is to be linked to re-export, it has been held that such non-financial conditions cannot be appended for release of goods. Therefore, while upholding the liability of the goods to confiscation, we set aside the confiscation. Consequently, the option to redeem becomes infructuous. We concur with the lower authorities that the goods, being prohibited for import, be re-exported.

7. Now we turn to the penalty imposed under section 112 of Customs Act, 1962. The goods were imported for sale in India but were ordered to be re-exported. Penalty is an instrument of deterrence. Re-export is not without any financial consequence to the importer. That should be sufficient deterrent against such imports.

8. Accordingly, we modify the impugned order and limit the detriment to that of re-export of the said goods without having to redeem the goods and without being penalised. The appeal is disposed off accordingly.

(Pronounced in Court on 15-04-2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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