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

APPEAL NO: C/458/2012

[Arising out of Order-in-Original No: 87/VA/VB/2012 dated 25th April 2012 passed by the Commissioner of Customs (Import), Nhava Sheva.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri 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?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
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

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Sahil International … ***Appellant***

versus

Commissioner of Customs (Import)
Nhava Sheva …***Respondent***

Appearance:

Shri Chirag Shetty with Shri JH Motwani, Advocates for appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:	**18/03/2019**
Date of decision:	**07/05/2019**

ORDER NO: A/85854 / 2019

Per: C J Mathew

Appellant assails the detriments of redemption fine, attendant upon confiscation under section 111(m) of Customs Act, 1962, and imposition of penalty of ₹ 5,00,000/- under section 112(a) of Customs Act, 1962.

2. M/s Sahil International had filed bill of entry no. 6208971/09.03.2012, and 6208862/09.03.2012 for import of goods declared as 'JBL iPod dock (JBL Mx150/30 speaker)' and claimed classification under section 77 of the heading no. 8518 2200 of the First Schedule to the Customs Tariff Act, 1975. Upon examination, the goods were found to be 'audio systems' that would be classifiable under heading no. 8527 9100 of First Schedule to the Customs Tariff Act, 1975. The revision is not in dispute but appellant question the scope for invoking section 111(m) of Customs Act, 1962 in relation to particulars in bill of entry filed for warehousing.

3. Learned Counsel for the appellant contends that the absence of intent to mis-declare the goods is apparent from the details in the bills of entry conforming to the particulars in the invoice and bill of lading and as the imported goods were primarily 'iPod docks'. He contends that 'speaker', which was also incorporated in the description, was unjustifiably used for rendering the finding of mis-declaration as it was not of their own volition but drawn out from the bill of lading.

4. He submits that, with the materials particulars having been furnished to the assessing officer, it is the responsibility of the proper officer to make the correct assessment by identifying the appropriate heading in the Customs Tariff Act, 1975. He places reliance on the decision of the Hon'ble Supreme Court in *Northern Plastic Ltd v. Collector of Customs & Central Excise [1988 (101)(ELT 549 (SC)]*.

5. Learned Authorised Representative submits that the intent to mis-declare was apparent as the 'speaker' was included to mislead the proper officer of the customs into believing that the goods were not audio system. He also draws attention to section 111(m) of Customs Act, 1962, that had been invoked, to show that the material particular in entry filed under section 46 of Customs Act, 1962 should be such as is relevant to assessment of bill of entry.

6. The impugned order is premised on the finding that the goods were declared as 'speaker' and that corresponding to such description

is heading no. 8518 2200 of the First Schedule to Customs Tariff Act, 1975. Though the importer did declare the goods as ‘speaker’, we are unable to perceive that it could foster a wrong impression in the minds of examining officer. This was not an assessment under the risk management system but of physical ascertainment on ‘first check’ basis. In these circumstances, the finding that the expression ‘speaker’ does not apply at all to the function of an iPod dock, which in addition to other functions, is also a speaker, cannot be viewed as an attempt to mislead. The finding in the impugned order to the effect that there has been a mis-declaration is based on certain premises such as the regularity of imports, the value thereof and the relationship between the supplier and the importer. In view of the above facts and circumstances, we find no reason to sustain the order of confiscation and imposition of penalty.

7. The appeal is allowed to that extent.

(Pronounced in Court on 07/05/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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