

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Custom Misc. No. 85464, 86312, 86428 of 2018

in

Custom Appeal No. 86258 of 2018

(Arising out of Order-in-Original No. 93/2017-18/Commr/NS-IV/JNCH dated 29.12.2017 passed by the Commissioner of Customs (NS-IV), JNCH, Nhava Sheva)

M/s. Maxx Mobile Communications Ltd **.....Appellant**
106, First Floor Chawda,
Commercial Centre Mindspace,
New Link Road, Chinchpoli Bunder,
Malad West, Mumbai

Vs.

Commissioner of Customs & Service tax, **.....Respondent**
Mumbai West
Mahavir Jain Vidyalaya, Juhu Lane,
Andheri (W), Mumbai

APPEARANCE:

Shri V.M. Doiphode, Advocate for the appellant
Shri Trupti Chavan, AC(AR) for the respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER No: A/88469 / 2018

DATE OF HEARING : 06.12.2018

DATE OF DECISION : 06.12.2018

PER: C J MATHEW

These miscellaneous applications have been filed by M/s Maxx Mobile Communications Ltd for declaration of the appeal to be in full compliance with pre-requisite for being entertained by the Tribunal and to include additional grounds in the referred miscellaneous application filed earlier for amending some of the grounds of appeal cited in appeal no. C/86258/2018-DB against order-in-original no. 93/2017-18/Commr/NS-IV/JNCH dated 29th December 2017 of Commissioner of Customs (NS-IV), Jawaharlal Nehru Customs House, Nhava Sheva.

2. We have heard Learned Counsel for applicant and Learned Authorised Representative at length. The appeal has been filed under section 129 of Customs Act, 1962 and the essential pre-requisite for such an appeal to be entertained by this Tribunal is compliance with section 129E of Customs Act, 1962 prescribing deposit of 10% of the duty, where duty and penalty are in dispute, or of the penalty, where penalty alone is in dispute, subject to a ceiling of ₹10,00,00,000/-. It is clear from this provision that the only dispute pertaining to duty and/or penalty are contemplated. This does not pose any impediments as confiscation *per se* is only incidentally necessary for the imposition of penalty.

3. Furthermore, as per section 126 of Customs Act, 1962, confiscated goods vest with the Central Government to be taken by,

and held in the possession of, the officer adjudging the confiscation. It is only by exercise of the option to redeem provided for in section 125 of Customs Act, 1962 that the possession of the confiscated reverts from the Central Government. Not unnaturally, goods that are not redeemed cannot be offered up as pre-deposit.

4. The applicant submits that due compliance of this pre-requisite is not in dispute as the value of the goods impugned in the order-in-original is more than enough for meeting the requirements of pre-deposit. The question of the goods being appropriate discharge of security prescribed in section 129E is not tenable in the light of section 129E of Customs Act, 1962 requiring deposit and section 126 of Customs Act, 1962 precluding the right to so deposit alienated goods.

5. Accordingly, we find that the appeal to be not maintainable before the Tribunal. In the absence of jurisdiction to entertain the appeal, these applications pertaining to the appeal stands disposed off.

(Operative part pronounced in Court)

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

(C J MATHEW)
Member (Technical)