

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

REGIONAL BENCH - COURT NO. 02

**Customs Appeal No. 438 of 2011**

(Arising out of Order-in-Appeal No. 128 (Gr.VB)/2010(JNCH)/IMP-93 dated 22.03.2011 passed by Commissioner of Customs (Appeals) Mumbai-II JNCH, Nhava Sheva)

**M/s Hello Brother**

**.....Appellant**

Shop No.3, 1<sup>st</sup> Floor, Bony Plaza Shopping  
Centre, S.V. Road, Andheri (W),  
Mumbai - 400 058

*VERSUS*

**Commissioner of Customs  
(Import), Nhava Sheva**

**.....Respondent**

Jawaharlal Nehru Custom House, Post Uran,  
District Raigad, Sheva - 400 707.

**Appearance:**

Shri N. S. Patel, Advocate for the Appellant

Shri Bhushan Kamble, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. Sanjiv Srivastava, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/88554/2018**

Date of Hearing: 20.12.2018

Date of Decision: 20.12.2018

**Per: S.K. MOHANTY**

Briefly stated, the facts of the case are that the appellant had imported mobile chargers, plastic and foam covers for mobile, ear phones etc. and filed the Bills of Entry for

assessment before the jurisdictional customs authorities. During the course of examination of the goods, the department found that the appellant had contravened the statutory provisions inasmuch as the imported goods of Nokia brand are prohibited goods within the meaning of Section 11 of the Customs Act, 1962. Since, those goods were imported in violation of the Intellectual Property Rights of Nokia Corporation, the department concluded that the provisions of Section 11 (2)(n) *ibid* read with Section 29 of Trade Marks Act, 1999 have been violated. Accordingly, show cause proceedings were initiated by the department, seeking for confiscation of goods and for imposition of penalty on the appellant. The matter was adjudicated vide order dated 31.03.2010, wherein the adjudicating authority had re-determined the value of imported consignment at Rs.20,03,555/- and Rs.28,26,500/- and confiscated the goods at the re-determined value, with the option to redeem the said goods on payment of redemption fine of Rs. 6lakhs within a period of 30 days from the date of receipt of the order. The said adjudication order also imposed penalty of Rs. 4lakhs on the appellant under Section 112 (a) *ibid*. On appeal, the Ld. Commissioner of Customs (Appeals), Mumbai -II vide the impugned order dated 22.03.2011 has upheld the adjudication order and rejected the appeal filed by the appellant. Feeling agreed with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The Ld. Advocate appearing for the appellant submitted that the option provided in the original order for redeeming the goods was not exercised by the appellant and out of the total amount of Rs.12,05,194/- paid by the appellant, an amount of Rs.4lakhs towards penalty was adjusted and the remaining amount was refunded by the department. Thus, he submitted that since the penalty amount in question has already been adjusted by the department, the appellant is not interested in pursuing the appeal before the Tribunal.

3. On the other hand, the Ld. AR appearing for Revenue reiterated the findings recorded in the impugned order.

4. We find that the goods in the present case, were imported in contravention of the provisions of Section 11 *ibid* and accordingly, same were confiscated by the department. Option for redemption of the said goods provided in the order dated 31.03.2010 has not been exercised by the appellant. Further, out of the duty amount deposited by the appellant, after adjusting the amount of penalty, the department had refunded the balance amount to the appellant. In view of the fact that the amount of penalty has already been paid and the Ld. Advocate for the appellant specifically prayed for not pursuing the appeal, we are of the view that the appeal can be dismissed as infructuous.

5. Therefore, appeal filed by the appellant is dismissed as infructuous.

(Operative part of the order pronounced in the open court)

**(S.K.Mohanty)**  
**Member (Judicial)**

**(Sanjiv Srivastava)**  
**Member (Technical)**

*Sm*