

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
MUMBAI**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 705 of 2010

(Arising out of Order-in-Original No. COMMR/PGM/ADJN/01/2010-11 dated 06.7.2010 passed by the Commissioner of Customs Airport, Mumbai)

M/s. Genx Entertainment Ltd.
1171-72, Solitaire Corporate Park,
Guru Hargovindji Marg, Chakala, Andheri (E)
Mumbai 400 093.

.....Appellant

VERSUS

**Commissioner of Customs (II)(Airport
Special Cargo), Mumbai**
Avas Corporate Point, Makwana Lane Behind S.M. Centre,
Andheri-Kurla Road, Andheri (East),
Mumbai 400 059.

.....Respondent

WITH

(i) Customs Appeal No. 706/2010 (Jignesh Kenia); (ii) Customs Appeal No. 797 of 2010 (Commissioner of Customs(II)-(Airport Special Cargo, Mumbai)(Arising out of Order-in-Original No. COMMR/PGM/ADJN/01/2010-11 dated 06.7.2010 passed by the Commissioner of Customs Airport, Mumbai); **(iii) Customs Appeal No. 671 of 2011 (Innovision Communications Pvt. Ltd.); (iv) Customs Appeal No. 672 of 2011 (Inderjeet Singh Bhatia)** (Arising out of Order-in-Appeal No. 129/Mumbai-III/2011 dated 21.06.2011 Passed by the Commissioner of Customs (Appeals), Mumbai Customs-Zone III)

Appearance:

Shri Prasad Paranjape and Shri Anil Mishra, Advocates for the Appellants/Respondent

Shri Mohammad Shamshad Alam, Authorized Representative for the Respondent/appellant

CORAM:

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

FINAL ORDER NO. A/87653-87657/2019

Date of Hearing: 13.11.2019
Date of Decision: 13.11.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant is inter alia, engaged in the business of providing broadcast programs and cinematography films on television channels in India. For undertaking the telecast/broadcasting activities, the appellant imports content in a media called digibeta tape, falling under Chapter 85.23 of the Customs Tariff Act, 1975. The appellant is liable to pay license fee to the copyright owners who have licensed their right to reproduce and distribute the content in an imported media to the appellant. The digibeta tape imported in the present case were intercepted by the DRI Officers and during the investigation, it was found that the appellant had mis-declared the value for the purpose of assessment of duty liability. Accordingly, the department has proceeded to determine the value in terms of Rule 9(1) (c) of the Customs Valuation Rules, 1988. The investigation culminated into the show cause notice dated 30.06.2008 issued by the DRI under Section 28(1) of the Customs Act, 1962, seeking for recovery of the differential amount of duty from the appellant. The said show cause notice had invoked the extended period of limitation provided under Section 28 of the Customs Act, 1962. The matter arising out of the show cause notice dated 30.06.2008 was adjudged vide the impugned order dated 06.07.2010, wherein Customs duty demand of Rs. 1,64,83,891/- was confirmed along with interest and also equal amount of penalty was imposed on the appellant company under Section 114A *ibid*. Besides, the impugned order also imposed penalty on Shri Jignesh Kenia under Section 112 (a) *ibid*. Feeling aggrieved with the impugned order dated 06.07.2010, the appellants have preferred

these appeals before the Tribunal. Further, Revenue has also assailed the impugned order on the ground that quantum of penalty imposed under Section 114A *ibid* is not equal to the duty along with interest confirmed by the original authority. Revenue contended that the appellant was required to pay penalty equal to the amount of duty and interest confirmed against them.

2. The Ld. Advocate appearing for the appellant fairly concedes that on merits, the appellant has no case to succeed. In this context, he has relied upon the decision of this Tribunal in the case of Star Entertainment Pvt. Ltd. Vs. Commissioner of Central Excise 2015 (327) ELT 238 (Bom.), to state that confirmation of the differential duty demand in terms of Rule 9(1)(c) *ibid* is in conformity with the statutory provisions. However, the Ld. Advocate submits that the proceedings initiated by the department are barred by limitation of time. He submits that for identical imports made from the same overseas supplier, the department in the previous occasion had initiated show cause proceedings against the appellant. Thus, he submits that since the entire facts of importation of the subject goods from the same supplier was known and within the knowledge of the department in December 2007, the extended period of limitation provided under Section 28 *ibid* cannot be invoked and the demand should only be confined to the normal period provided under the said statute. To support the stand that the extended period of limitation cannot be invoked in the circumstances of the present case, the Ld. Advocate has relied upon the judgment of Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs. Commissioner of Central Excise 2006 (197) ELT 465 (S.C.) and also the decision of this Tribunal in the case of Star Entertainment Pvt. Ltd. (supra), which was upheld by the

Hon'ble Bombay High Court, reported in 2005 (329) ELT 50 (Bom.).

3. On the other hand, the Ld. AR appearing for the Revenue reiterates the findings recorded in the impugned order and on limitation aspect, he submits that as per the ratio laid down by Hon'ble Delhi High Court in the case of *Maldhari Sales Corporation Vs. Union of India* 2016 (334) ELT 418 (Del.), the extended period of limitation has rightly been invoked by the department for confirmation of the adjudged demands on the appellant.

4. Heard both sides and perused the records.

5. The issue as to whether the amount of royalty paid for the license should be included in the transaction value for determination of the duty liability is no more *res integra*, in view of the co-ordinate bench decision of this Tribunal in the case of *Star Entertainment Pvt. Ltd.* (supra). The Ld. Advocate also fairly concedes that the appellant is not contesting its case on merits. Insofar as invocation of extended period of limitation is concerned, we find that on identical issue, in respect of the same imports made during the period August 2007 and October 2007, the department had issued the show cause notice on 26.12.2007 and 21.01.2008, calling upon the self same appellant to deposit the differential amount of Customs duty. The present show cause notice dated 30.06.2008 was issued, seeking for recovery of the differential duty for the period May 2007 to October 2007. It is evident that when the earlier show cause proceedings were initiated by the department against the appellants, the facts regarding importation of the subject goods were in the knowledge of the department. Thus, under such circumstances, the charges of fraud, collusion, willful misstatement etc. cannot be alleged,

justifying issuance of show cause notice beyond the normal period prescribed under Section 28 *ibid*. In this context, we find that the Hon'ble Supreme Court in the case of Nizam Sugar Factory (supra) have held that by issuing second and third show cause notices, on the similar and on the identical facts, the charges of suppression cannot be leveled against the assessee, since the facts of the activities were already in the knowledge of the department. Further, we also find that though this Tribunal in the case of Star Entertainment Pvt. Ltd. (supra) has held that duty is required to be paid on the royalty amount, but on the ground of limitation, has held that the extended period of limitation cannot be invoked. Such stand taken by the Tribunal has also been upheld by the Hon'ble Bombay High Court (supra), holding that extended period of limitation cannot be invoked for confirmation of the adjudged demands. The judgment of Hon'ble Delhi High Court in the case of Maldhari Sales Corporation (supra) relied upon by the Ld. AR for Revenue is distinguishable from the facts of the present case inasmuch as in the said decided case, the appellant was a regular and habitual offender in suppressing the material facts from the department. Whereas, in the present case, it is an admitted fact on record that the earlier show cause notices dated 26.12.2007 and 21.01.2008 issued to the appellant did not contain any allegation of suppression, willful misstatement etc., with intent to evade payment of duty. Thus, we are in agreement with the submissions of the appellant that the extended period of limitation cannot be invoked for recovery of the adjudged demands.

6. In view of above discussions, we do not find any merits in the impugned order, insofar as it has confirmed the proposed demand by invoking the extended period of limitation. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants on the

ground of limitation alone. Since, we are allowing the appeals filed by the importer-appellants on the ground of limitation, there is no need for consideration of the issue raised in the appeals filed by Revenue with regard to the quantum of penalty imposed in the adjudication order. Thus, the appeals filed by Revenue are accordingly, dismissed.

7. In the result, the appeals filed by M/s. Genx Entertainment Ltd. and Shri Jignesh Kenia are allowed and the appeals of Revenue are dismissed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sm