CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 88335 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-613/2019-20 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.)

M/s Integra Solutions ....Appellant
Plot No. 389, Shop No. 6,
Rajas Garden, Model Colony,
Shivajinagar, Pune,
Maharashtra – 411 016

VERSUS

Commissioner of Customs, Mumbai ....Respondent
(Air Cargo Import)
Air Cargo Complex,
Sahar Andheri (E),
Mumbai, Maharashtra

APPERANCE:

Shri K. V. P. Singh, Consultant for the Appellant
Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85944/2020

Date of Hearing: 24.11.2020
Date of Decision: 16.12.2020

Confirmation of the order for absolute confiscation of "Access Control Card Readers" imported vide bill of entry no. 2145572 dated 21.02.2019 having assessable value of Rs.13,12,514/- under Section 111(d) of the Customs Act, 1962 alongwith imposition of penalty of

Rs.4,00,000/- on the appellant under Section 112(a)(i) and Rs.2,00,000/- under Section 114AA of the Customs Act, 1962 by the Commissioner of Customs (Appeals), Mumbai Zone – III on the ground of none availability of BIS certificate & labelling is assailed in this appeal.

2. Learned Counsel for the appellant submitted that as appellant was new to the export business and unaware of requirement of BIS certification etc. for import of "Access Control Card Readers" it could not produce the same during clearance but it had discharged the customs duty liability and intended to re-export the imported goods, for which it had submitted a request letter to the adjudicating authority on dated 10th June, 2019. However, Order-in-Original was passed on the same date, for which the request could not be considered. He further submitted that under the circumstances, when imported goods cannot be sold in the market after confiscation also for want of BIS certification, the same would be a liability on the Customs department to destroy the goods. He earnestly prayed for permission to re-export the goods and to reduce the penalties to make the appellant less burdensome as re-export would itself incur financial loss to the appellant that would be a sufficient deterrent for such unauthorised import.

3. In response to such submissions, learned Authorised Representative for the respondent-department Shri Manoj Kumar, Assistant Commissioner, while arguing in support of the order passed

by the Commissioner (Appeals), had admitted about the request for re-export that was made by the appellant and had been acknowledged by the respondent-department to which effect no order had been passed by the Commissioner (Appeals).

4. Both parties submitted relevant case laws in support of their contentions.

5. I have gone through the case record and the judicial decisions, on the issue including the one passed by this Tribunal with me as co-Member in the case of *Global Enterprises Vs. Commissioner of Customs (NS-V), Nhava Sheva* reported in *[2019 (369) ELT 1596 (Tri.- Mumbai)].* Concerning re-export para 10 of the Order-in-Original is worth reproducing here:-

> *"I find that a letter dated 04.05.2019 was also written to importer by Customs informing him that the imported goods viz "Access Control Card Reader" cannot be released for home consumption without requisite 'No objection Certificate' from MSAL, WPC and BIS. Hence, it was asked from importer that whether they intend to re-export the impugned goods or not. In this regard, no reply was received from importer till date."*

This being the facts and evidence on the record, I find that it is a fit case where re-export would have been ordered by the Commissioner (Appeals) on the basis of request already received in writing from the appellant by the respondent–department on 10th June, 2019 since, Section 128A(3) empowers the Commissioner (Appeals) to make "such further inquiry" as may be necessary and pass such order. As he thinks just a proper ... . Therefore, when a request was also made by the respondent-department to the appellant to re-export the goods as noted in Order-in-Original and appellant belatedly accepted the same, there was no impediment on the part of the Commissioner (Appeals) in accepting such request and reducing the financial burden, which may be incurred by the respondent-department for destruction of the imported goods. Under the circumstances, I find it is also a fit case to reduce the penalties to the barest minimum since re-export option itself was initiated by the respondent-department and appellant agreed to comply the same. Hence the order.

ORDER

6. The appeal is allowed in part and the order passed by the Commissioner of Customs (Appeals), Mumbai Zone-III. *vide* Order-in-Appeal No. MUM-CUSTM-AMP-APP-613/2019-20 dated 31.10.2019 is hereby modified. Appellant's prayer for re-export is accordingly allowed and penalties are reduce to Rs.1,00,000/- for each count under Section 112(a)(1) & 114AA of the Customs Act, 1962.

(Order pronounced in the open court on 16.12.2020)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad