

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

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 85624 of 2020

(Arising out of Order-in-Appeal No. 767 (Gr. VI)/2020 (JNCH)/Appeal-II dated 26.06.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Crysta LED Pvt. Ltd.
Nariman Bhavan, I-38B, Plot 227,
V.K. Shah Marg, Nariman Point,
Mumbai: 400021

.....Appellant

VERSUS

Commissioner of Customs –
Nhava Sheva – V
JNPT, Custom House,
Nhava Sheva, Raigad

.....Respondent

APPEARANCE:

Shri Sujay Kantawala, Advocate for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative
for the Respondent

CORAM:

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

FINAL ORDER NO. A/85016 / 2021

Date of Hearing: 22.12.2020

Date of Decision: 12.01.2021

Confirmation of order for absolute confiscation of goods covered under Bill of Entry No. 3503904 dated 03.06.2019 valued at Rs.10,27,108/- under Section 111 (d) of the Customs Act, 1962 along with penalty of Rs.1,50,000/- under Section 112 (a) by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II on dated 26.06.2020 for want of BIS certification is assailed by the importer appellant in this appeal.

2. I have heard the submissions from both the sides at length the other day.

3. The primary ground for rejection of the BIS officials test report submitted by the importer appellant before the adjudication authority was that the sample forwarded by the dock officer to the concerned group was different from the photographs annexed to the test report as reveals from para 16 of ORDER-IN-ORIGINAL dated 12.02.2020 passed, subsequent to the remand order of the Commissioner (Appeals), in the first round of litigation. Photographs being secondary piece of evidence which appearances can vary with the angle of photography, it should not form the basis of his decision that the goods are 'LED chains' and not 'LED modules' as opined by the BIS Authorities. In such an event also if discrepancy is noticed Circular No. 30/2017-Cus. dated 18.07.2017 at clause (f) of para 2 that permits redrawal of sample even for a second test could have been resorted to and the second Test report could have been accepted. It reads:

"The competent authority shall consider the results of the retest without prejudice to the results of the first test. In case there is a variation in the results of the first test and the retest, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the retest results, then it may order a second retest provided the consignment is still in the Customs control. However, this option should not be resorted to in every case of variation between the first test and the retest results."

This was not invoked by the adjudicating authority namely, Additional Commissioner of Customs, Gr.-VI, NS-V, JNCH nor by the

Commissioner (Appeals) before passing his subsequent order for which, on the request of the appellant, a direction was given by this Bench to redraw sample from the seized imported goods and get the same tested at the Bureau of Indian Standards. In obedience to such order dated 06.10.2020 test was carried out and BIS authorities have submitted their report reconfirming that the imported goods are LED Modules standard IS 16103 and the Port Duty Officer, Mumbai forwarded the same report received through e-mail to the respondent department with a cover note that for such item compulsory BIS registration mark is not required. These two e-mail printouts are accepted as additional evidence as per Rule 23 clause (3) of the CESTAT Procedure Rule, 1992 to arriving at a conclusion that the order passed by the Commissioner (Appeals) for absolute confiscation of imported goods does not stand the test of law and the same is required to be set aside. Hence the order

Order

4. The appeal is allowed and order passed by Commissioner (Appeals) on dated 26.06.2020 vide Order No. 767 (Gr. VI)/2020 (JNCH)/Appeal-II is hereby set aside. The respondent department is directed to treat the imported goods as LED Modules for the purpose of clearance in favour of the appellant and complete the process within a month of communication of this order.

(Order pronounced in the Court on 12.01.2021)

(Dr. Suvendu Kumar Pati)
Member (Judicial)