

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

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 85148 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-665/18-19 dated 30.10.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.)

Mr. Subodh Menon
Pankajam Banglow,
D Monte Lane, Orlem Malad (W),
Mumbai – 400 064

.....Appellant

VERSUS

Commissioner of Customs, ACC Mumbai
Air Cargo Complex Sahar,
Andheri (E), Mumbai – 400 099

.....Respondent

APPEARANCE:

Shri C.S. Biradar, Advocate for the Appellant
Shri Manoj Das, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87045/2021

Date of Hearing: 03.09.2021

Date of Decision: 03.11.2021

Legality of import without Importer-Exporter Code (IEC), is challenged in this appeal. Facts of the case, in brief, is that appellant, for his personal use, imported "PIANO" having value of Rs.16,05,389/- and filed a Bill of Entry No. 3944625 dated

18.01.2016 for clearance of the said "PIANO" through CHA M/s. H. Mangaldas & Co. with permanent IEC number as prescribed for individuals (persons). Appellant was put to show-cause as the said import was without IEC number to which it responded by requesting waiver of show-cause as the imported goods were not meant for sale in market and imported for personal use. Matter was adjudicated upon that resulted in order of confiscation of imported goods under Section 111(d) of the Customs Act, 1962 with an option for redemption of goods on payment of redemption fine of Rs.2,00,000/- under Section 125 of the Customs Act, 1962 and penalty of Rs.1,00,000/- under Section 112(a) of the Customs Act on the appellant. The said order of adjudication passed on dated 20.01.2016 by Additional Commissioner of Customs, Gr VI, ACC, Mumbai was challenged before the Commissioner of Customs (Appeals), Mumbai Zone-III who upheld the order but taking a lenient view reduced redemption fine to Rs.1,50,000/- and penalty to Rs. 50,000/-. The said order is assailed here by the appellant.

2. I have heard submissions from both the sides, perused the case record, relevant statutory provisions and the decided case laws relied upon by the parties. At the outset it must be placed on record that it is an admitted fact that the goods in question is covered under HSN No. 9804900 which is not freely importable but restricted subject to value limit of Rs.2000/- (C.I.F.) and other conditions as specified in Clouse 3(1) of the Foreign Trade (Exemption from application of Rules in certain cases) order 1993, which appellant had

asserted all along before the adjudicating authority and the Commissioner (Appeals) but the goods were directed to be confiscated for violation of Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 read with Foreign Trade Policy para 2.12 and 2.8 of 2009-2014. Further, there is no denial of the fact that in the said Foreign Trade (Exemption from application of Rules in certain cases) order 1993 under Order No. 3(I) any person importing goods through the post/courier or otherwise for his personal use except certain item including consumer electronic items is covered under such exemption when the CIF value of such goods shall not exceed of Rs.2000/-. Therefore, admittedly this goods is a restricted item but there is no absolute restriction or prohibition available for such import of goods except that in case the CIF value of goods is above Rs.2000/- the same is subjected to customs duty which appellant had paid @ 35% + CVD + SAD, as per submissions of learned Counsel for the appellant. The other conditionality or to say requirement for such import is a compulsory use of IEC number, which as per the DGFT of Handbook procedure, can be permanent IEC numbers i.e. required to be used by non-commercial PSU and other categories of importers and exporters under which IEC No. 0100000053 is mentioned as permanent IEC for use by persons importing or exporting goods for personal use, not connected with trade or manufacturing. Evidence is available on record that the said number is entered in the Bill of Entry filed by the appellant and instead of 10% duty required to be paid for importer of such goods for commercial use, appellant had paid over 35% as duty etc.

Furthermore, it can be said that the case law of *Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta and Others* reported in 1971 AR 293 cited by the learned Authorised Representative Shri Manoj Das, Assistant Commissioner that states about any restriction of import or export is to an extent a prohibition can't be equated with complete prohibition since the said sentence is preceded by a clarificatory line that prohibition may be complete or partial. Therefore, to my considered view, restriction may be in a way prohibition but the same is not absolute prohibition. On the other hand, the case laws cited by learned Counsel for the appellant Shri C.S. Biradar namely *Stephen M. Fernandes Vs. Commissioner of Customs & Central Excise, Goa* reported in 2018 (362) ELT 370 (Tri.-Mumbai) that there is no violation of procedure under Foreign Trade Policy if goods imported for personal use against Bill of Entry without having IEC code can be considered as more appropriate precedent that rules the field despite the fact that learned Authorised Representative distinguished it on the ground that Rule 31(I) of Foreign Trade Regulation is not taken into consideration and the value of enhancement is not discussed in the said judgment, in view of fact that Circular No. 33/2010-Cus. dated 07.09.2010 on Courier Import & Export Regulations has clarified under para 3(iv) that in case of import of goods for personal use not connected with manufacture or agriculture, the permanent IEC number given under Hand Book of Procedure (Valume - I) notified by the DGFT may be used. Therefore, the order of confiscation with option for redemption fine

and penalty for importer/appellant not having IEC number is not sustainable in law and facts. Hence the order.

ORDER

3. The appeal is allowed and the order passed by the learned Commissioner of Customs (Appeals), Mumbai Zone-III vide Order-in-Appeal No. MUM-CUSTOM-AMP-APP-665/18-19 dated 30.10.2018 is hereby set aside.

(Order pronounced in the open court on 03.11.2021)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad