CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86924 OF 2021

[Arising out of Order-in-Appeal No: 849 & 850 (Gr.V)/2021(JNCH)/Appeals dated 8th October 2021 passed by the Commissioner of Customs (Appeals), Mumbai– II.]

Rigel India Pvt Ltd
Plot No. 20-21, Kh 7/14, Hari Nagar Kakrola
New Delhi 110078 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal: Uran, Dist: Raigad, Maharashtra - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86925 OF 2021

[Arising out of Order-in-Appeal No: 849 & 850 (Gr.V)/2021(JNCH)/Appeals dated 8th October 2021 passed by the Commissioner of Customs (Appeals), Mumbai– II.]

Bhagwati Impex
A-305, Kukreja Plaza, Plot No. 46-47,55 Sector 11
CBD Belapur, Navi Mumbai - 400614 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal: Uran, Dist: Raigad, Maharashtra - 400707 ***…Respondent***

APPEARANCE:

Shri H K Hirani, Advocate for the appellant

Shri Manoj Das, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87301-87302/2021

DATE OF HEARING:	08/12/2021
DATE OF DECISION:	08/12/2021

PER: C J MATHEW

The resolution of the dispute in these appeals lies within the narrow compass of the eligibility of goods, otherwise claimed by customs authorities to be 'hazardous' and prohibited for import, to be covered by the temporary exclusion from such debarment till 8th June 2021 that was denied to M/s Rigel India Pvt Ltd in relation to 'old and used Maquet Servoi ventilator machine with standard hoses and accessories' sought to be cleared against bill of entry no. 4403297/21.06.2021. The importer claimed that the impugned goods had been shipped against bill of lading no. 00LU4051790650/17.05.2021 from the United States of America and, therefore, falls squarely within the relaxation afforded by OM dated 10th June 2021 issued from F.no. 23/8/2021-HSMD by the Government of India in the Ministry of Environment, Forest and Climates Change, if at all the goods were to be considered as ‘hazardous’ which, according to them, it is not..

2. The goods, declared as valued at ₹ 9,49,430/- , was confiscated under section 111(d) of Customs Act, 1962 on the finding of being prohibited within the intent of ‘old and used medical equipment’ in ‘Basel no. B1’ of schedule VI’ in accordance with rule 12(6) of Hazardous and Other Wastes (Management, Handling and Trans-Boundary Movement) Rules, 2016 and permitted for redemption, under section 125 of Customs Act, 1962, on payment of fine of ₹ 5,00,000/-, solely for re-export. Penalties of ₹50.000 each were imposed under section 112 of Customs Act, 1962 on M/s Rigel India Pvt Ltd and their customs broker, M/s Bhagwati Impex. Strangely, and inconsistent with condition of redemption, the assessable value of the goods was enhanced to ₹10,43,666/- with consequential short levy of duty to the extent of ₹ 4712/-. These were upheld in appeal by order no. order-in-appeal no. 849 & 850 (Gr.V)/2021 (JNCH)/Appeals dated 8th October 2021of Commissioner of Customs (Appeals), Mumbai– II against which both importer and customs broker are before us.

3. It is contended by Learned Consultant on behalf of the appellant that the impugned goods are not ‘hazardous’ within the meaning of Hazardous and Other Wastes (Management, Handling and Trans-Boundary Movement) Rules, 2016 as these are not medical equipments. It is also contended that, even if these were, the

relaxation granted by the office memorandum referred to *supra*, applicable to goods already imported and lying at different ports/airports as on 8th June 2021, renders illegal the proceedings for confiscation initiated by the original authority. He also argues that the re-determination of value by the original authority to ₹ 10,43,666/- is not on the basis of any provision of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4. We have heard Learned Authorised Representative who submits that the relaxation granted by the Government of India was limited to goods lying uncleared at the ports as on 8th June 2021 and that it was common knowledge that, taking advantage of the emergency, owners of the ventilating machines had been making undue profits.

5. We find that the imports effected by the appellant-importer is a small consignment of five ventilators with a declared value of ₹ 9,49,430/- and duty implication of ₹ 47,472/-. Considering the size of the consignment and the circumstances in which the imports had been effected, it is not necessary for us to go into the issue of whether 'ventilators' are to be considered as 'medical equipment' within the meaning of the expression deployed in Hazardous and Other Wastes (Management, Handling and Trans-Boundary Movement) Rules, 2016. Suffice it to say that all 'old and used medical equipment' had

been temporarily relieved from the prohibition, otherwise existing, owing to the pandemic and urgency of deploying any available equipment and that the relaxation ordered on 10th June 2021 was available to all goods that were yet uncleared as on 8th June 2021. The bill of lading covering the present consignment was issued on 17th May 2021 and well before 8th June 2021 fixed as the deadline for import. It is not the case of the customs authorities that the imports were effected to circumvent the prohibition.

6. The temporary exclusion from prohibition was accorded to goods imported as on 8th June 2021. As

> *'(23) "import", with its grammatical variance and cogent expressions, means bringing into India from place outside India'*

with India defined

> *'(27) …..to include territorial waters of India'*

in section 2 of Customs Act, 1962, the impugned goods, shipped on 17th May 2021 and included in manifest dated 8th June 2021, would conform to the definition of 'imported goods' which, merely because these had not been landed on 8th June 2021, does not take these out of the purview of goods lying uncleared at the port. That would require evidence of the conveyance having been beyond the territorial waters which has not been demonstrated by customs authorities. The relaxation in the office memorandum *supra* applies to the impugned goods.

7. In view of the above circumstances, and the absence of any finding that the declared value did not represent the transaction value, the confiscation and imposition of penalty, as also the re-determination of value, is not valid in law. Accordingly the impugned order is set aside and appeals allowed.

(Operative part of the order pronounced in Open Court on 8th December 2021)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*