

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

REGIONAL BENCH - COURT NO. 01

**Customs Appeal No. 86908 Of 2021**

(Arising out of Order-in-Appeal No. 808(Fr.V)/2021(JNCH)/Appeals dated 28.09.2021 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

**M/s Star Dimension India P Ltd**

303 Mathuria APTS Sir M V Road, Andheri  
East Mumbai-400069.

**.....Appellant**

*VERSUS*

**Commissioner of Customs-  
Nhava Sheva-V**

JNPT, Custom House, Nhava Sheva, Raigad.

**.....Respondent**

**Appearance:**

Shri Raj Kumar Maji, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

**CORAM:**

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

**HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86082/2023**

Date of Hearing: 05.07.2023

Date of Decision: 05.07.2023

**PER : S. K. MOHANTY**

This appeal is directed against the impugned order dated 28.09.2021 passed by the Learned Commissioner of Customs (Appeals), Mumbai-II. Vide the said order, the first appellate authority has held that since the function of the 'winches' is that of the LED driver and also it has integrated control gear, importation of the same requires compulsory registration with BIS as per IS:15885(Part 2/Section 13): 2012. While deciding the appeal filed by the appellant, the Learned Commissioner (Appeals) has upheld the original order of original authority in

Order-in-Original F. No. S/10-Adj.08/2021-22 Gr.V dated 19.05.2021, wherein he has ordered for re-classification of the goods under CTH 94054090, confiscation of goods along with imposition of redemption fine for re-export purpose and penalty on the appellant-importer.

2. This is the second round of litigation before the Tribunal. In the first round, the Tribunal vide Final Order No. A/85356/2021 dated 12.02.2021 has remanded the matter back to the original authority for determination of Indian Standard applicable to subject imported goods as per column no. (3) of table given as the schedule to the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012. Further, the Tribunal also directed the original authority for consideration of the issue of applicability of the order of 2012 to the impugned goods and for determination of the issue regarding confiscation of the subject goods and also for imposition of penalty on the appellant.

3. Shri Rajkumar Maji, Learned Advocate appearing for the appellant submitted that the case of the appellant is governed under Bureau of Indian Standards Act, 1986 read with Bureau of Indian Standards Rules, 1987 and the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 dated 07.09.2012 issued by the Ministry of Communication and Information Technology (Department of Electronics and Information Technology). By referring to the said statute, Learned Advocate submitted that the goods in question imported by the appellant does not require any certification by the Bureau of Indian Standards (BIS). Thus, he submitted that the goods under importation are not prohibited goods and as such the provisions of Section 111(d) of the Customs Act, 1962 and Section 112 cannot have the application for confiscation of goods and for imposition of

penalty. In this context, he has relied upon the decision of this Tribunal in the case of *Commissioner of Customs, Chennai Vs. S.P. Associates and others*, reported in 2021 (9) TMI 770-CESTAT-Chennai and *Principal Commissioner of Customs (Port), Kolkata Vs. M/s Kanha Electronics*, 2021 (11) TMI 960-CESTAT-Kolkata.

4. On the other hand, the Learned AR appearing for revenue reiterated the findings recorded in the impugned order and further submitted that since by deriving the powers under the BIS Act and the Rules framed there under, the conditions were imposed such as registration and compliance of the procedures, etc. have been framed by the Central Government, the same should strictly be adhered to by the importers and since the appellant did not comply with such requirements, the goods were liable for confiscation and the appellant is also exposed to the penal consequences provided under the statute.

5. Heard both sides and examined the case records.

6. The issue involved in this appeal for consideration by the Tribunal is whether the Order dated 07.09.2012 *supra* is applicable for compliance of the requirements contained therein in respect of the impugned goods imported by the appellant herein.

7. The Learned Advocate advanced his arguments in claiming that the Bureau of Indian Standards Act, 1986 and the Rules framed there under in 1987 are not applicable in the case of importation of the goods from outside the country. To strengthen the stand, Learned Advocate has placed reliance on the said Act of 1986 *vis-a-vis* the Act of 2016. By referring to both the enacted Acts, Learned Advocate has stated that the definition contained in Section 2(a) relating to "article" does not

take within its ambit, the importation of goods into India. The said phrase was incorporated on 21.03.2016 in the Act of 2016. He further relied upon the definition of person contained in Section 2(25) of both the Acts and has stated that the phrase "Person" has not been defined in the Act of 1986 and for the first time the said phrase was brought into the statute book only with effect from 21.03.2016. Thus, he submitted that since for the first time an importer was considered to be a person as per the definition under the Act of 2016, the case of the appellant should not fall within this scope of ambit of Indian Standards Acts and Rules for consideration of compliance of the procedures laid down therein in respect of the goods imported by the appellant. We find force in the argument placed by the Learned Advocate appearing for the appellant. Since, the Tribunal in the first round of litigation has remanded the matter for a limited purpose of ascertaining the applicability of the Act and Rules framed by the BIS, which should only confine ourselves for discussing the issue as to whether the registration and other formalities are required to be complied with by the appellant in respect of the disputed goods imported by him. Since, the case of the appellant is governed under the un-amended Act of 1986 read with the Rules of 1987 and the order issued there under on 07.09.2012, the restriction of registration etc. brought into force later by amended Act w.e.f. 12.10.2017 cannot be imposed in respect of the goods imported by the appellant prior to such enactments took place in the statute. We find that in a similar case, the co-ordinate bench in Chennai in the case of *S.P. Associates and others supra* has held that Compulsory Registration Order (CRO), 2012 was issued under BIS Act, 1986 and BIS Rules, 1987 does not provide any regulation for the imported goods, as it has gone beyond the Act and Rules in imposing a restriction on imports. Thus, it was held that the restrictions imposed therein are not applicable to the goods imported from outside the country. In the said order, the

Tribunal has also set aside the order of the lower authority in confiscating the goods and for imposition of penalty on the appellant.

7. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld the confiscation and imposition of penalty by the original authority. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

**(S. K. Mohanty)**  
**Member(Judicial)**

**(M. M. Parthiban)**  
**Member (Technical)**