CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85627 OF 2024

[Arising out of Order-in-Appeal No: 51(Arshiya FTWZ)/2024(JNCH)/Appeals dated 24th January 2024 passed by the Commissioner of Customs (Appeals), Mumbai-II.]

Direct Logistics and Export Co Ltd
Rajeshkumar Laxmikant Jha,
Flat No. 103, D-Wing, Akurli Road,
Lokhandwala Township, Kandivili East,
Mumbai-400101 … ***Appellant***

versus

Commissioner of Customs (General)
New Customs House, Ballard Estate, Mumbai- 400 001 ***…Respondent***

APPEARANCE:

Shri JC Patel, Advocate for the appellant

Shri Krishna Murari Azad, 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: 86848/2024

DATE OF HEARING: 15/05/2024
DATE OF DECISION: 13/11/2024

PER: C J MATHEW

The limited issue in this appeal of M/s Direct Logistics and

Export Co Ltd is the competence of the customs authorities to proceed against goods imported into a Free Trade and Warehousing Zone (FTWZ) for non-compliance with the prescriptions in the Foreign Trade Policy (FTP) and other laws.

2. The appellant herein is an entity based in Hong Kong and had availed warehousing facility offered by M/s Infinity Global Supply Chain Pvt Ltd, a unit issued with Letter of Approval (LoA) by the jurisdictional Development Commissioner to operate in Ashriya Free Trade and Warehousing Zone, established under the Special Economic Zone Act, 2005. The appellant had transferred 'ATX CASES – OTHERS' from their Dubai warehouse in three containers to the premises of M/s Infinity Global Supply Chain Pvt Ltd and, on subsequent investigation by customs official, were found to be old and used 'central processing unit (CPU)' and 'hard disk drives (HDD)' of various brands valued at ₹ 6,15,89,600. Investigations were triggered by three 'request IDs', a process preceding filing of bill of entry prescribed in rule 47 of Special Economic Zone Rules, 2006, for clearance into the 'domestic tariff area (DTA)' from a Free Trade and Warehousing Zone (FTWZ). Proceedings were initiated against the appellant for import of impugned goods without appropriate licence from the Director General of Foreign Trade (DGFT) and, further, for alleged breach of E-Waste (Management) Rules, 2016 with the imputation that the appellant attempted to clear the goods for home

consumption in breach of allied laws and, hence, liable to confiscation under section 111(d), section 111(l) and section 111(m) of Customs Act, 1962 read with Foreign Trade Policy 2015-20 and E-Waste (Management) Rules, 2016. The adjudicating authority re-determined the value of goods under section 14 of Customs Act, 1962, read with rule 9 of Customs Valuation (Determination of Valued of Imported Goods) Rules, 2007, which were confiscated under section 111 of Customs Act, 1962 and allowed to be redeemed on payment of fine of ₹ 1,10,00,000/- subject to re-export under section 125 of Customs Act, 1962. The reduction in redemption fine was the sole modification of the order[1] of the Commissioner of Customs (Appeals), Mumbai–II in the first appellate order.

3. According to Learned Counsel for the appellant, section 111 of Customs Act, 1962 could not have been invoked inasmuch as the goods, though landed in geographical limits of India, these were, in accordance with section 53 of Special Economic Zone Act, 2005, beyond the customs territory. It was further contended that neither section 111(d) nor section 111(l) could be brought to bear on the impugned goods in the proceedings before lower authorities as no bill of entry had been filed for clearance into the domestic tariff area (DTA). It was further submitted that clearance to the, domestic tariff area (DTA), if at all did occur, is governed by the procedure set out in

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[1] [order-in-appeal no. 51(Arshiya FTWZ)/2024(JNCH)/Appeals dated 24th January 2024]

rule 47 of Special Economic Zone Rules, 2006 and liable to duty in accordance with section 30 of Special Economic Zone Act, 2005.

4. Learned Authorised Representative contended that the intent to clear ineligible goods into the domestic tariff area (DTA) was evident from the manner in which they proceeded to the stages prior to filing of bill of entry. It is further alleged that the import of 'old and used goods' without proper licence was barred in terms of Foreign Trade Policy and that the import of such goods is subject to E-Waste (Management) Rules, 2015.

5. The issue in dispute revolves around the competence of the customs authorities to proceed against goods brought into a special economic zone (SEZ) constituted under the Special Economic Zone Act, 2005 even as these yet remained within the notified area. Under section 51 of the Special Economic Zone Act, 2005, the notified area is outside customs territory of India and consequently, without applicability of Customs Act, 1962 to any authorized operations within. It is not the case of lower authorities that import of 'old and used computer parts' is not within the authorized operations of the unit or, for that matter, even barred from being brought into a special economic zone (SEZ).

6. It is on record that no bill of entry had been filed under rule 47 of Special Economic Zone Rules, 2006 and, hence, the intendment of

clearance of goods inappropriately into the domestic tariff area (DTA), even if such intendment sufficed to invoke section 111 of Customs Act, 1962, was unevidenced. As per section 53 of Special Economic Zone Act, 2005, such zones are deemed to be outside the customs territory. The jurisdiction of the Customs Act, 1962 comes into play either in connection with import contrary to requirement for undertaking authorized operations or upon removal from the special economic zone without payment of duty or in contravention of any prohibition on import into India. There is no evidence on record; even preponderance of probability does not offer such.

7. It is also clear from section 51 of Special Economic Zone Act, 2005 that, in the event of conflict, the provisions of Special Economic Zone Act, and 2005 will prevail. In these circumstances, the finding of the lower authorities that the goods are liable to confiscation under section 111 of Customs Act, 1962 is patently erroneous. The imposition of penalty under section 112 of Customs Act, 1962 is, therefore, not correct.

8. In view of the above, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 13/11/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*