

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 87477 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTOM-APSC-APP-1014 &
1015/2018-19 dated 17.01.2019 passed by the Commissioner of
Customs (Appeals), Mumbai III)

ICC Worldwide

Lotus House, Off Andheri Kurla Road
Saki Naka, Andheri (East),
Mumbai

.....Appellant

VERSUS

Commissioner of CGST, Mumbai East

9th Floor, Lotus Infocentre, Near Parel Stn
Parel, Mumbai

.....Respondent

APPEARANCE:

Shri A. Sachwani, Advocate for the appellant
Shri Ranjan Kumar, AC(AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 85865/2025

DATE OF HEARING : 12.03.2025
DATE OF DECISION : 05.06.2025

Per: AJAY SHARMA

This appeal has been preferred by the appellant, M/s. ICC Worldwide, assailing the Order-in-Appeal dated 17.1.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III whereby the learned Commissioner did not find any

merits in the appeal filed by the appellant and rejected the same while disposing of the appeal.

2. The brief facts leading to the filing of Appeal are that in the month of July, 2013 based on specific information, the officers of Air Preventive Unit visited the godown premises of the Appellant, a registered courier firm. Upon examination, of courier parcels arrived by Flight on 3.7.2013 under courier Bill of Entry No. 19112 dated 4.7.2013 having 20 gunny bags containing 285 parcels, as per department 24 parcels having value of Rs.2,65,156/- were cleared without being declared in the said courier B/E. Another 198 declared courier parcels, purchased online or company to company/individual but cleared as gift items without payment of duty, were found to have an ascertained value of Rs.10,58,033/-. On several parcels, instead of individual's name in the consignor's column, company's name such as 'ebay/i2c/ibhejo.com/etc' was mentioned.

3. Consequently a show cause notice dated 14.8.2013 was issued, culminating in the Order-in-Original dated 31.3.2014 by which the Adjudicating Authority ordered the appropriation of the duty with interest paid by the appellant at the time of provisional release and imposed redemption fine of Rs.3,50,000/- to regularise the release alongwith penalty equivalent to duty and interest under the provisions of Customs Act. The said order was upheld by the learned Commissioner (Appeals).

4. Learned counsel for the appellant submits that the appellant is neither the importer nor the owner of the parcels and they merely acted as a clearing agent for the consignees in India. Their duty was to deliver the said parcels to the customers/ consignees in India as mentioned in the invoice/tacking number etc. post customs clearance. According to learned counsel due diligence was exercised by the appellant while submitting information but they have also certain limitations as they cannot ascertain the value of the parcels coming from the foreign country for the consignee/owner in India. The information/valuation etc. has been provided in the bill of entry which they placed before the custom officer who has to verify the details, value etc. after checking the parcels/goods. He further submits that during the investigation they paid duty of Rs. 23,18,635/- with interest @ 18% p.a. and also furnished the Bank Guarantee of Rs. One lakh but no such details have been disclosed in the show cause notice. Moreover, no inventory of parcels or its examination report was done by the officer during their visit nor any such examination/inventory report had been supplied to the appellant nor it had been made annexures to the show cause notice. According to learned counsel, the B/E in question were duly assessed by the customs department and post-payment of duty on enhanced value, as pointed out by customs department, parcels were released and were brought to their godown. According to learned counsel, the appellant had not violated any Rules or Regulations and

therefore not liable to pay any penalty or interest. Per contra learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

5. Upon hearing learned counsel for the appellant and learned Authorised Representative on behalf of Revenue and perusing the case records including the written submissions/synopsis alongwith case laws placed on record, I find that both the authorities below have failed to properly examine several crucial aspects. It would appear from the order of the original authority, as confirmed by the first appellate authority, that the appellant was penalized under Customs Act, 1962 for non-compliance with the Courier Imports and Exports (Clearance) Regulations, 1998 and for not exercising due diligence. However, no reason has been assigned by both the authorities below as to the applicability of Rule 11 of Foreign Trade (Regulation) Rules, 1993 which is intended for the 'owner of the imported goods', though the appellant, throughout, has maintained that they are not the owner of the parcels. Importantly, during the adjudication proceedings, they produced the copies of the receipts of the parcels in question to the respective consignees/owners as documentary evidence but the same was neither looked into nor considered by either of the authorities below. The said document, in my view, has to be looked into by the adjudicating authority before arriving at any conclusion. There is also a conspicuous absence of finding as to which parcel allegedly

contained prohibited goods or how the goods have been held as prohibited as mandated by Section 111(d) of Customs Act, 1962. In the absence of such a finding, merely referring the provisions of regulations is not an adequate substitute. A breach of the regulations can be visited with consequences contained therein. Mere handling in the course of professional engagement does not necessarily imply prior knowledge about confiscation or reason to believe that any document produced by them is false in any manner. That requires an independent and specific finding which is absent in the orders of the authorities below. If the parcels have been sent by a company and not by any individual as a consignor of goods the prohibition, if any, in the Regulations of 1998 has also not been elaborated. Furthermore, the valuation method adopted by the lower authorities has also not been explained.

6. The adjudication has not been done properly and has been upheld by the first appellate authority in a mechanical manner without proper examination. Therefore without commenting on the merits, I am of the opinion that the matter deserves to be remanded to the adjudicating authority for a *de novo* adjudication after examining all the relevant evidences/documents. Needless to mention that the adjudicating authority shall give a proper opportunity of hearing to the appellant. The appellant is directed to produce all the relevant evidences/documents as and when the date of hearing is fixed by the said authority. Since this is an old issue, I hope that the

adjudicating authority shall adjudicate it as early as possible preferably within a period of six months from the date of receipt of this order.

7. The impugned order is accordingly set aside and the appeal is allowed by way of remand.

(Pronounced in open Court on 05.06.2025)

(Ajay Sharma)
Member (Judicial)

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