CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89326 OF 2014

[Arising out of Order-in-Appeal No: 3002(Gr.V)/2014(JNCH)/IMP-2860 dated 21ST July 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Jindal Photo Limited
11/5-B Basement – 01, Pusa Road, New Delhi - 110005 … ***Appellant***

versus

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

APPEARANCE:

Shri Jhamman Singh, Advocate for the appellant

Shri Krishna 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: 85860/2025

DATE OF HEARING:	04/12/2024
DATE OF DECISION:	03/06/2025

PER: C J MATHEW

As the facts bear out, and as the submissions show, the controversy in this appeal of M/s Jindal Photo Limited, against order[1] of Commissioner of Customs (Appeals), Mumbai – II affirming the findings of the original authority, in relation to three imports of 'photo printers' - one current and two past - is fine of ₹ 10,00,000 under section 125 of Customs Act, 1962 for redemption of goods confiscated under section 111 of Customs Act, 1962 and penalty of ₹ 3,00,000 under section 112 of Customs Act, 1962.

2. M/s Jindal Photo Limited had filed bill of entry no. 2749408/30.07.2013 for import of 210 units valued at ₹ 62,42,846.71 on which duties of customs, chargeable under section 12 of Customs Act, 1962 and additional duty of ₹ 7,83,976 chargeable under section 3(1) of Customs Tariff Act, 1975, having been discharged on self-assessment was found to have been incorrectly computed as 'pre-packaged goods' were liable to additional duty in terms of *proviso* to section 3(2) of Customs Tariff Act, 1975. It is noted that the appellant herein sought permission to affix labels indicative of 'maximum retail price (MRP)' of ₹ 75,000 per unit and thereupon discharged differential duty liability on ₹ 7,73,384. Likewise, on the earlier imports, effected against bills of entry no. 2169974/18.05.2013 and no. 2485633/20.06.2013, differential duty of ₹ 20,38,304, along with interest of ₹ 45,976, was made good on 13th August 2013. From the records, it is seen that the importer had waived right to be issued with

[1] [order-in-appeal no. 3002(Gr.V)/2014(JNCH)/IMP-2860 dated 21ST July 2014]

show cause notice *vide* letter dated 2nd September 2013 and, during personal hearing on 4th September 2013, pleaded for a lenient view to be taken. The order of the Additional Commissioner of Customs confirmed duty liability and interest, as discharged, in addition to confiscation of imported goods under section 111(m) and 111(o) of Customs Act, 1962 with consequential fine of ₹ 10,00,000 under section 125 of Customs Act, 1962 as condition of redemption and imposition of penalty under section 112 of Customs Act, 1962. Before the first appellate authority, importer sought intervention on the ground of failure to consider of their submissions and that the principles espoused by the Hon'ble Supreme Court in *Northern Plastics Ltd v. Collector of Central Excise [1998 (101) ELT 549 (SC)]* had been overlooked. It was also contended that imposition of penalty as well as redemption fine in circumstances such as theirs was not in conformity with the decisions of the Hon'ble Supreme Court in *Akbar Badruddin Jiwani v. Collector of Customs [1990 (47) ELT 161 (SC)]*, in *Pratibha Processors v. Union of India [1996 (88) ELT 12 (SC)]* and of the decision of the Hon'ble High Court of Calcutta in *Extrusion v. Collector of Customs, Calcutta [1994 (70) ELT 52 (Cal.)]* and of Hon'ble High Court of Punjab and Haryana in *Commissioner of Customs, Amritsar v. Kamal Kapoor [2007 (216) ELT 21 (P&H)]* but the first appellate authority dismissed the appeal on the finding that *mala fide* intentions were evident and that *mens rea* was of no consequence insofar as detriment under fiscal laws are concerned.

3. The issue before us is limited to the confiscation of the consignment under import and imposition of penalty thereupon. Learned Counsel for the appellant submitted that the goods had been seized owing to which non-issuance of the show cause notice under section 124 of Customs Act, 1962 for confiscation was inappropriate. It was further submitted that the issue involved was not of such substance as to conclude that the goods were in breach of Customs Act, 1962 in the manner set out in section 111 of Customs Act, 1962. According to Learned Authorized Representative, the facts sufficed for the outcome of confiscation as the importer had attempted to clear goods without payment of appropriate duty and that both the lower authorities had noted that *mens rea* was not essential to confiscation and imposition of penalty.

4. The differential duty in the dispute arose solely on the ground that assessment was undertaken on the value declared for the purpose of charging duties under section 12 of Customs Act, 1962 that, in most cases, are applied also for discharge of additional duty of customs; there is no allegation of misdeclaration of such value. It was the contention of customs authorities, as also conceded by the importer, that additional duties of customs should have been discharged on ‘retail sale price (RSP)’ which had not been affixed on the imported goods. That

deficiency was made good and the importer was permitted to rectify he *lacuna*. Moreover, the importer had not only discharged differential duty liability on the consignment under assessment but had, on 13th August 2013, made good the differential duty, along with interest, on earlier consignments. The reference to non-payment of those was not only misrepresentation but also irrelevant in considering the liability of goods under import to confiscation under section 111(m) of Customs Act, 1962.

5. The clearances effected against the earlier bill of entry are not connected with the present proceedings as is abundantly clear in the order of the original authority confiscating goods imported *vide* bill of entry no. 2749408/30.07.2013. The appellant had discharged duty liability on the current, as well as past imports, on 13th August 2013 despite which the goods under import were seized on 20th August 2013. It would, thus, appear that the intention to confiscate the goods had not been made known to the importer at any stage and the waiver of show cause notice as preliminary to adjudication appears to have been grounded on the lack of such intent even as late as September 2013. Indeed, the original authority had failed to verbalise the proposals sought to be invoked against the importer and, especially in the light of

> *'Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

> *Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.'*

in section 124 of Customs Act, 1962, in circumstances that warranted making known intent to proceed with detriments.

6. In failing to do so, not only was the appellant not placed on notice of intent to confiscate the goods but there is also demonstrated non-application of mind in invoking section 111(o) of Customs Act, 1962. There is not a whiff of allegation that any post-importation conditions were breached and we also notice that

> *'(12). The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.*

of section 3 of Customs Tariff Act, 1975 does not extend to declarations made nor does responsibility devolve upon importers for distinguishment of declaration for the purpose of basic customs duty and, in special cases, for additional duty of customs. In such circumstances, and in the absence of any finding that the value to be declared for the purpose of section 3(1) of Customs Tariff Act, 1975 was different, the scope for invocation of section 111(m) of Customs

Act, 1962 does not exist. Moreover, it is seen that the appellant had made good the differential duty liability immediately upon it being pointed out that the goods were to be subjected to duties on the basis of 'retail sale price (RSP)' and not on the basis of transaction value. It may also be noted that, even for the purposes of assessment of basic customs duty, the scope for confiscation arises from a specific provision in rule 11 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, by no stretch, does that extend to declaration or non-declaration of the price at which the goods were intended to be sold.

7. For the above reasons, especially in the light of immediate discharge of duty liability along with interest on past imports, there is no reason to sustain confiscation under section 111 of Customs Act, 1962 or for retention of penalty under section 112 of Customs Act, 1962. The impugned order is modified to that extent and appeal disposed off.

(Order pronounced in the open court on 03/06/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*