CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86449 of 2022

(Arising out of Order-in-Appeal No. 139 (Gr.VA)/2022(JNCH)/Appeals dated 22.03.2022 passed by Commissioner of Customs (Appeals), JNCH Mumbai-II)

Commissioner of Customs-Nhava Sheva-V .....**Appellant**
JNPT, Customs House, Nhava Sheva, Raigad, Maharashtra-400 707.

VERSUS

M/s Waaree Energies Ltd. .....**Respondent**
15, Plot No.334, Road No.3, GIDC Sachin, Surat, Gujarat-394 230.

Appearance:

Shri Ram Kumar, Authorized Representative for the Appellant
Shri Lizum Wangdi, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/86330/2022

Date of Hearing: 22.07.2022
Date of Decision: 21.11.2022

Heard both sides and examined the case records.

2. Brief facts of the case, leading to this appeal, are summarized herein below:

2.1 The respondents herein had imported 'Solar Modules-540W' from China and filed the Bill of Entry (B/E) No. 5263788 dated 15.11.2021 before the Jurisdictional customs authorities for clearance of the said imported consignment. During the course of examination of the goods by the customs department, it was found that the BIS mark and registration number have not been mentioned therein. Thus, the department had concluded that the respondents had not complied with the mandatory BIS Standard IS 14286:2010 norms for the imported goods and thus the same are BIS non-complaint. On the basis of such observation, proceedings were initiated by the department against the respondents, which culminated into the adjudication order dated 20.12.2021, wherein the learned Additional Commissioner of Customs had confiscated the imported goods under Section 111(d) of the Customs Act, 1962, providing the option to the respondents for redeeming the same for the purpose of re-export only on payment of redemption fine of Rs.5,00,000/-; confirmed the charges payable by the respondent in respect of the imported goods as per Section 125(2) of the Act of 1962; and also imposed penalty of Rs.5,00,000/- on the respondents under Section 112(a) (i) of the Act of 1962.

2.2 On appeal against the said adjudication order dated 20.12.2021, the learned Commissioner of Customs (Appeals-I), Mumbai-II vide the impugned order dated 22.03.2022 had partially modified the said adjudication order, to the extent of allowing redemption of the imported goods for home consumption on payment of redemption fine, subject to fulfilling the conditions of Standard Mark; requisite labels and marking details, a specified by the Bureau of Indian Standards from time to time, including the conditions as set out in Annexure-I of the License dated 17.11.2021. In support of such order, the learned

Commissioner (Appeals) had observed that testing of the goods as per the BIS Standard was done prior to the date of issuance of the invoice, Bill of Lading and filing of the Bill of Entry and as such, the BIS License dated 17.11.2021 can be considered as proper and valid license for importation of the subject goods; that the goods having been imported without Standard Mark and requisite labels, the provisions of the BIS Act and Solar Photovoltaics, Systems, Devises and Component Goods (Requirement for Compulsory Registration) Order, 2017, have been violated and thus, the goods should be considered as 'prohibited goods'.

2.3. Feeling aggrieved with the impugned order dated 22.03.2022 passed by the learned Commissioner of Customs (Appeals), to the extent it has allowed redemption of the imported goods for home consumption subject to fulfilment of the licensing condition, Revenue has preferred this appeal before the Tribunal.

2.4 Revenue has assailed the impugned order *inter alia*, on the grounds that the mandatory requirement of registration and marking of Standard Marks in the imported goods have not been complied with by the respondents and thus, the decisions of the Tribunal in the case of *Binatone Telecommunication Pvt. Ltd. Vs. Commissioner of Customs (Import), New Delhi* – 2020 (374) E.L.T. 283 (Tri.-Del.) and *Geep Batteries (India) Pvt. Ltd. Vs. Commissioner of Customs (Prev.), West Bengal* – 2009 (238) E.L.T. 536 (Tri.-Kolkata), relied upon by the learned Commissioner (Appeals) in the impugned order cannot be applied to the facts of the present case; that importation of the subject goods without standard marking is in contravention/ violation of the Handbook of Procedure read with the Foreign Trade Policy issued by DGFT.

3. I find that in the case in hand, the respondents had initiated the process of obtaining the BIS License well in advance before issuance of invoice by the overseas supplier and filing of the Bill of Entry by them. Since, the testing of the goods as per the BIS Standard was done and license dated 17.11.2021 was issued prior to the date of shipment of the goods, in my considered view such license issued by the competent authority is valid and the goods imported on the basis of such license is proper and justified. Therefore, I do not find any infirmity in the impugned order, wherein it has been held that the goods were imported by the respondents in compliance with statutory provisions. Since, the goods were imported without Standard Mark and requisite labels, I am of the view that the impugned order is correct in saying that the respondents had contravened the provisions of the BIS Act and Order of 2017. Further, I also find that the learned Commissioner (Appeals) had correctly relied upon the decision *(supra)*, in order to allow redemption of the imported goods for home consumption on payment of the redemption fine.

4. In view of above discussions, I concur with the findings recorded in the impugned order that the subject goods should be allowed for home consumption on payment of redemption fine, subject to

fulfilment of the conditions of Standard Mark, requisite labels and marking details as specified in the BIS statute, including the conditions set out in the Annexure to the License dated 17.11.2021. Therefore, I find that there is no merit in the appeal filed by Revenue and thus, the same is dismissed.

5. Appeal filed by Revenue is accordingly disposed of.

(Order pronounced in the open court 21.11.2022)

(S. K. Mohanty)
Member (Judicial)

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