CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86537 of 2014

[Arising out of Order-in-Appeal No. 507(GR.VA&B)/2014(JNCH)/IMP-476 dated 21.02.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.]

Indo Count Industries Limited **.... Appellants**
Plot No.T-3, Kagal-Hatkanangale Five Star MIDC
MIDC Industrial Area, Talangade Post
Kolhapur District, Maharashtra – 416 216.

Versus

Commissioner of Customs (Import) **.... Respondent**
Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva, Taluk Uran, District Raigad
Maharashtra – 400 707.

APPEARANCE:

Shri Akhilesh Kangasia along with Shri T. Vishwanathan, Ms. Madhura, Advocates for the Appellants

Shri Ranjan 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/87642/2024

Date of Hearing: 20.03.2024
Date of Decision: 20.03.2024

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Indo Count Industries Limited, Kolhapur District (herein after, referred to as 'the appellants', for short), assailing the Order-in-Appeal 507(GR.VA&B)/2014(JNCH)/IMP-476 dated 21.02.2014 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.

2.1 Briefly stated, the facts of the case are that the appellants herein, *inter alia* imported from M/s Asano Holdings Limited, the group company of Guangdong Asano Technology Co., China, 1300 numbers of "panels of LED TV 32 inches" and "32 inch LED TV components in SKD", by filing two Bills of Entry (B/E) No.9598316 and 9601113 both dated 18.03.2013 claiming customs duty exemption benefit under Sl. No.432 of Notification No. 12/2012-Customs dated 12.03.2012. The imported goods covered under both B/Es were examined by the jurisdictional Customs officers. During such examination, it was found that the imported goods were covered under three invoices viz., Invoice No. AI1225 dated 07.03.2013 for "32 inch LED TV Panel" of 1300 sets; Invoice No. AI1226-1 dated 07.03.2013 for "32 inch LED TV SKD Kits" of 1300 sets; and Invoice No. AI1226-2 dated 07.03.2013 for "32 inch LED SKD Kits – Main Board-53 sets, Power Board-15 sets, Remote control-16 sets and speaker-40 sets" for which there was only a single proforma invoice No. LC980RDR018 FSTVFZ dated 24.01.2013. Further, a single Letter of Credit was issued covering all the aforesaid invoices; and the packing lists providing detailed description of the goods along with specification and quantity of goods, along with marking on the carton boxes, indicating that these are complete set of parts of 1300 LED TVs of model No. RELEG3203-MH. On the above basis, and as per Rule 2(a) to the General Interpretative Rules (GIR) for classification under the Customs Tariff, which provided for classification of goods imported in CKD/SKD form, to be classifiable as complete goods i.e., complete TV sets, the Department interpreted that the importer had tried to evade payment of appropriate customs duty by availing ineligible notification benefit, and determined that the importer had short paid duty of Rs.12,20,122/-.

2.2 The appellants-importer by their letter dated 25.03.2013 claimed that the imported goods were only parts, and some more parts are required for manufacturing of TVs; but could not explain about the specific items which are required to be added to such imported goods, as well as the details of manufacturing activity that are undertaken to substantiate their claim of manufacturing of TVs from imported parts. Further, by their letter dated 10.04.2013 they stated that they do not require any show cause notice for adjudication of the case but desired a personal hearing. After giving a personal hearing to the appellants-importer, the original authority vide Order-in-Original dated 13.06.2013, revised assessment of imported goods as 'complete TV sets in CKD/SKD form', but not packed together as a prepacked commodity, by denying customs duty exemption. For the offence of mis-declaration of imported goods under Section 111(m) of the Customs Act, 1962, the Original authority had confiscated the goods and offered the option of release of such confiscated goods on payment of redemption fine of Rs.10,00,000/- under Section 125 ibid and also imposed penalty of Rs.5,00,000/- on the importer-appellants under Section 112(a) ibid. Being aggrieved with the said order of the original authority, the appellants filed an appeal before the Commissioner (Appeals), who vide the impugned order had rejected the appeal filed by the appellants by upholding the order of the original authority. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3. Heard both sides and perused the records of the case carefully.

4. In the impugned order, the learned Commissioner (Appeals) had found that the imported goods are not conforming to the nature of goods for which customs duty exemption was available, since the goods are imported as SKD kits. In coming conclusion for rejection of the appeal filed by the importer, he had given his findings as follows:

> *"8. I find that in compliance to the subject OIO dated 24/05/2013, the Bs/E were reassessed and the appellant paid the due Customs duty of Rs. 12,17,366/- along with interest of Rs. 12,007/- and RF of Rs. 10,000,00/- & penalty of Rs. 5,000,00/- vide TR-6 challan no. 2006014543.*
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> *9. I have gone through the impugned Order-in-Original and submissions of the appellant. I find that the same proforma invoice no. LC980RDR018FSTVZ dated 24/01/2013 is mentioned in both the import invoices no. AI 1226 for 1300 sets of 32 inch LED SKD Kits and no. AI 1225 for 1300 sets of 32 inch LED TV panel. It shows that the consignment was artificially split up in two parts for availing exemption benefits.*
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> *11. I find that the appellant is importing completely populated PCB boards / AV boards and not the components like diodes, triodes, resistors, transistors, ICs etc and using them in their factory. They are importing fully populated AV boards / main boards and assemble / connect them in other modules and fit these into the LED panel cabinet and conduct incidental inspection and testing. I find that the components imported by the appellant are not subjected to any further working operations for completion or assembling of TV sets. I find that the appellant uses only a screw driver technology.*
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> *12. I find that the adjudicating authority has rightly concluded that the goods should be treated as complete TV sets and be classified accordingly. Therefore, I do not feel any need to interfere in the impugned Order-in-Original."*

5. It is an fact on record that the manufacturing process flowchart submitted by the appellants indicates that the activities undertaken by them, as panel inspection, fixing of various components and parts, tuning, ageing, testing, loading software so as to make it a complete television set. It is nowhere indicated in the records that the manufacturing process involved working on printed circuit boards (PCBs), mounting of components PCBs, wave soldering etc. In this regard, we find that the issue had been examined by the Central Board of Excise & Customs (CBEC) earlier vide Circular No. 44/97-Customs dated 30.09.1997 on the assessment of components of Colour Television Sets, in terms of Rule 2(a) of GIR and it was clarified that the process of populating the PCB, a critical component of the TV, amounts to working

on the bare (unmounted) PCB and manufacture. However, the process of assembling the parts and components, either by means of simple fixing devices (by screws, nuts, bolts, etc.) or by riveting or by welding, provided only assembly operations are involved, do not amount to manufacture irrespective of the complexity involved in such assembling process. In the said circular, it was desired that the customs field formations should take into account these aspects for finalising the classification issue of imports of parts/ components of TV.

6. Further, exemption entry in Sl. No. 432 of Notification No.12/ 2012-Customs dated 12.03.2012 provides the description of goods as follows:

"S. No.	*Chapter or Heading or Sub-heading or tariff item*	*Description of goods*
(1)	(2)	(3)
432.	*8529*	*LCD (Liquid crystal display) and LED (Light Emitting Diode) TV Panels of 20 inches and above"*

From the above, it transpires that the exemption entry covered only LED TV Panels of 20 inches and above, and not the complete TV sets. In order to ascertain the true nature of the imported goods, the claim made by the appellants-importer for exemption in the B/E filed by them was put to strict scrutiny by the jurisdictional customs authorities by way of detailed examination of the imported goods, and the Department had come to the conclusion that the imported goods were complete set of parts and components for assembling the TV, brought in the form of CKD/SKD, by splitting the entire goods as "panels of LED TV 32 inches" and "32 inch LED TV components in SKD". Therefore, in our considered opinion, there exists no grounds to interfere with the impugned order of the learned Commissioner (Appeals) in upholding the assessment of the imported goods and in denying the exemption claimed by the appellants.

7. As regards the imposition of confiscation of imported goods and imposition of redemption fine on confiscated goods, we find that the provisions of Section 111(m) ibid, state any goods which do not correspond in respect of value or in any other particular declared in the Bill of Entry, is liable for confiscation. It is on record that the description of the goods was found to be as per the details given in the invoice; and packing list containing the detailed description of various parts and also submitted before the Department, at the time of examination of imported goods. The only deviation in the declaration made by the appellants as recorded in the impugned order is that the imported consignment was artificially split into two parts to avail customs duty exemption. Further,

as there were doubts are being expressed in the matter of classification of components of Colour Television Sets in the context of provisions contained in Rule 2 (a) of the General Rule for the interpretation of the First Schedule to the Customs Tariff Act, 1975, CBEC had issued an clarification on the manner of assessment of goods vide Circular No. 44/97-Customs dated 30.09.1997.

8. It is also recorded in the impugned order that the importer-appellants had complied with the order of re-assessment and the paid the differential Customs duty of Rs. 12,17,366/- along with interest, as well as paid the redemption fine and penalty imposed on them. Further, the decision taken by the co-ordinate bench of the Tribunal in the case of *Commissioner of Customs, Goa Vs. D-Link India Private Limited* – 2014-TIOL-669-CESTAT-MUM, involved entirely different set of facts, where actual manufacturing process were carried out from the imported parts and components, and therefore the case was decided in favour of the appellant therein and in deciding against the appellant therein that there was no suppression with intent evade duty, and holding the same unsustainable.

9. Considering the factual matrix of the case and that the dispute involved certain doubts expressed in the television industry about the eligibility to exemption on account of Rule 2(a) of GIR, we also find reason that imposition of harsh fine and penalty is not justifiable in the present case. Therefore, we consider it appropriate to reduce the redemption fine imposed under Section 125 of the Customs Act, 1962 to Rs.2,50,000/- and also to reduce the penalty imposed under Section 112(a) ibid on the appellants importer to Rs.1,00,000/-.

10. In the result, the impugned order is partially modified in reducing the redemption fine and penalty as above, and the appeal filed by the appellants is partly allowed to the above extent.

(Operative portion of the Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha