

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40389 of 2022

(Arising out of Order-in-in Appeal Seaport C.Cus. II No. 182/2022 dated 31.03.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

The Commissioner of Customs

: Appellant

Chennai-II Commissionerate

No. 60, Rajaji Salai, Custom House, Chennai – 600 001

VERSUS

M/s. SRK Overseas

: Respondent

4372/21, 1st Floor, Dayanand Marg,
Darya Ganj, Delhi – 110 002

APPEARANCE:

Smt. Sridevi Taritla, Authorized Representative for the Appellant

Shri S. Sankaranarayanan, Advocate for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40339 / 2022

DATE OF HEARING: 22.09.2022

DATE OF DECISION: **03.10.2022**

Order :

This appeal is filed by the Revenue against the Order-in-Appeal Seaport C.Cus.II No. 182/2022 dated 31.03.2022 passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the First Appellate Authority has allowed the appeal filed by the respondent-assessee by also ordering provisional release of the impugned goods.

2. Heard Smt. Sridevi Taritla, Learned Additional Commissioner for the appellant-Revenue and Shri S. Sankaranarayanan, Learned Advocate for the respondent.

3. Brief facts, as could be gathered from the impugned Order-in-Appeal and which are undisputed, *inter alia*, are that the respondent viz. M/s. Genuine Copier Systems filed Bill-of-Entry No. 7276435 dated 19.07.2018 for clearance of used Digital Multifunctional Printers / Devices (MFDs) of various makes and models with standard accessories and attachments and classifying the goods under CTH 84433100; that the Revenue having noticed that the goods were second hand in nature, adhering to the RMS/CCR instructions mentioned in the EDI system and as per the prevailing practice, the cargo covered under the above said Bill-of-Entry was ordered for first check examination, to verify with respect to Chartered Engineer Report as to whether the residual life of the imported goods was 80%, to verify the nature of accessories, requirement for compliance of conditions imposed under the Hazardous and Other Wastes Management Rules, 2016, E-Waste Management Rules, 2016, authorization of DGFT under FTP, 2015-20 and applicability of BIS as required under Compulsory Registration Order, 2012, apart from compliance to the RMS instructions.

4. The Adjudicating Authority in the Order-in-Original No. 78920/2020 dated 06.01.2021 has *inter alia* found that the respondent:-

- Had not complied with the provisions of Domestic laws under the Bureau of Indian Standards (BIS) Act, 2016 read with the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order (CRO), 2012;
- Failed to obtain DGFT authorization as required for the import of second hand goods, as required under paragraph 2.31 of the FTP, 2015-20; and

- Had not produced Chartered Engineer Certificate in complete and properly, as advised by the Department, and thereby failed to comply with the conditions imposed under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016,

and consequently ordered as under:-

- (i) Declared value of Rs.36,44,030/- (CIF) (Rupees Thirty Six Lakhs Forty Four Thousand and Thirty only) in respect of the goods imported by M/s. S.P. Associates, Delhi vide Bill-of-Entry No. 7276435 dated 19.07.2018 was rejected in terms of the provisions contained in Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and re-determined the value as Rs.43,49,223/- (CIF) (Rupees Forty Three Lakhs Forty Nine Thousand Two Hundred and Twenty Three only) under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (ii) Confiscation of 272 units of goods declared as 'Old & Used Digital Multifunction Print and Copying Machines with Standard Accessories' covered under Bill-of-Entry No. 7276435 dated 19.07.2018 under Sections 111(d) and 111(m) of the Customs Act, 1962 for contravention of the provisions of imports, as discussed.
- (iii) Imposed redemption fine of Rs.6,52,000/- (Rupees Six Lakhs and Fifty Two Thousand only) on the importer in terms of Section 125 of the Customs Act, 1962 and permitted the importer to re-export the subject goods imported Bill-of-Entry No. 7276435 dated 19.07.2018 within 90 days from the date of receipt of the order.

(iv) Imposed a penalty of Rs.4,35,000/- (Rupees Four Lakhs Thirty Five Thousand only) under Section 112(a)(i) of the Customs Act, 1962 on the importer for having rendered the goods liable for confiscation under Section 111(d) and 111(m) *ibid*.

(v) Imposed a penalty of Rs.50,000/- (Rupees Fifty Thousand only) under Section 117 of the Customs Act, 1962 on the importer for the non-compliance of the procedures set out under Section 49 of the Customs Act, 1962.

5. Aggrieved by the above order, the appellant preferred an appeal before the First Appellate Authority and the First Appellate Authority having heard the appellant as well as the representative (Mr. R. Syam Prasad, Appraiser) for the Revenue, allowed the appeal thereby ordering provisional release of the impugned goods, against which the present appeal has been preferred by the Revenue before this forum.

6. In the impugned order, the First Appellate Authority has only followed the order of this Bench of the CESTAT in the case of *Commissioner of Customs, Chennai v. M/s. S.P. Associates [Customs Appeal No. 40098 of 2021]* & *ors.* in *Final Order Nos. 41931-41971 of 2021 dated 27.08.2021* and also the decision of the Hon'ble Apex Court in the case of *M/s. Delhi Photocopiers v. The Commissioner of Customs, Chennai-II* in *Special Leave Petition No. 7565 of 2021 & ors. dated 11.08.2021* to order for provisional release of the goods.

7. I have considered the rival contentions and have gone through the decision of the Hon'ble Apex Court in the case of *M/s. Delhi Photocopiers (supra)* as well as the order of this Bench of the Tribunal in the case of *M/s. S.P. Associates (supra)*.

8. The ratio of the above case has been followed by me in the case of *The Commissioner of Customs, Chennai-II v. M/s. Kutty Impex in Customs Appeal No. 40390 of 2022 [CESTAT, Chennai]*, wherein it was held that the First Appellate Authority was correct in allowing the appeal thereby ordering provisional release of the goods in question, and since there is no change in the facts, I am of the view that the same is required to be followed in the case on hand as well. Following the above *ratio decidendi*, therefore, the appeal of the Revenue is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

(Order pronounced in the open court on **03.10.2022**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd