IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, BANGALORE

Appeal No. C/21550/2018-SM

Arising out of No. 1/2018-19, Dated: 10.05.2018
Passed by Commissioner of Central Tax, COCHIN

Date of Hearing: 21.10.2019
Date of Decision: 25.10.2019

M/s M PHONE ELECTRONICS AND TECHNOLOGIES PVT LTD
REPRESENTED BY MANAGING DIRECTOR,ITHAMA AUGUSTINE
RESIDING AT MOONGANILJAL HOUSE,THRIKKAIPETTA P.O WAYANAD
WAYANAD KERALA - 682009

Vs

COMMISSIONER OF CUSTOMS
COCHIN-CUS CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN KERALA - 682009

Appellant Rep by: Mr Zakir Hussain, Adv.
Respondent Rep by: Mr Rama Holla, Superintendent (AR)

CORAM: S S Garg, Member (J)

Cus - The assessee imported two models of feature phones, 'm280' and 'm380', batteries, chargers (power adapters) and other mobile accessories with a declared assessable value of Rs.36,14,969/- - The goods have been confiscated by Customs under Section 111(d) on the ground that the goods which are prohibited are attempted to be imported - Perusal of Section 111(d) of Customs Act, 1962 shows that the said Section is applicable only if the goods which are imported or attempted to be imported or are brought within Indian Customs Water contrary to any prohibition imposed by this Act or any other law for the time being enforce whereas the Customs in the present case has failed to bring anything on record to show that the mobile phones are prohibited for import - Further, the main ground for confiscating the goods are that the address of the manufacturer in BIS Certificate and in the Bill of Entry are not matched - It appears that both the authorities have ignored to see the Letter of Delegation issued by Shenzhen Huanuo Internet Technology Co., Ltd in favour of Honkong Internet Network Technology Co. Limited and in the said letter, it is specifically mentioned that both the companies are same - This has been done because payment was made in Hong Kong as the financial transaction in dollar could only be carried out there - The manufacturing unit in Shenzhen, China has authorized all its customers to effect all banking transactions pertaining to company to Hong Kong as part of usual business practice followed by all traders in India while importing articles from China - The finding of both the authorities that the names of both companies are different is not tenable in law and both the authorities have not properly examined all the documents produced before them - Further, assessee has produced the documents pertaining to earlier import by them of mobile phones and no such objection was raised earlier by the Customs authorities - The respondent has failed to appreciate the business practice

followed by all Indian traders while importing articles from China and has unnecessarily detained the goods of assessee company without any reason - The imposition of penalty on assessee to the tune of Rs.10,000/- is also unwarranted in law, therefore, same is set aside, directing the Customs authorities to release the goods to the assessee immediately on receipt of the copy of this order: CESTAT

Appeal allowed

FINAL ORDER NO. 20887/2019

Per: S S Garg:

The present appeal is directed against the impugned order dated 10.05.2018 passed by the Commissioner of Customs (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellants, M/s Mphone Electronics and Technologies (P) Ltd. imported two models of feature phones, 'm280' and 'm380', batteries, chargers (power adapters) and other mobile accessories vide Bill of entry No. 3715846 dated 23.10.2017 with a declared assessable value of Rs.36,14,969/-. The Original Authority vide *Order No.136/2017 dated 07.12.2017* confiscated the goods under Section 111 (d) of the Customs Act, 1962 on the grounds that the mobile phones imported have been manufactured by a manufacturer other than the one authorized by BIS; and the BIS registration will not apply to the mobile phones imported and the import of mobile phones is without valid BIS registration for their batteries. The Original Authority imposed a penalty of Rs.10,000/- on the appellant under Section 112(a) of the Customs Act, 1962. The Original Authority permitted the appellant to redeem the goods for re-export back to the supplier on payment of redemption fine of Rs.1,00,000/- under Section 125 of the Customs Act, 1962, in lieu of the confiscation. Aggrieved by the said order, the appellant filed appeal before the Commissioner (A) who rejected the same. Hence, the present appeal.

3. Heard both the parties and perused the records of the case.

4. Learned Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly conducting inquiry of the goods with regard to the import in the light of valid documents produced by the appellant company. He further submitted that the goods have been confiscated under Section 111(d) of the Customs Act, 1962. He further submitted that Section 111(d) of the Customs Act is not applicable in the present case; Section 111(d) is applicable only if the goods which are imported or attempted to be imported or are brought with in the Indian Customs water, contrary to any prohibition imposed by or under this Act or any other law for the time being enforce. Learned Counsel further submitted that in the present case mobile phones have been imported strictly in accordance with law and the appellant has not violated any law. Further, there was no prohibition imposed under Customs Act or any other law for importing mobile phones and accessories and in the absence of any prohibition imposed by or under the Customs Act, there is no justification in ordering confiscation of the goods imported by the appellant. He also denied that the appellant has violated Para 2.03 of the Foreign Trade Policy or any other law in respect of present import. He also submitted that the imposition of penalty

under Section 112 of the Customs Act is wrongly imposed on the appellants. Under Section 112 of the Customs Act, penalty for importation of goods can be imposed only if the goods are liable for confiscation under Section 111(d). He further submitted that with regard to BIS certification, there is no contradiction or inaccuracy in the address of the manufacturer and the finding to the fact that the name of registered company and the name of the manufacturer in the documents are incorrect is not justifiable. He has also submitted that the company has not sought permission to re-export the goods to the supplier. He further submitted that the goods have been seized by the Customs officials due to the wrong interpretation of an Office Memorandum issued by the Telecommunication Department on 17.08.2012 regarding mis-declaration of SAR value, based on certificate from ILAC Lab or TEC (Telecom Engineering Centre), India. He further submitted that with regard to BIS Registration No. R-41069892 for the mobile phone models, 'mphone 380' and 'mphone 280', the name and the address of the manufacturer to whom the registration was allowed was found in the BIS website by the Customs officials belonging to "Shenzhen Huanuo Internet Technology Co. Ltd., Room 10G, Tower 4C, Software Industry Base, Nashan District, Shenzhen China – 518000"; whereas the manufacturer as per the IMEI certificate and other import documents was "Honkong Internet Network Technology Co. Limited, Hong Kong". He further submitted that even though the addresses of both the companies are different, a Letter of Delegation was issued by Shenzhen Huanuo Internet Technology Co., Ltd delegating Hongkong Huano Network Technology Co. Limited for TT deposit collection on its behalf. He also submitted that BIS certificate so obtained in the name and address of the factory of the manufacturer, at Shenzhen China whereas the Bill of Entry was raised in the billing address of the manufacturer in Hong Kong because the payment was made in Hong Kong as the financial transaction in dollars could only be carried out there. Further, the manufacturing unit in Shenzhen, China has authorized all its customers to effect all bank transactions pertaining to the company to Hong Kong as part of usual business practice followed by all traders in India while importing articles from China. He further submitted that this Letter of Delegation as well as BIS certification was produced before the Commissioner (A) but in spite of that the Commissioner (A) has wrongly observed that the appellants have produced no proof to suggest that both the companies are the same. He also submitted that with regard to BIS Registration No. R4107600 given for mobile batteries, it is a common practice followed in the business of mobile import that batteries registered with BIS alone can be used in mobile phones; not necessary that the manufacturer of the battery is by the same company. Non OEM batteries are made to work with certain models of phone, but are made by different companies. In most cases while OEM batteries come from large mobile phone companies that are well known and established, the Non OEM batteries are made by companies that so well known or known to public. Similarly, with regard to BIS Registration No.R4103908 given for mobile chargers (power adapters), Learned Counsel submitted that BIS No. R41039098 was granted on 19.05.2017 for YZD. During the purchase of chargers and production and assembling process of the handsets, appellant has used the same above mentioned BIS for the charger and the same BIS stood valid till 18.05.2018, Even in the BIS site, it is shown as operative in one particular link and cancelled in another link. The said declaration is enumerated under Para 3 of the concerned BIS Certification produced by the appellant. Learned

Counsel also submitted that in the past, appellants have been importing the said instrument and from the same company and he has produced on record the various documents relating to earlier import of the mobile phones by him from the same company and no objection was raised by the Customs. He further submitted that once the appellant has followed all the laws relating to the import of mobile phones then confiscation of the same under Section 111(d) is not tenable in law.

5. On the other hand, Learned AR defended the impugned order and submitted that the appellant could not satisfy both the authorities regarding contradiction appearing in Bill of Entry as well as in BIS Certificate. He further submitted that Letter of Delegation issued by the Shenzhen Huanuo Internet Technology Co., Ltd in favour of Honkong Internet Network Technology Co. Limited was not produced before both the authorities.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the goods have been confiscated by the Customs under Section 111(d) on the ground that the goods which are prohibited are attempted to be imported, perusal of Section 111(d) of the Customs Act 1962 shows that the said Section is applicable only if the goods which are imported or attempted to be imported or are brought within Indian Customs Water contrary to any prohibition imposed by this Act or any other law for the time being enforce whereas the Customs in the present case has failed to bring anything on record to show that the mobile phones are prohibited for import. Further, I find that the main ground for confiscating the goods are that the address of the manufacture in the BIS Certificate and in the Bill of Entry are not matched. It appears that both the authorities have ignored to see the Letter of Delegation issued by the Shenzhen Huanuo Internet Technology Co., Ltd in favour of Honkong Internet Network Technology Co. Limited and in the said letter, it is specifically mentioned that both the companies are same. This has been done because payment was made in Hong Kong as the financial transaction in dollar could only be carried out there. The manufacturing unit in Shenzhen, China has authorized all its customers to effect all banking transactions pertaining to the company to Hong Kong as part of usual business practice followed by all traders in India while importing articles from China. The finding of both the authorities that the names of both companies are different is not tenable in law and both the authorities have not properly examined all the documents produced before them. Further, I note that the appellant has produced the documents pertaining to earlier import by them of the mobile phones and no such objection was raised earlier by the Customs authorities. The respondent has failed to appreciate the business practice followed by all Indian traders while importing articles from China and has unnecessarily detained the goods of the appellant company without any reason. Further, I find that the imposition of penalty on the appellant to the tune of Rs.10,000/- is also unwarranted in law. Therefore, I set aside the impugned order and direct the Customs authorities to release the goods to the appellant immediately on receipt of the copy of this order. The appeal is accordingly allowed.

(Order was pronounced in Open Court on 25.10.2019)