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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: August 23, 2018

\+ CUS.A.C. 9/2009, C.M. Appl. No. 25758/2018

COMMISSIONER OF CUSTOMS

..... Petitioner

Through: Mr. Amit Bansal, Senior Standing Counsel

versus

R.K. INTERNATIONAL

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% **23.08.2018**

S. RAVINDRA BHAT, J. (Oral)

1. The question of law framed in this case is as follows:

> *"Whether the revenue is entitled to recover the customs duty under Section 125(2) of the Customs Act on the goods which are confiscated under Section 111(d) and allowed redemption under Section 125(1) of the said Act, even when no specific demand is made in the show cause notice?"*

2. The brief facts of the case are that in an alleged violation of the law, imported computer components (i.e. memory cards, RAMs etc.) valued at ₹28,29,550/- were seized from the respondent on 01.06.2007. Pursuant thereto the statement of one Raj Kumar Ahuja

was recorded who has conceded to the purchase of the articles from overseas visitors. Show cause notice under Section 124 proposing confiscation of goods was issued. The final order confirmed the show cause notice and confiscated goods, with an option to redeem the goods, provided a fine of ₹5 lakh was paid. The amount of ₹4 lakh was paid. Additional penalty of ₹1 lakh was imposed on M/s. R.K. International. The amounts deposited by the party were appropriated. Claiming to be aggrieved, the Revenue appealed to CESTAT alleging that duty was recovered and that this obligation was implicit in section 125. The Revenue relied upon the judgment of the Supreme Court in *Commissioner of Customs* v. *Jagdish Cancer and Research Centre* reported in 2001 (132) E.L.T. 257 (S.C.), especially the observations that an order confiscating the goods would provide an option to pay the redemption fee and in the event he exercises it, the Assessee/Importer has to pay duty and charges [in accordance with Section 125(2)]. The Tribunal relied upon a previous judgment of the Supreme Court in *Mohan Meakins Ltd. v. Commissioner* - 2000 (115) E.LT 3 (S.C.), which stated that the Adjudicating Officer is under a duty to firstly assess the market value of the goods and then levy the duty and charges apart from the redemption fine which he intends to levy under Section 125(1). The Tribunal rejected the appeal with the following reasoning:

> *"9. On an analysis of the provision contained in Sections 124 and 125 of the Customs Act, 1962 read with the decisions in Metal Forgings case and Jagdish Cancer & Research Centre case it may be stated that a show cause notice should necessarily state a proposal for levy*

of duty which is necessity of law. This would be a requirement to grant opportunity of defence when the case of Jagdish Cancer & Research Centre case shows that the Assistant Commissioner who issued the show cause notice had proposed realization of customs duty of ₹64,93,598/-. With the proposal in show cause notice for levy of duty, the decision in para 11 of the judgment appears to have been arrived at. It appears that judgment in Jagdish Cancer & Research Centre has not laid down the ratio that a show cause notice can ignore proposal for levy of customs duty. Therefore, ratio laid down in Metal Forgings case warrants to state that para 11 of the Jagdish Cancer & Research Centre's case is to be read with the governing fact that proposal to levy customs duty was made through a show cause notice.

10. In view of the aforesaid analysis, it may be stated that the levy of customs duty in Jagdish Cancer & Research Centre case having been proposed by a show cause notice issued, action for levy of duty, was held to be proper without attracting section 28 of Customs Act, 1962 in that case. The admitted fact in Jagdish Cancer & Research Centre's case is that assessee was asked by show cause notice to pay customs duty of ₹64,93,598/-. But in the present case, no such notice was issued to the respondent. Therefore, Revenue's grievance that duty shall be payable cannot be answered affirmatively.

11. It may be stated that if the appeal of Revenue is canvassed to be a case of realization of duty as well as confiscation with option given for payment of redemption fine in lieu of fine, the learned Commissioner who had issued show cause notice on 28.11.2007 should have taken benefit of decision of Apex Court in the case of Jagdish Cancer & Research Centre decided on 02.08.2001 decision in the case of Metal Forgings decided on 22.11.2002. But he has not taken at all any care as to the recovery of the duty in the present case. Therefore, learned Chairman of Central Board of Excise

& Customs is expected to deal the matter appropriately as to loss of Revenue, if any, that has resulted in the present case that remain un-recovered."

3. Mr. Amit Bansal, counsel for Revenue urges that the Tribunal fell into error in glossing over Section 125(2), which is couched in mandatory terms. It is submitted that every show cause notice carries with it an implied condition that if the option of redeeming the goods proposed to be confiscated is given to the importer/noticee, the latter has to pay the relevant duties. He reiterated this position by relying upon *Jagdish Cancer and Research Centre* (supra). The provision relied upon, i.e. Section 125(2), no doubt, is in mandatory terms and suggests that when the duty is payable by the concerned party or importer, the quantum of the duty – even on a tentative basis should necessarily be spelt out in the show cause notice, which is essential under Section 124 of the Act. The facts in *Jagdish Cancer and Research Centre* (supra) itself show that the show cause notice under Section 125 had proposed customs duties (₹64,93,598/-) and had invoked Section 111(O) and also proposed penalty under Section 112.

4. In other words, the authority could not as is sought to be canvassed, be read in a wide manner as is proposed. The Adjudicating Officer, who issues a show cause notice is in-charge of the goods – seized or otherwise pending clearance. He has the opportunity to tentatively assess the value and also indicate the duty payable. In the event of final adjudication, it is possible that the valuation amount may vary, depending upon which, the exact amount of duty may fluctuate. Nevertheless, it broadly outlines the amount meant to be

short levy or non levy and the same would have to be spelt out in the notice under Section 124. If that primary obligation, which lies with the State Official is not discharged, it cannot be contended at a later stage that the importer was under an obligation to pay the relevant duty - which was never assessed in the first instance.

5. In these circumstances, the question of law is answered against the Revenue; the appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

ANU MALHOTRA, J

AUGUST 23, 2018
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