IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 914 OF 2019

M/s J & J Electronics, Plot No. 24, D-3/3, Mapusa Industrial Estate, Mapusa, Goa – 403 507.
(Represented through its Proprietor, Mr. Joit Kumar Jain) …. Petitioner

Versus

Commissioner of Customs (Import), office of the Commissioner of Customs (Import), Adjudication Cell, Air Cargo Complex, Sahar, Andheri (East), Mumbai – 400 099. …. Respondent

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Mr. C.A. Ferreira with Mr. Rajiva Srivastava, Advocates for the Petitioner.

Ms. Asha Desai, Standing Counsel for the Respondent.

Coram:- M.S. SONAK &
C.V. BHADANG, JJ.

Date:- 4th December, 2019

ORAL JUDGMENT: (Per M. S. Sonak, J.)

Heard Mr. Ferreira with Mr. Srivastava, the learned Counsel for the petitioner and Ms. Desai, the learned Standing Counsel for the respondent.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. The challenge in this Petition is to the order in original dated 23.04.2019, made by the Commissioner of Customs (Import), Adjudication Cell, Mumbai.

4. Ms. Desai, the learned Standing Counsel, at the outset, submitted that as against the order in original dated 23.04.2019, the petitioner has an alternate and efficacious remedy of an Appeal before the Customs, Excise, Service Tax Tribunal, Mumbai (CESTAT). As such, she submits that the present Petition may not be entertained.

5. Accordingly, we have heard Mr. Ferreira, the learned Counsel for the petitioner and Ms. Desai, the learned Counsel for the respondent on the issue of alternate remedy.

6. From the perusal of the impugned order, we find that the petitioner had raised an issue of jurisdiction before the Commissioner of Customs (Import), Mumbai, who issued notice and thereafter, adjudicated on this matter.

7. The petitioner had specifically relied upon the judgment of the CEGAT in the case of **Samtel Color Limited Vs. Collector of Central Excise, Meerut**[1] and yet another decision of the CESTAT in the case of **Cosmo Ferrites Ltd. Vs. Commissioner of Central Excise Chandigarh**[2]. Placing reliance on both these decisions, in fact, the contention raised on behalf of the Revenue was that the Commissioner of Central Excise, before whom, the bond had been furnished by the parties, alone, had jurisdiction to issue notice and to institute proceedings in the matter, which was accepted by the CESTAT.

1 **2000 (126) E.L.T. 1256 (Tribunal)**

2 **2014 (308) E.L.T. 633 (Tri.-Delhi)**

8. Mr. Ferreira, the learned Counsel for the petitioner pointed out that both these decisions were specifically cited before the Commissioner of Customs (Import), Mumbai, who had made the impugned order in original. He pointed out that these decisions have not even been considered in the impugned order.

9. Ms. Desai, the learned Counsel for the respondent pointed out that this was a case of mis-declaration at the place of import, which was Mumbai and accordingly, the jurisdictional Central Excise Authority, had jurisdiction in the matter.

10. Upon perusal of the impugned order in original, we find that the aforesaid decisions of the Tribunal, on the issue of jurisdiction, were clearly cited before the Commissioner of Customs (Import), Mumbai. In fact, there is reference to such decisions in the impugned order in original. However, without considering such decisions or the import of such decisions, the objection relating to the jurisdiction, has

been disposed off, merely by observing that this is a case of mis-declaration and therefore, the authorities will have jurisdiction over the matter.

11. Since, this is an issue, which goes to the root of the jurisdiction, it will not be appropriate to relegate the petitioner to alternate remedy. Besides, we find that there is virtually no consideration as such, of the objection as to the jurisdiction, in the present case. The decisions which were cited by the petitioner have been noted, but the same have not at all been considered. There are no reasons as to why the decisions are not applied or as to why the decisions can be distinguished in the facts and circumstances of the present case.

12. The only discussion that is found is at para 204 h. (page 202 of the paper book), which reads as follows:

> *"h. I do agree that the jurisdictional Central Excise Authority would have the jurisdiction to recover duty*

> *under Section 28 of the Customs Act for failure to comply with the conditions of Bond but the instant case is about the mis-declaration at the instant of import and therefore the jurisdiction for recovery of duty which otherwise would have been recovered but for the mis-declaration at the instant of import, will perforce lie with the jurisdictional authorities at the place of import."*

13. The said finding, according to us, does not amount to consideration of issue of jurisdiction or consideration of the decisions, upon which specific reliance was placed by the petitioner. The aforesaid discussion merely records the conclusion, without any reasons to back the same. This was not a satisfactory manner of dealing with the issue of jurisdiction, raised by the petitioner.

14. In view of the aforesaid, we set aside the impugned order in original and remand the matter to the Commissioner of Customs (Import), Mumbai to re-consider the objection as to the jurisdiction, as raised by the petitioner. The Commissioner of Customs (Import), Mumbai is also requested to consider the decisions of the co-ordinate

Bench of the Tribunal in the case of **Samtel Color Ltd.** (supra) and **Cosmo Ferrites Ltd.** (supra).

15. We, however, make it clear that we have not gone into the issue of jurisdiction and therefore, all contentions of all parties are expressly left open, for being decided by the Commissioner of Customs (Import), Mumbai.

16. The parties to appear before the Commissioner of Customs (Import), Mumbai on 13.01.2020 at 11:30 a.m. and file authenticated copy of this Order.

17. We request the Commissioner of Customs (Import), Mumbai to dispose off this matter as expeditiously as possible and in any case, within a period of six weeks from the date the parties file the authenticated copy of this Order i.e. within a period of six weeks from 13.01.2020.

18. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

C. V. BHADANG, J. ***M. S. SONAK, J.***

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