**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 15.02.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN**
**AND**
**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**C.M.A. Nos.316, 710, 712, 713, 714, 728, 730, 775, 776, 782, 784, 1124, 1139, 1171, 1172, 1173, 1174, 1175, 1176, 1178, 1179, 1182, 1417,1418, 1439, 1430, 1489, 1494, 1496, 1498, 1590, 1591, 1594, 1595, 1596, 1597, 1598, 1599, 1651, 1653, 1677, 1678, 1682, 1718, 1719, 1724, 1729, 1732, 1833, 1836, 1842 of 2022 and 3, 4, 13, 14, 15 of 2023**
**and**
**C.M.P. Nos. 26, 27, 34, 171, 173 and 175 of 2023**

**C.M.A. No.316 of 2022:**

The Commissioner of Customs,
Chennai-II Customs Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai-600 001. ... Appellant

v.

S.P.Associates,
1/11959, Uldhanpur,
Naveen Shahdara, North East Delhi- 110 032. ... Respondent

**Prayer:** Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962, praying to set aside the order No.42309 of 2021 dated 15.09.2021 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant (in all C.M.As.) : Mrs.R.Hemalatha
Senior Panel Counsel

For Respondent (in all C.M.As.) : Mr.N.Viswanathan

**COMMON JUDGMENT**

The challenge made and the issue involved in this batch of appeals filed by the Revenue being same, they were taken up together and are disposed of by this common judgment.

2. At the outset, certain facts may be noted. The appeal in C.M.A. No.316 of 2022 is taken up as a lead matter for consideration. The appeal was admitted on the following substantial questions of law:

*(i) Whether on the facts and circumstances of the case, the CESTAT is right in allowing redemption for home consumption, despite admitting the fact that the conditions of para 2.31 of the Foreign Trade Policy are not satisfied?*

*(ii) Whether on the facts and circumstances of the case, the finding of the CESTAT that the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 (CRO, 2012) is beyond the Act and Rules is erroneous or not, on the face that the CRO*

*itself is formulated under the provisions of Bureau of Indian Standards Act (BIS Act), which regulates the imported goods as well?*

*(iii) Whether on the facts and circumstances of the case, the CESTAT is right in overlooking the CRO, 2012, which covers Multifunctional and Printers/Devices (MFDs) along with printers and plotters?*

3. The Respondent filed Bills of Entry to import used Digital Multi-Function Printers / Devices [MFDs] of various makes and models with standard accessories and attachments classifying them under Customs Tariff Heading 84433100. They were examined on first check appraisal in the presence of the Chartered Engineer to verify (a) residual life of the goods (b) nature of the accessories (c) the requirement of compliance of conditions imposed under Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016 (d) E-Waste (Management) Rules, 2016 (e) Authorization of DGFT under the Foreign Trade Policy 2015-2020; and (f) applicability of Bureau of Indian Standards as per the Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012. The Chartered Engineer submitted his report and also appraised the value of the goods. After perusal of the documents, the lower authority passed an order of adjudication dated 19.12.2019 *inter alia* holding as under:

i) Rejected the declared value of the goods under Rule 12 and re-determined the value in terms of Rule 9 of the CVR, 2007.

ii) Confiscated the goods declared as old and used digital multifunction print and copying machines with standard accessories under Sections 111(d) and Section 111(o) of the Customs Act, 1962 for contravention of the provisions of imports.

iii) imposed redemption fine under Section 125 of the Customs Act, 1962 and permitted the importer to re-export the goods imported within 90 days from the date of receipt of the order, failing which the imported goods were ordered to be deformed beyond use and disposed off as scrap by the importer at their own cost in terms of Rule 3(2) of the CRO, 2012 read with para-2 (c) of the Import Policy for Electronic and Information Technology Goods as specified in Schedule-I of Import Policy ITC (HS) 2017.

iv) imposed penalty on the importer under Section 112 (a) of the Customs Act, 1962 for having rendered the goods liable for confiscation under Section 111 (d).

v) imposed penalty on the importer under Section 117 of the Customs Act, 1962 for non-compliance of the procedures set out under Section 49 of the Customs Act, 1962.

4. Aggrieved, the respondent appealed to the Commissioner of Customs (Appeals-II) who, by order dated 21.09.2020, partly allowed the appeal in the following terms:

(a) Reduced the redemption fine imposed under Section 125 of the Customs Act, 1962 and allowed the respondent to redeem the goods for home consumption.

(b) Reduced the penalty imposed under Section 112 (a) of the Customs Act, 1962, except in Appeal C/40663/2020 (CC Chennai vs. Delhi photocopiers), while confirming the penalty imposed by the original authority under Section 112(a) of the Act.

(c) Penalty under Section 117 of the Customs Act, 1962 was set aside.

5. Similar orders were passed by the Appellate Authority in the other appeals filed by the assessees.

6. Challenging the orders of the appellate Authority, the appellant / Revenue filed appeals before the Tribunal. Upon hearing both sides, the Tribunal by common order dated 15.09.2021, rejected the appeals. The relevant portion of the same is extracted below:

> *"11.Heard both sides. The issue has been considered and analysed by this Tribunal in a batch of appeals vide Final Order No.41931-*

*41971/2021 dated 27.08.2021. The discussions and findings of the Tribunal in the above stated final order are reproduced as under:*

"*.......*

*35......*

*(1) Electronics & Information Technology Goods (Requirement for Compulsory Registration) Order 2012 has gone beyond the Act and Rules in imposing a restriction from imports. Even these restrictions were confined only to printers and plotters. Multi-Functional Devices were not covered under this order. The letters and circulars of the Meity cannot take the place of law and therefore the goods were not prohibited for import.*

*(2) The impugned goods are useful second hand goods with residual life and are not hazardous waste and hence are correctly allowed redemption for home consumption.*

*(3) Valuation of the goods by Customs is not disputed and duty has to be paid accordingly which is not interfered. So ordered.*

*(4) Confiscation of the goods under Section 111(m) consequently need not be interfered with.*

*(5) Redemption fine imposed under Section 125 in the impugned orders and allowing of clearance for home consumption are correct and proper and need no interference.*

*(6) The penalty imposed under Section 117 is correctly set aside as there is no Act or omission rendered by the importer under Section 49 which may have violated.*

*(7) Reduction of penalty under Section 112 (a) by Commissioner (Appeals) is proper and valid."*

*12. We find no new grounds to deviate from the view taken in the earlier batch of similar appeals vide this Bench Final Order No.41931-41971/2021 dated 27.08.2021. Following the above said final order as discussed above, we hold that impugned orders are upheld and appeals filed by Revenue are rejected with consequential relief to the respondents. The impugned goods, if not released already by the Customs, must be cleared for home consumption within 10 days from the date of receipt of copy of this order, if the respondents pay the duty and other dues as per the impugned orders."*

7. Aggrieved by the common order of the Tribunal, the Revenue carried the matter in appeals by way of a batch of matters including C.M.A

316 of 2022 which as stated supra, is taken as lead matter. It may be relavant to note that the present issue had engaged the attention of various forums including the High Courts across the country including that of Andhra Pradesh, wherein writ petitions were filed assailing the actions of the Customs authorities in detaining the containers and refusing clearance thereof on the pretext of applicability of Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2021. The Andhra Pradesh High Court found that previous consignments had been released after penalty has been paid and thus, found no reason as to why later consignments have been withheld. The relevant portion of the Andhra Pradesh High Court order is extracted hereunder:

> *"There is no explanation forthcoming as to the contradiction between the Foreign Trade Policy 2015-20 which came into effect from 01.04.2015 and the notification dated 17.01.2017. It is however an admitted fact that the petitioner firm suffered the Order-in-Original dated 05.07.2017 passed by the Joint Commissioner of Customs, Kolkata, confiscating its first consignment under Sections 111(d) and 111(m) of the Customs Act, 1962 but permitting it the option of redeeming the said goods on payment of fine of Rs.3,30,000/- under Section 125 thereof and penalty of Rs. 1,45,000/- under Section 112(a) thereof. The petitioner firm admits that it paid the aforestated fine and penalty in Para 3 of the writ affidavit. This order therefore attained finality. That being so, there is no reason as to why the later consignments of the petitioner firm, which have been withheld, should not be treated alike.*
>
> ......
>
> *Sri P.Gangaiah Naidu, learned senior counsel, would state the petitioner firm would once again furnish all the documents as stipulated in the Rules of 2016. As and when the petitioner firm produces the documents, the Customs Authorities shall consider the same in the light of*

*the statutory regime under the Act of 1962 and the notifications issued thereunder, keeping in mind the earlier Order-in-Original dated 05.07.2017 passed by the Customs Authorities at Kolkata in like circumstances, and consider the petitioner firm's plea for release of the two consignments in accordance with law. This exercise shall be completed within one week from the date of furnishing of documents by the petitioner firm."*

8. The matter was carried by way of SLP by the Revenue. The Special Leave Petitions and the Civil Appeal were disposed of by the Hon'ble Supreme Court after finding that the goods in question were already released on payment of penalty:

> *"Today, when this batch of matters are taken up for further hearing, learned counsel appearing on behalf of the respondent has pointed out that, in the year 2017, the goods in question have been released on payment of penalty. Learned counsel appearing for the Revenue is not in a position to dispute the same.*
>
> *In that view of the matter, when the goods in question are already released by the Department on recovery of the penalty, we dismiss all these Special Leave Petitions and Appeals, keeping the question of law open.*
>
> *Consequently, all these Special Leave Petitions and Appeals stand dismissed. However, question(s) of law, if any, is/are kept open."*

9. It is submitted by both the learned counsel for the appellant as well as the Respondent in all these cases that the goods have been released on payment of duty and other dues, as per the order of the Tribunal.

10. In view of the above submission, following the order of the Hon'ble Supreme Court as referred to above, we dismiss this batch of appeals keeping

the questions of law open to be adjudicated in appropriate proceedings. No Costs. Consequently, connected miscellaneous petitions are closed.

**[R.M.D., J.] [M.S.Q., J.]**
**15.02.2024**

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To

1.The Customs, Excise and Service Tax Appellate Tribunal,
Chennai

2.The Commissioner of Customs,
Chennai-II Customs Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

**R.MAHADEVAN, J.**
**AND**
**MOHAMMED SHAFFIQ, J.**

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**C.M.A.Nos.316 of 2022 and etc., batch**

**15.02.2024**