(2015) 07 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 12 Of 2010

CC, New Delhi — APPELLANT

Vs

M/s Brightpoint India Pvt. Ltd. — RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Customs Act, 1962 — Section 11, 129A
Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 — Rule 5(a), 5(b), 7

Citation : (2015) 07 CESTAT CK 0003

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : B.B. Sharma

Final Decision : Dismissed

Judgement

1. This appeal has been filed by Revenue against order-in-appeal dated 6.11.2009.

2. The brief facts of the case are as under.

The respondent filed Bill of Entry dated 24.2.2009 for the clearance of 300 numbers of Samsung dual SIM mobile phones valued at Rs.37,77,824/-

imported from China: On examination by Customs in the presence of CHA, the imported goods were found as per the description. However, since the

Mobile phones were with double SIM sockets, the import appeared to be in violation of the Intellectual Property Rights under patent No. 214388 dated

11.2.2008 granted to Shri S. Ramkumar by Patent office, Chennai. The said patent was registered in the office of the Commissioner of Customs, IPR

Cell, Chennai Airport, Air Cargo Complex, Meenabakkam, Chennai-600027 and allotted registration no. UPRvNo. A01671NMAA4PR. Therefore, the import of 300 piece of mobile phones with dual SIM cards appeared to be in contravention of Section 11 of the Customs Act, 1962 read with

Notification No. 47 /2007-Cus.(NT) dated 8.5.2007 and the Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 and hence the

clearance of these goods was accordingly suspended in terms of Rule 7 of IPR Rules, 2007.

3. Intellectual Property Right Cell (IPR Cell))/SIIB, I&G Commissionerate, New Customs House, New Delhi vide Jetter F. No.

SIIB/Cus/I&G/IPR/15/2009 dated 12.3,2009 informed the importer regarding suspension of clearance of the above said goods, suspected to be

infringing the said IPR. Accordingly, the Patent holder was also informed vide e-mail dated 12.3.2009 about the above said import of dual SIM mobile

phones and asked to execute a consignment specific Bond (equal to 110% of the value of infringing goods as specified in para 7 of Notification No.

47 /2007-CUS(NT) dated 8.5.2007. The patent holder executed the required bond.

4. The proceedings initiated in respect of said Bill of Entry were eventually dropped and mobile phones imported by the respondents were ordered to

be released. The primary adjudicating authority also ordered that the demurrage on the said goods was to be recovered from Shri S. Ramkumar by

enforcing the security furnished by Shri S. Ramkumar to the extent needed, It also stated if the importer paid the demurrage charges to facilitate

speedy clearance of the goods, the amount should be reimbursed to him by enforcing the bond executed by Shri S. Ramkumar.

5. Revenue reviewed the primary adjudicating authority's order on the grounds that:

(i) There was no provision in the Intellectual Property Right (imported goods) Enforcement Rules, 2007 for recovering demurrage charges in the event

of release of goods.

(ii) The primary adjudicating authority has not: indicated as to who is to recover and pay the demurrage charges.

(iii) As the security has been furnished in favour of the Commissioner of Customs, the Commissioner of Customs cannot enforce the security to

reimburse the demurrage to the importer.

6. The Commissioner (Appeals) vide impugned order held that the condition of

the bond executed by Shri Ramkumar makes it very clear that the

incidental and ancillary liabilities to the act of suspension of clearance has to be borne by the right holder and that Rule 5(a) and (b) of the said Rules,

2007 read with bond's conditions makes it amply clear that even in the case of release of the goods detention, demurrage and other ancillary liabilities

are to be borne by the right holder. In view of these reasons the Commissioner (Appeals) upheld the order of the concerned Assistant Commissioner.

The Commissioner (Appeals) further held that ""it is also the case of the department that the said Rules do not provide any mechanism to recover said

charges and their payment to custodian. Since, the bond is executed with the Commissioner of Customs, the authority to recover said charges from the

right holder vests with the Commissioner. Absence of suitable mechanism cannot be a reason for right holder not to pay the demurrage and detention

charges. Concerned Commissioner can devise a suitable mechanism in this regard.

7. The Id. DR is not able to explain as to how Revenue is aggrieved by the impugned order of Commissioner (Appeals) which allowed enforcement of

bond executed by the right holder for recovering of demurrage charges. The grounds of appeal are identical to the grounds advanced by Revenue in

its appeal before the Commissioner (Appeals) and we find that those grounds are adequately dealt with by Commissioner (Appeals). Revenue has no

ground to be aggrieved by Commissioner (Appeals') order which only stated that the recovery of demurrage charges can be made from the right

holder by enforcing the bond executed by him. Indeed setting aside the impugned order-in-appeal would meant that the Revenue cannot recover the

demurrage charges by enforcing the bond executed by the right holder. In these circumstances, we are of the view that Revenue cannot be said to be

aggrieved by the impugned order-in-appeal and consequently has no right to file an appeal there-against under Section 129A of the Customs Act under

which only a person aggrieved by the impugned order can file appeal. The appeal is therefore dismissed as mis-conceived.

