
(2021) 08 CESTAT CK 0085

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Stay Application No. 40077, 40078, 40079, 40080, 40081, 40082, 40083, 40084, 40085, 40086, 40089, 40090, 40091, 40092, 40093, 40094, 40095, 40096, 40097, 40098, 40100, 40101, 40102, 40103, 40104, 40105, 40106, 40107, 40108, 40109, 40110, 40111, 40

Commissioner Of Customs

APPELLANT

Vs

M/s.S.P Associates And Ors.

RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Customs Act, 1962 — Section 2(39), 49, 111(d), 111(m), 112, 112(a), 117, 125, 129C, 129E
Central Excise And Service Tax Appellate Tribunal (Procedure) Rules, 1982 — Rule 28C, 41
Indian Penal Code, 1860 — Rule Section 193, 196, 228
Code of Criminal Procedure, 1973 — Section 195, Chapter XXVI
Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 — Rule 3(2)
Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016 — Rule 15(2)
Bureau of Indian Standards Act, 1986 — Section 10, 10(1)(p), 16, 16(1), 16(2), 17, 25(3)
Bureau of Indian Standards Rules, 1987 — Rule 13, 13(fa)

Citation : (2021) 08 CESTAT CK 0085

Hon'ble Judges : Sulekha Beevi C.S., J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. All these appeals and the stay applications have been filed by the Revenue in respect of the impugned orders as tabulated under :-

Sl.No.

Appeal No.

Stay Application No.

Respondent

Impugned Order-in-Appeal No.& date

1.

C/40098/2021

C/S/40077/2021

SP Associates

C. Cus.II No.1071- 74/2020 dt. 30.12.2020

2.

C/40099/2021

C/S/40078/2021

-do-

-do-

3.

C/40100/2021

C/S/40079/2021

-do-

-do-

4.

C/40101/2021

C/S/40080/2021

-do-

-do-

5.

C/40102/2021

C/S/40081/2021

Arihant Enterprises

C. Cus.II No.1075- 77/2020 dt. 30.12.2020

6.

C/40103/2021

C/S/40082/2021

-do-

-do-

7.

C/40104/2021

C/S/40083/2021

-do-

-do-

8.

C/40105/2021

C/S/40084/2021

Excel Copiers

C. Cus.II No.8- 12/2021 dt. 19.01.2021

9.

C/40106/2021

C/S/40085/2021

-do-

-do-

10.

C/40107/2021

C/S/40086/2021

-do-

-do-

11.

C/40108/2021

C/S/40089/2021

-do-

-do-

12.

C/40109/2021

C/S/40090/2021

-do-

-do-

13.

C/40110/2021

C/S/40091/2021

City Office Equipments

C.Cus. No.II 1087- 1091/2020 dt. 31.12.2020

14.

C/40111/2021

C/S/40092/2021

-do-

-do-

15.

C/40112/2021

C/S/40093/2021

-do-

-do-

16.

C/40113/2021

C/S/40094/2021

-do-

-do-

17.

C/40114/2021

C/S/40095/2021

-do-

-do-

18.

C/40115/2021

C/S/40096/2021

Photofax Sytems

C. Cus.II No.1078- 79/2020 dt. 30.12.2020

19.

C/40116/2021

C/S/40097/2021

-do-

-do-

20.

C/40117/2021

C/S/40098/2021

Skylark Office Machines

C. Cus.II No.1092- 1095/2020 dt. 31.12.2020

21.

C/40118/2021

C/S/40100/2021

-do-

-do-

22.

C/40119/2021

C/S/40101/2021

-do-

-do-

23.

C/40120/2021

C/S/40102/2021

-do-

-do-

24.

C/40121/2021

C/S/40103/2021

Star Copiers

C. Cus.II No.1081- 82/2020 dt. 31.12.2020

25.

C/40122/2021

C/S/40104/2021

-do-

-do-

26.

C/40123/2021

C/S/40105/2021

SRK Overseas

C. Cus.II No.1080/2020 dt. 30.12.2020

27.

C/40124/2021

C/S/40106/2021

Rank Office Automation

C. Cus.II No.1083/2020 dt. 30.12.2020

28.

C/40125/2021

C/S/40107/2021

Prius Technologies

C. Cus.II No.13- 15/2021 dt. 19.01.2021

29.

C/40126/2021

C/S/40108/2021

-do-

-do-

30.

C/40127/2021

C/S/40109/2021

-do-

-do-

31.

C/40128/2021

C/S/40110/2021

Genuine Copier Systems

C. Cus.II No.1084/2020 dt. 31.12.2020

32.

C/40129/2021

C/S/40111/2021

Amar Enterprises

C. Cus.II No.1085/2020 dt. 31.12.2020

33.

C/40130/2021

C/S/40112/2021

Atul Automation Pvt. Ltd.

C. Cus.II No.24- 26/2021 dt. 29.01.2021

34.

C/40131/2021

C/S/40113/2021

-do-

-do-

35.

C/40132/2021

C/S/40114/2021

-do-

-do-

36.

C/40133/2021

C/S/40115/2021

Delhi Photocopiers

C. Cus.II No.22- 23/2021 dt. 29.01.2021

37.

C/40134/2021

C/S/40116/2021

38.

C/40135/2021

C/S/40117/2021

Kutty Impex

C. Cus.II No.1086/2020 dt. 31.12.2020

39.

C/40136/2021

C/S/40118/2021

Photo Fax System

C. Cus.II No.16/2021 dt.19.01.2021

40.

C/40137/2021

C/S/40119/2021

Gee Kay Computers

C. Cus.II No.16/2021 dt.19.01.2021

41.

C/40138/2021

C/S/40120/2021

Best Mega International

C. Cus.II No.17/2021 dt.19.01.2021

2. By the impugned orders, the Ld. Commissioner of Customs (Appeals), Chennai has allowed the appeals of the respondents herein, partly modifying the orders of the adjudicating authorities by:

(i) allowing redemption of the confiscated goods under Section 125 of the Customs Act, 1962 on payment of reduced amount of redemption fine

(ii) reducing the penalty imposed under Section 112 (a) of Customs Act, 1962; and

(iii) setting aside penalty imposed under Section 117 of the Customs Act, 1962. The orders were reviewed by the Committee of Commissioners of Customs and appeals have been filed before this Tribunal along with stay applications.

3. At the outset, Ld. Counsel for the respondents raised a preliminary objection that the stay applications filed under Rule 41 of the CESTAT (Procedure) Rules, 1982 are not maintainable and that this Tribunal does not have the power to grant stay. Rule 41 of the Customs, Central Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982 it reads as under :

"The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice."

4. It has been submitted by the Ld. Counsel for the respondents that this Rule can only be read as empowering the Tribunal to give effect to its own orders. It does not explicitly give the power to stay orders of any lower authority. It is his submission that these Rules have been framed under Section 129C of the Customs Act, 1962 which reads as follows :

"129C. Procedure of Appellate Tribunal. -

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in 47 sub-section (4), a Bench shall consist of one judicial member and one technical member.

[(3) x x x]

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where -

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(c) the amount of fine or penalty involved, does not exceed fifty lakh rupees.

(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points

shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

5. It is his submission that Section 129C itself does not empower the Tribunal to stay the order of the lower authority. The only power of the Tribunal was with respect to stay of the requirement of predeposit under Section 129E of the Customs Act prior to 06.08.2014. After 06.08.2014, the amount of predeposit has been statutorily fixed and the Tribunal has no power to modify the amount of predeposit also. There is no other law under which the Tribunal can pass a stay order.

6. We have, at the outset, considered these submissions of the Ld. Counsel of the respondent. We find that Rule 41 of the CESTAT (Procedure) Rules, 1982 empowers the Tribunal to pass an order

- (a) to give effect to its orders;
- (b) also in relation to its orders
- (c) to prevent abuse of process or
- (d) to secure ends of justice.

Be that as it may, Rule 28C of CESTAT Procedure Rules which provides for filing miscellaneous applications would apply for filing stay applications also. Misquoting of a Rule cannot be the main ground for denying relief.

7. Having found that stay orders can be passed by this Tribunal, we, however,

find that in the present case a large number of consignments of goods are involved and therefore it would be expedient to decide the main appeals themselves. With the consent of both sides, the matter was heard on merits for final disposal.

8. The facts of the case are that the respondents had filed various Bills of Entry to import used Digital Multi-Functional 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 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, Hazardous Waste Rules (d) E-Waste (Management) Rules, 2016, e-Waste Rules (e) Authorization of DGFT under Foreign Trade Policy 2015-2020, FTP; and (f) applicability of Bureau of Indian Standards, BIS as per Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012, CRO 2012. The Chartered Engineer submitted his report and also appraised the value of the goods. After perusal of the documents, the lower authority found as follows :

(i) The values declared by the importers are liable to be rejected under the Customs Valuation Rules, 2007, Valuation Rules and goods need to be revalued as per the Chartered Engineer's Certificate.

(ii) The importers failed to produce information as per Hazardous Waste Rules, 2016.

(iii) The imported goods were subject to mandatory standards as per BIS for which the importer has neither submitted registration certificate from the BIS nor submitted an exemption letter from the Ministry of Electronics & Information Technology, MeitY.

(iv) The import of the goods are restricted under FTP (Para-2.31) and can be imported only against authorization from the DGFT and the importers had not produced such authorization.

(v) The importers had deposited the goods in the warehouse pending clearance as per Section 49 of the Customs Act, 1962 which was allowed for a period of 30 days but importer had not applied for or obtained extension of the period to keep the goods in the warehouse.

9. Show cause notices were issued to the importers for violation of the provisions of FTP, Hazardous Waste Rules, E-Waste Rules and Bureau of Indian Standards Act, 1986, proposing confiscation of the goods under Section 111 (d) and 111 (m) of the Customs Act, 1962 and proposing imposition of penalty imposed upon the respondents under Section 112 (a) and Section 117 of the Customs Act, 1962.

10. Meanwhile, some of the importers had filed writ petitions before the Hon'ble High Court of Madras who directed the Customs authorities to conduct the adjudication proceedings of the consignments as per applicable statutory provisions and in accordance with law. Accordingly, the lower authority held personal hearings via video conference and respondents gave written submissions. The lower authorities has passed orders as under :

(i) rejected the declared value of the goods and re-determined the value in terms of Rule 9 of CVR 2007.

(ii) confiscated the goods under Section 111(d) and Section 111(m) of the Customs Act, 1962 for contravention of the provisions of the import.

(iii) imposed redemption fine under Section 125 of the Customs Act, 1962 and permitted the importer to redeem and re-export the goods within 90 days from the date of receipt of the product 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 Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order 2012 read with para-2 (c) of the Import Policy for Electronic Goods and Information Technology Goods as specified in Schedule-1 of Import Policy ITC (HS) 2017 and in accordance with procedures set out in Rule 15 (2) of Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016.

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

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

(vi) In Appeals No.40102, 40103, 40104 and 40138, the lower authorities have also invoked Section 111 (l) in addition to Section 111(d) and 111(m) to confiscate the goods.

11. Aggrieved, the respondents herein appealed to the Commissioner (Appeals) who, by the impugned orders, partly allowed the appeals as follows :

(a) reducing the redemption fine imposed under Section 125 of the Customs Act and allowing respondents to redeem the goods for home consumption.

(b) reducing the penalty imposed under Section 112 (a) of the Customs Act, 1962

(c) setting aside the penalty under Section 117 of the Customs Act, 1962.

12. Revenue is aggrieved by these orders of the Commissioner (Appeals) and filed appeals on the following grounds :-

(i) Commissioner (Appeals) has waived the penalty imposed under Section 117 of the Customs Act, 1962 which is not correct because it is on record that the importers had deposited the goods under Section 49 of the Customs Act, 1962 in

the warehouse and had not sought permission to keep them in the warehouse beyond normal period of 30 days.

(ii) The Commissioner (Appeals) has relied on the judgement of the Hon'ble Supreme Court in the case of S.L.P. No.17307/2019 in which by an order dt. 18.09.2020 it was held as follows :

"Considering that the petitioners in the other special leave petitions have had their goods released pursuant to orders of this court, we allow these applications. The goods are to be released on the same terms as have been released in the other cases".

The S.L.P is specific to each case and it cannot be followed in similar cases of other appellants and there is no binding effect on other parties.

(iii) The Commissioner (Appeals) did not justify the reason for unconditional release of the goods in the absence of a DGFT decision on the subject matter under the provisions of Foreign Trade (Development & Regulations) Act, 1992 read with Foreign Trade Regulations, 1993 as directed by the Hon'ble High Court of Madras in its order dt. 10.09.2019 which the Apex court affirmed and the appellate Commissioner relied upon. The Commissioner (Appeals) has followed the ratio of the order passed by the High Court of Andhra Pradesh in RR Marketing case, W.P.2728 of 2018 High Court of A.P. & Telangana and observed that order has been accepted by the department. It is the contention that the order has been accepted by the department only on monetary limits.

(iv) the requirement of registration under CRO 2012 is a condition precedent for import of MFDs and the matter is under dispute before the Hon'ble Apex Court in the S.L.P filed by MeitY in RR Marketing case against the order of Hon'ble High Court of A.P & Telangana in W.P.No.2728 of 2018.

(v) The Commissioner (Appeals) held that subject goods were examined by the Chartered Engineer and were found to be functional machines with residual life and they are neither sub-standard nor defective and sub-rule 3 (2) of CRO 2012 was illegally invoked in the matter.

(vi) Commissioner (Appeals) has ignored the finding of the lower authority that the importer has not complied with mandatory conditions under the Hazardous Waste Rules which warrants disposal of imported goods in accordance with Rule 15 (2) i.e., they should be either re-exported or disposed by Customs as waste with permission of the Pollution Control Board.

13. Further, the following points were asserted by Revenue :

(1) Imported second hand goods prior to 07.05.2019 required registration with BIS and the importer neither obtained registration under CRO 2012 nor obtained any specific exemption from MeitY.

(2) The MeitY has issued DO letters that imported devices are basically printers with copiers like PCs etc. and are covered under the category of printers /

plotters vide DGFT notification dt. 03.10.2012 requiring registration with BIS as per CRO 2012.

(3) The Directorate of Revenue Intelligence has issued an alert circular that multi-functional copiers should be in accordance with rules and provisions of CRO 2012. The substantial question of law with regard to requirements of BIS registration under CRO 2012 is pending with the Hon'ble Apex Court. The certificate of the Chartered Engineer does not alter the requirement of mandatory statutory compliance under CRO 2012. The impugned goods are being imported in large quantities since they are not manufactured in India and the intention of the Government seems to restrict in public interest import of second hand multi-functional device without a license. In view of the above, Revenue prayed that Orders-in-Appeal may be set aside by the Tribunal and the Hon'ble Tribunal may pass any order as it may be deem fit.

14. Ld. Counsel for the respondents submits that the main contention of the Revenue is that import of MFDs requires a certificate of compulsory registration by BIS as per CRO 2012. Clause (3) of this order reads as under :

"3. Prohibition regarding manufacture, storage, sale and distribution etc. of Goods -

(1) No person shall by himself or through any person on his behalf manufacture or store for sale, import, sell or distribute Goods which do not conform to the Specified Standard and do not bear the words "Self declaration - Conforming to IS (Relevant Indian Standard mentioned in column (3) of the Schedule) on such Goods after obtaining Registration from the Bureau:

2. The sub-standard or defective Goods which do not conform to the Specified Standard mentioned in Column (3) of the Schedule shall be deformed beyond use by the manufacturer and disposed off as scrap."

The order therefore applies to products indicated in the Schedule.

The relevant entry of the Schedule is as follows :

SCHEDULE

S.No.

Product

Indian Standard Number

Title of Indian Standard

(1)

(2)

(3)

(4)

...

...

...

...

7.

Printers, Plotters

IS 13252 : 2003

Information Technology Equipment - Safety - General Requirements

He submits that they have neither imported 'Printers' nor 'Plotters'. What they have imported is 'Multi-Functional Devices' which are distinct products known to the market as such. These products were also brought under control through a separate gazette publication called "Electronics & Information Technology Goods (Requirement of Compulsory Registration) Order, 2021" CRO 2021 published vide S.O.1248

(E) dt. 18.03.2021. Rule 2 of this order reads as under :

"2. Compulsory use of standard mark:- Goods or articles specified in the column (2) of the Schedule below shall conform to the corresponding Indian Standard given in the column (3) of the said Schedule and shall bear the 'Standard' Mark under a license from the Bureau of Indian Standards as per Scheme-II of Schedule-II of Bureau of Indian Standards (Conformity Assessment) Regulations, 2018, provided that nothing in the Order shall apply in relation to goods or articles, as specified in the column (2) of the said Schedule meant for export which conform to the specification required by the foreign buyer and to goods or articles, for which the Central Government has issued specific exemption letter based on reasons to be recorded in writing."

SCHEDULE

S.No.

Goods or Articles

Indian Standard

Title of Indian Standard

(1)

(2)

(3)

(4)

...

...

...

...

7.

Printers/ Multi-Function Devices (MFD) / Plotters

IS 13252 : Part 1 : 2010

Information Technology Equipment - Safety - General Requirements

The CRO 2012 specifically covers only 'printers and plotters'. The case of the Revenue rests on a circular issued by the Ministry of Information & Technology No.1/2019 dt. 02.05.2019 which reads as under :

"8(29)/2019-IPHW

Government of India

Ministry of Electronics and Information Technology,

IPHW Division.

Dated, 2nd May 2019

CIRCULAR No.1 of 2019

Subject :- Clarification regarding coverage of Multi-Function Devices (MFDs)

The Government of India, Ministry of Electronics and Information Technology (MeitY) has mandated Compulsory Registration for notified product categories including "Printers, Plotters" in the Electronics and IT Goods (Requirement of Compulsory Registration Order, 2012. (hereinafter called the Order) notified in the Gazette of India vide S.O.No.2357 (E) dated 03.10.2012.

2. In this regard, it is clarified that the Multi-Function Devices (MFDs), which are basically printers with additional features like photocopy, scan, Fax etc. and are covered in the category "Printers, Plotters" notified under the Order.

3. Other provisions of the aforesaid notification dated 03.10.2012 would apply as before."

Another letter was issued by the Joint Secretary vide No.37(10)/ 2016-IPHW dated 10.03.2017 of the same Ministry reads as follows :

"D.O.No.37 (6)/2016-IPHW Dated 06.12.2016

Dear Shri Srinivasa,

Meity is executing the surveillance of registered manufacturers for goods notified under "Electronics and IT Goods (Requirement for Compulsory Registration) Order (CRO), 2012". It has come to our notice that second hand electronics products are being allowed to be imported/sold in Indian market without registration.

2. The CRO applies universally to all notified products after the date of coming into effect of the Order. The repaired/refurbished/second hand items, if notified, also require registration under the provisions of the Order. For the notified products, the importer should get the product registered with BIS before import in India or should provide an exemption letter from MeitY.

3. The unregistered repaired/refurbished/second hand items should not be allowed to be imported without prior permission from MeitY. In such cases, the unregistered products shall be detained at customs and the matter should be brought into notice of Meity for necessary action.

Yours sincerely

Sd/-

(Rajiv Bansal)

Shri L Satya Srinivasa

Joint Secretary (Customs)

Central Board of Excise and Customs

Department of Revenue, North Block,

New Delhi 110 001."

15. Ld. Counsel submitted that based on these two letters, Revenue's case is that MFDs have to meet the standards under CRO 2012. But as can be seen by comparing entries in the CRO 2021 and CRO 2012, multi-functional devices were clearly not covered under the latter. Therefore, the confiscation of the goods itself is without any basis. Section 111(d) of the Customs Act provides for confiscation of goods imported contrary to any prohibition imposed by or under this Act (Central Act) or any other law for the time being in force. Any letter issued by an officer of MeitY cannot be termed a law. Imported goods cannot be confiscated on the ground that they do not conform to the letters/circulars issued by any officer of a Ministry.

16. He submitted that the second argument of the department is based on DGFT Notification No.5/2015-2020 dt. 07.05.2019 which reads as under:

"Notification No.5/2015-2020

New Delhi Dated 7 May, 2019

Subject: Import policy for electronics and IT Goods under Schedule - I (Import

Policy) of ITC (HS), 2017.

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends Note No.2(c) under the General Notes Regarding Import Policy and inserts Policy Condition No.2 under Chapter 84 and as Policy Condition No.5 under Chapter 85 of ITC (HS) 2017 as under :

Existing General Note 2 (c)

Amended General Note No.2 (c)

(c) Import Policy for electronics and IT Goods:

The import of Notified Goods under the "Electronics and Information Technology Goods (requirement of Compulsory Registration) Order, 2012, as amended from time to time, will be allowed subject to registration with the Bureau of Indian Standards (BIS), or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No.3022 dated 11.09.2013. Accordingly, import of unregistered/non-complaint notified products as in CRO,2012, as amended is "prohibited"

Import consignments without valid registration with BIS shall be reexported by the importer failing which Customs shall deform the goods and dispose them as scrap under intimation to MeitY

(c) Import policy for Electronics and IT Goods:

The import of Goods new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is prohibited unless they are registered with the Bureau of Indian Standards (BIS) and comply to the 'Labeling Requirements' published by BIS, as amended from time to time', or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No.3022 dated 11.09.2013.

The importer shall re-export such prohibited Goods reaching Customs Ports else the Customs Authorities shall deform the goods beyond use and dispose of the goods as scrap under intimation to MeitY.

Policy Condition: As under chapter 84 and 85 of ITC (HS) 2017:

The import of Goods new as well as second hand, whether or not refurbished, repaired or reconditioned) notified under the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time, is prohibited unless they are registered with the

Bureau of Indian Standards (BIS) and comply to the 'Labeling Requirements' published by BIS, as amended from time to time', or on specific exemption letter from Ministry of Electronics and Information Technology (MeitY) for a particular consignment, as per provisions of Gazette Notification SO No.3022 dated 11.09.2013.

The importer shall re-export such prohibited Goods reaching Customs Ports else the Customs Authorities shall deform the goods beyond use and dispose of the goods as scrap under intimation to MeitY.

Further, Para 2.31 (I) (a) of Foreign Trade Policy, 2015-20 is revised as under :-

S.No.

Categories of Second Hand Goods

Import Policy

Conditions, if any

Second Hand Capital Goods

(a)

i. Desktop Computers

ii. refurbished / re-conditioned spares of re-furbished parts of Personal Computers / Laptops / Multifunctional print & copying machines

iii. Air Conditioners

iv. Diesel generating sets

Restricted

Importable against Authorization

(b)

All electronics and IT Goods notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time.

Restricted

Importable against Authorization subject to conditions laid down under "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012, as amended from time to time.

(ii) Import of unregistered / non-complaint notified products as in CRO,2012, as amended from time to time is "prohibited".

3. Effect of this Notification : Import Policy and Policy condition for import of Electronics and It Goods is laid down .

This issues with the approval of Ministry of Commerce and Industry.

Sd/-

Alok Vardhan Chaturvedi)

Director General of Foreign Trade &

Ex Officio Addl. Secretary to the Government of India

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[issued from file No.01/89/180/39/AM-13/PC/2(A)/e 2261]

Note: The principal notification No.36/2015-2020, dated the 17th January, 2017 was published in the Gazette of India, Extraordinary vide number S.O.172E, dated the 17th January, 2017 and amended vide notification NO.50/2015-2020, dated the 8th January,2019 was published in the Gazette of India, Extraordinary vide number .SO.128 (E) dated the 8th January 2019."

It is his contention that even this notification of the DGFT only prohibits imports of goods which are covered by the CRO 2012.

Since their products are not covered by CRO 2012, DGFT notification does not apply. Therefore, on merits, it may be held that their goods are not covered under CRO 2012 and therefore they are not liable for confiscation under Section 111 (d) of the Act as there was no provision either under Foreign Trade Policy or under the CRO 2012 restricting import of the multi-functional devices by the respondents. As far as confiscation under Section 111 (m) is concerned, this was done on the ground that value of the goods does not match and the value has been re-determined as per the Chartered Engineer certificate and duty calculated accordingly, which they are not disputing. The redemption fine imposed by the lower authority has been correctly reduced by the Commissioner (Appeals). Therefore, goods may be allowed to be redeemed. The question of treating the goods as substandard or defective and deforming and disposing them off as scrap under clause 3 (2) of CRO 2012 does not apply to their case because the CRO 2012 itself does not apply. Therefore, the Commissioner (Appeals) has correctly allowed them to redeem the goods for home consumption. Correspondingly, the penalties under Section 112 have also been reduced by Commissioner (Appeals). He further submits that Commissioner (Appeals) has correctly set aside penalty imposed under Section 117 of the Customs Act, 1962. He therefore prays that department's appeals may be rejected and it may be held that the multi-functional devices imported by them were not covered under CRO 2012 and therefore their import was not prohibited during the relevant period.

17. Lastly, the learned counsel prays that a direction may be given to the Revenue to release the goods immediately since they have not been released to them despite order of Commissioner (Appeals). He also prays that an order to waive demurrages may be given to Commissioner.

18. We have gone through records of the case and considered arguments on both sides. The following questions need to be addressed :

(1) Whether the multi-functional devices imported by the appellants were required to meet the standards as 'printers / plotters' as per Electronics & Information Technology Goods (Requirements of Compulsory Registration) Order 2012 ?

(2) Whether the goods were covered by Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016 ?

(3) If they have to meet the standards, was the import of the goods prohibited and were they liable for confiscation under Section 111 (d) of the Customs Act, 1962 ?

(4) Whether the import of goods in question was restricted under para 2.31 of FTP ?

(5) Was the value declared by the respondents in their Bill of Entry incorrect and whether the revaluation has been done by the Chartered Engineer correctly ?

(6) Has the Ld. Commissioner (Appeals) correctly allowed redemption of the goods under Section 125 of the Customs Act for home consumption ?

(7) Whether the reduction of penalty imposed under Section 112(a) of the Customs Act, 1962, by Commissioner (Appeals) is correct and proper ?

(8) Whether the Commissioner (Appeals) has correctly set aside penalty under Section 117 of Customs Act imposed upon the respondents for violation of Section 49 of the Customs Act, 1962.

19. We proceed to the decide the above issues.

20. The CRO order 2012 was notified vide S.O 8.(14)/2006-IPHW (Vol-III) and reads as follows :

"In exercise of the powers conferred by section 10 (1) (p) of the Bureau of Indian Standards Act, 1986 (63 of 1986) and in pursuance of clause (fa) of rule 13 of the Bureau of Indian Standards Rules, 1987, the Central Government, after consulting the Bureau of Indian Standards, hereby makes the following Order, namely :-

1. Short title and commencement

(1)

(2)

2. Definitions :

(1)

(2) ...

3. Prohibition regarding manufacture, storage, sale and distribution etc. of Goods

-

(1) No person shall by himself or through any person on his behalf manufacture or store for sale, import, sell or distribute Goods which do not conform to the Specified Standard and do not bear the words "Self declaration - Conforming to IS Relevant Indian Standard mentined in column (3) of the Schedule) on such Goods after obtaining Registration from the Bureau:

Provided that nothing in this Order shall apply in relation to manufacture of Goods meant for export.

(2) The sub-standard or defective Goods which do not conform to the Specified Standard mentioned in Column (3) of the Schedule shall be deformed beyond use by the manufacturer and disposed off as scrap."

The relevant portion of the Schedule is as under :

S.No.

Goods or Articles

Indian Standard

Title of Indian Standard

(1)

(2)

(3)

(4)

...

...

...

...

7.

Printers, Plotters

IS 13252 : 2003

Information Technology Equipment - Safety - General Requirements

From the preamble, it is evident that this order was issued under Section 10 (1) (p) of the Bureau of Indian Standards Act, 1986 and in pursuance of clause (fa) of rule 13 of the Bureau of Indian Standards Rules, 1987. Section 10 of the Bureau of Indian Standards Act, 1986 reads as follows :-

"10. Functions of the Bureau.-(1) The Bureau may exercise such powers and perform such duties as may be assigned to it by or under this Act and, in particular, such powers include the power to-

(a)

(b)

...

(p) perform such other functions as may be prescribed."

21. It is pertinent to note that in the entire BIS Act, 1986, there is no provision for regulating imports at all including in Section 10 referred to above. Rule 13 of BIS Rules, 1987 deals with "other functions of the Bureau". It reads as follows :

"13. Other Functions of the Bureau - The Bureau under clause (p) of sub-section (1) of section 10 may also -

a. formulate, implement and coordinate activities relating to quality maintenance and improvement in products and processes;

b. promote harmonious development in standardization, quality systems and certification, and matters connected therewith both within the country and at international level;

c.

d.

e. ...

f.

(fa) formulate, implement and coordinate activities relating to registration for self declaration of conformity to the relevant Indian Standard on voluntary or compulsory basis, of articles as may be considered expedient in public interest and so notified through an order by the Central Government after consulting the Bureau."

A perusal of the entire BIS Rules, 1987 also shows that just like BIS Act, 1987, BIS Rules 1987 did not provide for regulating or prohibiting import of goods. Therefore, CRO 2012 has, in clause (3), gone beyond the scope of the Act and the Rules in prescribing a standard for import of goods and in prohibiting import of goods which did not meet the standards. Therefore, it is doubtful, whether in the first place, whether the CRO 2012 is legally sustainable.

22. Be that as it may, even if it is ignored that CRO 2012 was issued beyond the scope of the parent Act and Rules, the Schedule to CRO 2012 covers only "printers and plotters" at Sl.No.7. It did not cover multi-functional devices. The case of the Revenue is that Ministry of Electronics & Information Technology has issued a circular No.1/2019 dt. 02.05.2019 clarifying that multi-functional

devices are basically printers with additional features and covered under the category of 'printers and plotters' as notified in the order. Revenue also relies upon another D.O. letter dt. 16.08.2021 issued by the Joint Secretary of the Ministry in the matter. If that argument is accepted, the entry of printers / multi-functional devices / plotters in the Schedule to the CRO 2021 at Sl.No.7 is redundant because if multi-functional devices are also printers, there is no need to include them separately in the CRO 2021. Therefore, the case of the Revenue regarding prohibition of import lies on a shaky ground of circular issued by MeitY which effectively enlarged the scope of entry in the order itself.

23. For better appreciation of facts, it would be profitable to consider the CRO 2021 dt. 18.03.2021 which reads as follows :

"S.O. 1248(E).-In exercise of the powers conferred by sub-section (1) and (2) of section 16 read with sub section (3) of section 25 of the Bureau of Indian Standards Act, 2016,(11 of 2016), the Central Government, after consulting the Bureau of Indian Standards, is of the opinion that it is necessary or expedient so to do in the public interest, hereby makes the following Order, namely:-

1. Short Title and commencement: - (1) This Order may be called the ? Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021".

2. Compulsory use of standard mark:- Goods or articles specified in the column (2) of the Schedule below shall conform to the corresponding Indian Standard given in the column (3) of the said Schedule and shall bear the 'Standard' Mark under a license from the Bureau of Indian Standards as per Scheme-II of Schedule-II of Bureau of Indian Standards (Conformity Assessment) Regulations, 2018, provided that nothing in the Order shall apply in relation to goods or articles, as specified in the column (2) of the said Schedule meant for export which conform to the specification required by the foreign buyer and to goods or articles, for which the Central Government has issued specific exemption letter based on reasons to be recorded in writing.

....

SCHEDULE

S.No.

Goods or Articles

Indian Standard

Title of Indian Standard

(1)

(2)

(3)

(4)

...

...

...

...

7.

Printers / Multi-Function Devices(MFD) Plotters/

IS 13252 : Part 1 : 2010

Information Technology Equipment - Safety - General Requirements

This order was passed under the BIS Act, 2016 which replaced BIS Act, 1986. BIS Act, 2016 specifically provided for regulating imports Section 16 & 17 of the Act read as follows :

"16. (1) If the Central Government is of the opinion that it is necessary or expedient so to do in the public interest or for the protection of human, animal or plant health, safety of the environment, or prevention of unfair trade practices, or national security, it may, after consulting the Bureau, by an order published in the Official Gazette, notify-

(a) goods or article of any scheduled industry, process, system or service; or

(b) essential requirements to which such goods, article, process, system or service, which shall conform to a standard and direct the use of the Standard Mark under a licence or certificate of conformity as compulsory on such goods, article, process, system or service.

Explanation.-For the purpose of this sub-section,-

(i) the expression "scheduled industry" shall have the meaning assigned to it in the Industries (Development and Regulation) Act, 1951;

(ii) it is hereby clarified that essential requirements are requirements, expressed in terms of the parameters to be achieved or requirements of standard in technical terms that effectively ensure that any goods, article, process, system or service meet the objective of health, safety and environment.

(2) The Central Government may, by an order authorise Bureau or any other agency having necessary accreditation or recognition and valid approval to certify and enforce conformity to the relevant standard or prescribed essential requirements under sub-section (1).

17. (1) No person shall manufacture, import, distribute, sell, hire, lease, store or exhibit for sale any such goods, article, process, system or service under sub-section (1) of section 16-

(a) without a Standard Mark, except under a valid licence; or

(b) notwithstanding that he has been granted a license, apply a Standard Mark, unless such goods, article, process, system or service conforms to the relevant standard or prescribed essential requirements.

(2) No person shall make a public claim, through advertisements, sales promotion leaflets, price lists or the like, that his goods, article, process, system or service conforms to an Indian standard or make such a declaration on the goods or article, without having a valid certificate of conformity or licence from the Bureau or any other authority approved by the Central Government under sub-section (2) of section 16.

(3) No person shall use or apply or purport to use or apply in any manner, in the manufacture, distribution, sale, hire, lease or exhibit or offer for sale of any goods, article, process, system or service, or in the title of any patent or in any trade mark or design, a Standard Mark or any colourable imitation thereof, except under a valid licence from the Bureau."

As may be seen, the BIS Act, 2016 is an advancement of the BIS Act, 1986 and has provided for regulation of imports also. Consequently, the CRO 2021 issued under BIS Act, 2016 also covers imports.

24. The present case however pertains to CRO 2012 with respect to which the following can be concluded:

(1) CRO 2012 was issued under the BIS Act, 1986 and BIS Rules 1987 neither of which had any provision to regulate imports. Clause (3) of CRO 2012 therefore went beyond the scope of the Act and Rules and imposed controls over imports as well.

(2) CRO 2012 covers only to 'printers and plotters' and not to "MFDs". The circular and the letters issued by the MeitY went beyond the scope of CRO 2012 and sought to apply them to MFDs also on the ground that they are also in the form of printers.

(3) Customs Act, 1962 is both a fiscal statute and also a penal statute. Import of goods contrary to any prohibitions not only render such goods liable to confiscation under Section 111 of the Act, it amounts to smuggling [as per Section 2 (39) of the Act] and the persons involved will be liable to arrest [Section 104] and conviction [Section 135]. It is a well settled Rule of Interpretation that fiscal and penal statutes must be strictly interpreted. Therefore, a prohibition / restriction cannot be imposed and goods confiscated based on letters / circulars of MeitY. If there is no explicit prohibition / restriction, nothing can be read into the entry in CRO 2012 so as to enlarge the scope of prohibition. Sections 111(d), (l) and (m) under which the goods were confiscated by the lower authorities are reproduced below:

"SECTION 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

(a)

... ..

... ..

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

... ..

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"

(4) The case of the Revenue is that the goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962 because of import of the goods was prohibited under the BIS Act, 1986 read with BIS Rules 1987 read with CRO 2012 read with circular and letters issued by MeitY. In our considered view, the MFDs were clearly not covered even in the CRO 2012 whose restriction of imports itself was beyond the scope of BIS Act, 1986 and BIS Rules, 1987. Therefore, confiscation of the goods under Section 111 (d) on this ground is not sustainable and needs to be set aside which we do so.

25. It is undisputed that the goods were second hand in nature and were examined by the Customs under first check and were verified by expert Chartered Engineer and the import duty was recalculated accordingly under CVR 2007. Neither side is disputing the valuation. Therefore, the valuation of the imported goods does not call for any interference. Consequently, the confiscation of the goods or misdeclaration under Section 111 (m) also need not be interfered with.

26. The assertion of the Revenue is that Ld. Commissioner (Appeals) allowed

redemption of the goods under Section 125 for home consumption and that the goods should have been ordered to be either re-exported, or destroyed as being sub-standard and defective goods under CRO clause (3) (2). It is also the assertion of the Revenue that the goods fall under 'hazardous waste' and are regulated by Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2008. We have considered these submissions. We have already held that CRO 2012 does not cover the impugned goods. Therefore, the question of mutilation of the goods under clause 3 (2) of CRO 2012 does not apply as there was no standard prescribed under the CRO for MFDs. The circulars and letters of the Ministry are at best executive opinions and they cannot take the place of law. We have also observed that the CRO itself has imposed restriction on imports going beyond the scope of BIS Act, 1986 and BIS Rules 1987 neither of which (unlike BIS Act, 2016) provided for prescribed standards or for regulating imports. Therefore, the question of mutilation of goods does not arise. In so far as Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2008 is concerned, these define hazardous waste, other waste and waste, under Rule 3 (1) (I) as follows :

"3. Definitions: - (1) In these Rules, unless the context otherwise requires, -

... ..

.... ..

(17) "hazardous waste" means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances, and shall include -

(i) waste specified under column (3) of Schedule-I,

(ii) wastes having constituents specified in Schedule-II, if their concentration is equal to or more than the limit indicated in the said Schedule, and

(iii) wastes specified in Part A or Part B of the Schedule-III in respect of import or export of such wastes in accordance with rules 12, 13 and 14 or the wastes other than those specified in Part A or Part B if they possess any of the hazardous characteristics specified in Part C of that Schedule

... ..

(23) "other wastes" means wastes specified in Part B and Part D of Schedule III for import or export and includes all such waste generated indigenously within the country;

... ..

(38) "waste" means materials that are not products or by-products, for which the generator has no further use for the purposes of production, transformation or consumption.

Explanation.- for the purposes of this clause,

(i) waste includes the materials that may be generated during, the extraction of raw materials, the processing of raw materials into intermediates and final products, the consumption of final products, and through other human activities and excludes residuals recycled or reused at the place of generation; and

(ii) by-product means a material that is not intended to be produced but gets produced in the production process of intended product and is used as such;"

27. In this case, the goods in question were examined by the Chartered Engineer in the presence of the importers and the Customs officers and it was found that they have residual life and they are not waste as per Rule 3 (38) of the Hazardous Waste Rules because the goods in question have further use. It is true that as per Rule 2 (23) of these Rules means "wastes specified in Part B and Part D of Schedule III for import or export". Schedule III, Part 'D' does include at entry B1110 "Used multifunction print and copying machines (MFDs)***. The footnote "****" states "Import permitted in the country only to the actual users from Original Equipment Manufacturers (OEM) and subject to verification of documents specified in Schedule VIII of these Rules by the Customs Authority.

28. Even if used MFDs are listed as "other wastes" they must be "wastes" in the first place as per the very Rules. The impugned goods in these cases are not. They have further use and therefore cannot be called "waste". In fact, their value was enhanced by the Customs authorities. Revenue has placed emphasizes on Rule 15 of the Hazardous Waste Rules which reads as under :

"15. Illegal traffic.- (1) The export and import of hazardous or other wastes from and into India, respectively shall be deemed illegal, if,-

(i) it is without permission of the Central Government in accordance with these rules; or

(ii) the permission has been obtained through falsification, mis-representation or fraud; or

(iii) it does not conform to the shipping details provided in the movement documents; or

(iv) it results in deliberate disposal (i.e., dumping) of hazardous or other waste in contravention of the Basel Convention and of general principles of international or domestic law.

(2) In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists.

(3) In case of illegal import of hazardous or other waste, where the importer is not traceable then the waste either can be sold by the Customs authority to any user having authorisation under these rules from the concerned State Pollution Control Board or can be sent to authorised treatment, storage and disposal facility."

It is emphasized that as per Rule 15 (2), the impugned goods, having been imported without the requisite permissions, should be re-exported. Therefore, Commissioner (Appeals) was wrong in allowing clearance after redemption for home consumption. We find that this Rule requires the Customs officer to ensure re-export within 90 days from arrival. In these cases, even the order of the original authorities was passed well beyond the 90 days. For instance, in case of Bill of Entry No.2706447 dt. 4/4/2019, the OIO was passed only on 14/8/2020 well beyond one year. If this Rule 15(2) is applicable to this case, it is the Customs officers who are in violation of the Rule because the Rule places an obligation on the Customs and not the importer. The question is whether the goods in question are "other waste" and hence covered by the mischief of this Rule. While used MFDs are listed in the Schedule as "Other Waste" and hence covered by the mischief of these Rules for them to be classified as "other waste", they must be "waste" in the first place. Goods with further use are not "waste" as per the Rules.

29. Analogy can be drawn from the Central Excise Act which levies duty on "excisable goods" which are manufactured or produced in India. "Excisable goods" are defined as those listed in the Central Excise Tariff". Through a series of judicial pronouncements, it is well settled that it is not sufficient for something to be listed in the Tariff to be excisable goods but they should be "goods" in the first place, i.e., they must be capable of being bought and sold in the market. Similarly, in this case while "other wastes" listed in the Schedule includes used MFDs, they must be "waste" and the impugned goods do not qualify as "waste" as per Rule 3 (38). Therefore, the requirement of re-export or destruction under Rule 15 does not apply to the impugned goods. Revenue has, in fact, increased the value of imported goods. Had they been a waste, value should have been Nil or something close to it. Therefore, they are useful goods with some residual life and cannot be called hazardous waste by any stretch of imagination. Therefore, the Hazardous Waste Rules do not apply to the impugned goods.

30. So far as the Foreign Trade Policy is concerned, it is true that import of Second Hand MFDs were restricted and required an authorization which the respondents did not have. Therefore, the confiscation of the goods under Section 111 (d) is valid. Having confiscated, the goods can be allowed for redemption under Section 125 of the Customs Act, 1962 which reads as follows :

'SECTION 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation

whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section

(2) of section, 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

A perusal of this section shows that the adjudicating authority may allow redemption of prohibited goods and shall allow redemption of other goods. There is no bar on allowing redemption in any case. There is no power under this Section to allow redemption imposing same conditions for redemption [Commissioner of Customs Vs HBL Power Systems Ltd. - 2019 (367) ELT 154 (A.P.).

31. In view of the above, we find that the Ld. Commissioner (Appeals) is correct in allowing redemption of the goods under Section 125 for home consumption. Hon'ble High Court of Telangana & A.P. has released identical goods for home consumption in W.P. No.2728 of 2018 observing as follows :

"As regards the applicability of the Electronics and IT Goods (Requirement for Compulsory Registration) Order (CRO) 2012, the communication dated 06.12.2016 makes it clear that only repaired/refurbished/second hand items, if notified, would require registration. The learned Assistant Solicitor General could not produce before us any notification issued thereunder relating to the MFD (Multi Function Devices) printers and photocopiers, whereby such registration would be a condition precedent prior to their import. In the absence of such a notification, it is not open to the Customs Authorities to blindly apply the directive of the Department of Electronics and Information Technology, Ministry of Communications and Information Technology, under the letter dated 06.12.2016, to the petitioner firm's goods."

32. As far as the penalty under Section 117 is concerned, it was imposed by the original authority for violation of provisions of Section 49. These two sections read as follows :

"SECTION 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees".

SECTION 49. Storage of imported goods in warehouse pending clearance or removal. - Where,--

(a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;

(b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days:

Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section:

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time."

33. As can be seen, Section 49 is an enabling section and is not a prohibiting section. There is nothing in the section failure of which may be construed as contravention. A contravention, by definition, implies an act or omission prohibited by law. In this section, there is nothing which requires the importer to do or not to do something. It says that Assistant or Deputy Commissioner of Customs may permit to deposit of goods in a warehouse and the proviso states that the Commissioner can extend the period of storage. The warehouses in question are the Customs bonded warehouses licensed under Chapter IX of the Customs Act. Warehouses are normally meant for people who want to defer payment of duty they can do so by filing warehouse Bill of Entry and transferring the goods to the Customs bonded warehouse. When they clear the goods, they file an ex-bond Bill of Entry and remove the goods on payment of duty. The period for which the goods may remain warehoused under Chapter IX is in Section 61. Sub-section (2) of Section 61 states that if the goods remain warehoused beyond the period of 90 days from the date of which the proper officer has made an order interest shall be payable. Section 71 prohibits anybody from taking out warehoused goods except on clearance for home consumption or export or for removal to another warehouse or as otherwise provided under the Act. Provisions have been made for dealing with cases where goods have been improperly removed from the warehouse under Section 72. None of these provisions apply to goods deposited in a warehouse under Section 49 in view of the first proviso to Section 49 which says that the provisions of Chapter IX do not apply to goods deposited under Section 49. Therefore, there is neither any obligation to do anything nor prohibition of any act under Section 49. Therefore, there cannot be any contravention under Section 49. It is only an enabling

provision for the Assistant Commissioner and the Commissioner. Therefore, no penalty can be imposed under Section 117 for contravention of Section 49 and the Ld. Commissioner (Appeals) is correct in setting aside penalty under Section 117.

34. There is no dispute regarding reduction of penalty under Section 112 (a) by the Commissioner (Appeals) which we also find is fair and reasonable.

35. We have already discussed above that goods in question were not waste in the first place but are useful articles with residual life whose value has been enhanced by Customs authorities and therefore the provisions of Hazardous Waste Rules do not apply. In view of the above, we hold as under :-

(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.

(8) As far as the request of the Ld. Counsel for the respondents to waive demurrages is concerned, we find that there is no appeal against the impugned order by the respondents and therefore no relief can be considered or granted.

36. In view of the above, all impugned orders are upheld and the appeals filed by the 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. The

stay applications are also disposed of.
(Pronounced in court on 27.08.2021)