

2013 (1) ECS (95) (Tri-Mum)

IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Avesh Hanif Pitodia

Versus

Commissioner of Customs (Adjudication)

Application: C/Stay – 1209/2012 in Appeal: C/463/2012

Arising out of: Order-in-Original No. 11/2012/CAC/CC/BKS dated 29.02.2012.

Passed by : Commissioner of Customs (Adjudication), Mumbai.

Date of hearing: 16.1.2013
Date pronounced: 16.1.2013

Avesh Hanif Pitodia

Appellant – Represented by
Mr. G.B. Yadav, Advocate

Versus

Commissioner of Customs (Adjudication)

Respondent – Represented by
Mr. M.S. Reddy
Asstt. Commissioner (A.R)

CORAM

Shri. P.R. Chandrasekharan, Member (Technical)
Shri Anil Choudhary, Member (judicial)

ORDER NO. S/70/13/CSTB/C-I

“The appellant not only mis-declared the value of the goods but also imported duplicate goods bearing the brand name of well known brands thereby

contravening the provisions of IPR (Imported Goods) Enforcement Rules, 2007 and Foreign Trade (Regulations) Rules, 1993. Thus the appellant has not made out a case for total waiver of the penalty imposed on the appellant. Accordingly, we direct the appellant to make pre-deposit of Rs. 5 (Five) Lakhs within a period of eight weeks and report compliance on 28.03.2013. On such compliance, pre-deposit of the balance amount penalty adjudged against the appellant shall stand waived and recovery thereof stayed during the pendency of the appeal.” [Para5.1]

Per: P.R. Chandrasekharan:

1. The appeal is directed against Order-in-Original No. 11/2012/CAC/CC/ BKS dated 29.02.2012 passed by the Commissioner of Customs (Adjudication), Mumbai.
2. The appellant Shri Avesh Hanif Pitodia was found to be importing consignments of mobile phone accessories using the IEC code of M/s. Cell On Traders owned by Shri Shaikh Irfan Rashid by giving monetary consideration to him. Shri Avesh Hanif Pitodia owned a shop by similar name i.e. M/s. Cell On Shri Shaika Irfan Rashid does not have any legal identity in the shop except for the fact that he was working in the shop. However, for importing consignments of mobile phone accessories Shri Avesh Hanif Pitodia did not take IEC in his own name nor in his shop's name but arranged the IEC code in the name of Cell On Traders, making Shri Shaikh Irfan Rashid, as its proprietor and declaring the residential address of Shri. Shaikh Irfan Rashid as the address of M/s Cell On Traders. Shri Pitodia placed order with the overseas supplier for supply of mobile phone accessories, arranged the CHA for the Customs clearances and also paid the Customs duty thereon. However, Bill of Entry was filed using IEC Code of Cell On Traders and he was paying Rs. 10,000/- per container of Shri Shaikh Irfan Rashid. He had indulged in this activity previously also in respect of 17 consignments and adopting the same modus operandi by importing the consignments under the IEC of other people and also undervaluing the goods. Apart from the above, the consignments imported by Shri Avesh Hanif Pitodia also contained import of branded mobile phone accessories bearing the brand name of 'Nokia' whereas the goods were duplicate in nature. Thus, he violated provisions of Rule 3 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. On conclusion of the investigation a show cause notice was issued to Shri Avesh Hanif Pitodia among others for undervaluation of the goods and misusing the IEC and contravention of the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007. The goods imported by Avesh Hanif Pitodia in the name of Cell On Traders were held liable to confiscation under Section 111 (d) of the Customs Act for

contravention of the provisions of Rule 6 of IPR (Imported Goods) Enforcement Rules, 2007 and also for violation of the provisions of Rule 14 of the Foreign Traded (Regulation) Rules, 1993. A penalty of Rs. 13 lakhs was imposed on the appellant under the provisions of Section 112 (a) of the Customs Act. It is against this order the appeal is before us.

3. The learned counsel for the appellant submits that import of goods under the IEC Code issued to other is not a violation of the provisions of the Customs Act or the provisions of Foreign Trade (Regulations) Rules, 1993. He relies on the decision of the hon'ble High Court of Bombay in the case of Hamid Fahim Ansari vs. Commissioner of Customs

(Import), Nhava Sheva 2009 (241) ELT 168 and Carmel Exports & Imports vs. Commissioner of Customs, Cochin 2012 (276) ELT 505 (Ker) in support of his contention and accordingly prays for grant of waiver of pre –deposit.

4. The learned Assistant Commissioner (AR) appearing for the Revenue strongly opposes the plea for waiver of pre-deposit. He submits that in the present case it is not mere misuse of IEC Code issued to others but also undervaluation of the goods and violation of the provisions of IPR (Imported Goods) Enforcement Rules, 2007. Therefore, the goods are liable to confiscation under Section 111 (d) read with Section 11 of the Customs Act, 1962 and the appellant, being the main bran behind the whole scheme of illegal import, is liable to penalty under Section 112 (a).

5. We have carefully considered the submission made by both the sides.

- 5.1 From the statements recorded from the appellant as also the IEC holder, it is evident that the appellant Avesh Hanif Pitodia is the real importer and he has placed the order with the foreign supplier, engaged the CHA, paid the Customs duty and has taken delivery of the goods M/s Cell On Traders in whose name of the goods have been imported as declared in the imported documents are merely a dummy or a front for the illegal activities undertaken by the appellant and the said firm is a proprietorship belonging to the employee of the appellant. It is also on record that merely for the use of the IEC, the appellant has been paying a fixed sum per container basis to the IEC holder. It is further seen that the appellant has been importing 'Nokia' brand mobile phone accessories which are duplicate in nature and therefore, violating of IPR (Imported Goods) Enforcement Rules is also involved. Thus it is not a mere case of misuse of IEC code but involves violations of a number of laws including undervaluation and mis-declaration of the goods. As regards the case laws relied upon by the appellant, they dealt with a situation where the importer used the IEC code of another. In that context the hon'ble High Court

of Bombay held that using IEC code of another person is not a violation of the law. In the present case of the facts are completely different and distinct. The appellant not only mis-declared the value of the goods but also imported duplicate goods bearing the brand name of well known brands thereby contravening the provisions of IPR (Imported Goods) Enforcement Rules, 2007 and Foreign Trade (Regulations) Rules, 1993. Thus the appellant has not made out a case for total waiver of the penalty imposed on the appellant. Accordingly, we direct the appellant to make pre-deposit of Rs. 5 (Five) Lakhs within a period of eight weeks and report compliance on 28.03.2013. On such compliance, pre-deposit of the balance amount penalty adjudged against the appellant shall stand waived and recovery thereof stayed during the pendency of the appeal.

(Operative part Pronounced in Court)