

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH - COURT NO. 01

**Customs Appeal No. 88657 of 2014**

(Arising out of Order-in-Appeal No. 2685(Gr.V)/2014(JNCH)/IMP-2554 dated 07.07.2014 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva)

**The National Sport Club of India**

**.....Appellant**

Mathura Road,  
New Delhi -110001.

*VERSUS*

**Commissioner of Customs (Imports),  
JNCH, Nhava Sheva**

**.....Respondent**

Jawaharlal Nehru Custom House, Nhava Sheva,  
Raigad, Maharashtra – 400 707.

**Appearance:**

Shri V.K. Singh, Consultant for the Appellant

Shri Krishna Murari Azad, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85865/2024**

Date of Hearing: 29.08.2024

Date of Decision: 29.08.2024

**PER : S.K. MOHANTY**

Briefly stated, the facts of the case are that the appellants have filed the Bill of Entry before the Customs authorities, for clearance of the goods declared therein as SVPS Chillers. The appellants had classified the said goods under CTH 84198940 and

claimed the benefit of Notification No.21/2012-Cus dated 17.03.2012. The Bill of Entry filed by the appellants was self-assessed in terms of sub-section (1) of Section 17 of the Customs Act, 1962. On verification of the goods by the Shed Staff of the Customs department, it was observed that the benefit of notification dated 17.03.2012 claimed by the appellants should not be available to them, in view of the fact that the exemption provided therein is available only to the packaged commodities meant for retail sale, as per the Legal Metrology (Packaged Commodities) Rules, 2011. On the basis of such understanding, the Bill of Entry was re-assessed by the proper officer, in passing the adjudication order dated 22.01.2014. In the said order, the original authority had confiscated the imported goods under Section 111(m) *ibid*, with the option to redeem the said goods on payment of redemption fine of Rs.10,00,000/-(Rupees ten lakhs only). The original order has also imposed penalty of Rs.5,00,000/- (Rupees five lakhs only) on the appellants under Section 112(a) *ibid*. On appeal against the said adjudication order dated 22.01.2014, the learned Commissioner (Appeals) vide the impugned order dated 07.07.2014 has upheld the adjudication order and dismissed the appeal filed by the appellants. In the impugned order, the Learned Commissioner (Appeals) has held that the goods are liable for confiscation both under Section 111(m) *ibid* and 111(o) *ibid*. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Learned Consultant appearing for the appellants submitted that due to inadvertence, the benefit of notification dated 17.03.2012 was claimed by the appellants and upon detection of such mistake, the appellants had immediately deposited the duty attributable to the imported goods. He further submitted that since there is no mis-declaration with regard to the importation of the goods, the provisions of Section 111(m) *ibid* shall not be invoked for

confiscation of goods, imposition of redemption fine and penalty under Section 112(a) *ibid*. Furthermore, he also submitted that the original authority had not invoked the provisions of Section 111(o) *ibid*, which was invoked by the learned Commissioner (Appeals) for the first time, while passing the impugned order dated 07.07.2014. In this context, he submitted that since the re-assessment order was passed by the proper officer, ordering confiscation of goods under Section 111(m) *ibid*, the learned Commissioner (Appeals) is not competent to invoke the provisions contained in Section 111(o) *ibid*, while entertaining the appeal filed in terms of Section 128 *ibid*. To support his stand that the goods are not liable for confiscation and penalty cannot be imposed on the appellants, Learned Consultant has relied upon the following orders passed by the Tribunal:

- (i) *J.K. Industries Ltd. Vs. Commissioner of Customs, New Delhi – 1996 (99) E.L.T. 41 (Tribunal),*
- (ii) *Lewek Altair Shipping Pvt. Ltd. Vs. Commissioner of Customs, Vijayawada – 2019 (366) E.L.T. 318 (Tri,-Hyd.),*
- (iii) *SirthaiSuperware India Ltd. Vs. Commr. Of Customs, Nhava Sheva-III-2020 (371) E.L.T.324 (Tri-Mumbai).*

3. On the other hand, the learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. The provisions for confiscation of improperly importation of the goods are contained in Section 111 *ibid*. The goods which do

not correspond in respect of the value or in any other particulars are liable for confiscation under Clause (m) of Section 111 *ibid*. In the present case, the appellants had filed the Bill of Entry on the basis of the import documents such as commercial invoice, packing list etc. They have also claimed the correct classification of the imported goods. Claiming of wrong exemption notification is not a condition precedent for invocation of clause (m) in Section 111 *ibid*, for confiscation of the goods. We find that this Tribunal, in an identical matter, in the case of Sirthai Superware India Ltd. (*supra*) has set aside confiscation of goods and also imposition of penalty under Section 112(a) *ibid*, holding as under:

*"4.8 Section 111(m) and 111(o) of the Customs Act, 1962 which have been invoked by the Commissioner for holding that the goods are liable for confiscation read as follows:*

*(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;*

*4.9 From plain reading of the said clauses of Section 111, we do not find that these sub clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two clauses. Hence the order holding goods liable for confiscation and imposition of penalty under Section 112(a) cannot be sustained."*

Further, this Tribunal in the case of J.K. Industries Ltd. (*supra*) has also held that claim for exemption is not a declaration for the

purpose of Section 111(m) *ibid* and hence, confiscation of goods and imposition of penalty are liable to be set aside.

6. In view of the fact that the appellant herein had not contravened clauses (m) and (o) of Section 111 *ibid* at the time of importation of goods, in our considered view, the confiscation of goods, imposition of redemption fine and penalty by the authorities below are not in conformity with the statutory provisions. Therefore, we do not find any merits in the impugned order, insofar as it has upheld the confirmation of the adjudged demands on the appellants. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M. M. Parthiban)**  
**Member (Technical)**