CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 1690 of 2012

(Arising out of Order-in-Appeal No. 57/2012 dated 21.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Wipro Ltd.,
Doddakannelli,
Sarjapura Road,
Bangalore – 572 168. — Appellant(s)

VERSUS

Commissioner of Customs,
C.R. Building, P.B. No. 5400,
Queens Road,
Bangalore – 560 001. — Respondent(s)

APPEARANCE:

Shri Aryaman Ghulati, Advocate for the Appellant.
Shri K.A. Jathin, Deputy Commissioner (AR) for the Respondent.

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20530 / 2025

DATE OF HEARING: 08.01.2025
DATE OF DECISION: 30.04.2025

PER: R. BHAGYA DEVI

This appeal is filed against Order-in-Appeal No. 57/2012 dated 21.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly the facts of the case are that the appellant M/s. Wipro Limited had imported a consignment consisting of

1 set of WS-SVCF-SAMI-BB-K9 service application module for IP supplied M/s. Cisco Systems, Mexico, declaring the value as USD 26,400 (C&F). However, noticing that similar items by another importer was valued at USD 50,600 the declared value was rejected and enhanced the value as USD 1,10,000 and was assessed to duty. The consignment was also confiscated under Section 111(m) of the Customs Act, 1962 and was allowed to be redeemed on payment of redemption fine of Rs.50,000/- under Section 125 of the Customs Act, 1962 and imposed penalty of Rs. 2,00,000/- on the appellant under Section 112(a) of the Customs Act, 1962. An appeal was filed by the appellant with the Commissioner (Appeals) and the Commissioner (Appeals) after taking the note of the fact that the present consignment was replacement part of earlier supplied equipment supplied free of charge to the appellant, that originally the value declared was USD 29,150 which was accepted and assessed to duty by the authorities concerned, he upheld the order of the original authority but reduced the penalty to Rs.1,00,000/-. Further, based on the request made by the appellant, the goods were allowed to be reexported after payment of all charges. Aggrieved by this order, the present appeal is filed before this Tribunal.

3. The learned Counsel for the appellant submitted that the impugned goods imported under Bill of Entry No. 208049 dated 28.08.2009 is a replacement of goods which was imported earlier and found to be defective. Originally the consignment was imported and the invoice dated 30.06.2009 valued at USD 29,150 was accepted by the department. It is further stated that the original importation was supplied in terms of the price list with discount of 76% which was not disputed by the Revenue, so there was no mis-declaration and hence, not liable to confiscation. Therefore, it was contested that the request for

re-export should have been allowed without payment of redemption fine and penalty.

4. After hearing the learned Authorised representative (AR) for the Revenue on merits, since the goods were lying from March 2012 was directed by this bench to check the status of the impugned goods. Thereafter, the AR placed on record letter dated 18.11.2024 which stated that the impugned goods were auctioned on 07.11.2013 and prior intimation was given to the appellant vide letters dated 17.12.2009, 07.04.2010 and on 29.09.2010. It is further submitted that as per Notification No.31/86-Cus. dated 5.2.86, the goods seized and confiscated are to be disposed off in a time bound manner. Since the appellant had failed to clear the goods, the same were disposed only in 2013 after the impugned order had upheld the confiscation vide order dated 21.03.2012.

5. Countering the above submissions, the learned counsel for the appellant submitted that during the pendency of this appeal, the Revenue had disposed of the goods in auction without informing the appellant. It is stated that auction had taken place in a clandestine manner when the matter is sub-judice before this Hon'ble Tribunal, hence, requested that the restitution of the sale value of the goods be in favour of the appellant. In this regard, reliance was placed on the following decisions:

- **Shilp Impex vs. Union of India: 2001 (128) ELT 54 (Del.)** affirmed by Hon'ble Supreme Court as reported at **2002 (140) ELT 3 (SC)**
- **M/s. Intersales vs. Commissioner of Central Excise, Bangalore – II: 2021 (8) TMI 999 – CESTAT Bangalore.**
- **Md. Yaseen vs. Commissioner of Customs, Bangalore: 2005 (6) TMI 125 – CESTAT Bangalore** as

affirmed by the Hon'ble High Court of Karnataka vide Judgment reported in **2010 (3) TMI 532**.

6. Heard both sides. The undisputed facts are that the goods were allowed for re-export by the Commissioner (Appeals). It is also fact that the impugned goods were replacement for the goods imported earlier which were found to be defective. Since originally the goods were allowed to be cleared at the declared value and replaced goods which were received after two months from the date of original import which were provided free of charge, the question of redetermination of value does not arise. Moreover, though the show-cause notice observes that similar items supplied by the same supplier was imported by another importer HCL Technology Ltd., Chennai vide bill of entry No. 788183 dated 16.02.2009 for an unit valued at USD 50,600, the Original Authority rejected the declared value USD 26,400 on the impugned goods and re-determined the value based on the supplier's list priced at USD 1,10,000 for the purpose of assessment under Customs Act, 1962. He further observed that the appellant placed on record certification provided by M/s. Cisco, the supplier called as "Cisco Gold Certified System Integrated Partner" based on which the appellant had claimed 76% discount on the list price. However, rejects their claim on the ground that no documentary evidences were placed on record where such satisfied clients were eligible for large discounts. But, it is also the fact that the similar items was imported by M/s. HCL Ltd. without any certification at USD 50,600, therefore, redetermination of value based on the supplier's list price without any sufficient reasons cannot be sustained. Moreover, when the appellant had requested for re-export, the question of payment of redemption fine and penalty does not arise since the goods were replacement of the defective goods which is not in dispute. We also find that the

goods have been auctioned without any intimation to the appellant by the Revenue that too when an appeal is pending before this Tribunal. The three letters that are placed on record to prove that the appellant had been intimated or letters issued by M/s. Menzies Aviation Bobba (Bangalore) Pvt. Ltd., the custodian of the goods and these letters have been issued prior to the Adjudication by the Original Authority vide Order-in-Original No. 79/2011 dated 31.03.2011. This intimation is much prior to the issuance of order of confiscation of the impugned goods. The appellant is right when he claims that the goods have been clandestinely auctioned without their knowledge, the fact that actual auction took place on 07.11.2013 does not justify the action taken by the department, especially when the issue is sub-judice, wherein the appeal is still pending beefore this Tribunal.

7. The Hon'ble High Court of Delhi in the case of **Shilp Impex vs. Union of India** (supra) observed as:

> "**4.** We have heard the learned counsel for the parties. According to the petitioner, disposal of the goods even before the expiry of period granted by adjudication order is *per se* illegal, motivated and *malafide*. Further, the conclusions of Assistant Commissioner who had passed the subsequent order dated 8-8-2000 shows an efforts on the part of the authorities to by-pass the main issue and there main effort is to deprive the petitioner of its legitimate entitlement. According to the learned counsel for the respondent, the order is appealable one and in any event the course adopted by the authorities is in accordance with the provisions of Section 23(2) and Section 160 of the Act.
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> **5.** Though the order is appealable yet in view of the peculiar circumstances, we do not think it would be proper to throw out the petition on the ground of existence of alternative remedy. In view of the factual position highlighted above, notwithstanding passing of order dated 8-8-2000 during pendency of writ petition, we entertain

the petition. From the undisputed factual position it appears that the goods have already been sold and that too at much lesser price than the one declared by the petitioner and much less than the value of the goods adjudicated by the authorities. Though the petitioner had declared the value at Rs. 4,34,835/-, according to the Department, it was Rs. 6,24,997/-. It is baffling that the goods were sold for Rs. 2,78,000/-. On 2-8-1999, Joint Commissioner had fixed the price at Rs. 6,24,887/- as against the declared value of Rs. 4,34,835/ -. That being so, disposal of goods for Rs. 2,78,000/- on 7-8-1999 appears to be somewhat queer and mysterious. Be that as it may, once the petitioner had deposited the duty, redemption fine and penalty, it was entitled to release of the goods. Here again there is some confusion. According to the respondent, the petitioner was asked to take the goods from three consumer co-operative stores and it did not do so. In answer to this stand of the respondent, the petitioner has filed several letters to show that the goods which were supposed to be with three co-operative societies were not in a fit state to be taken back.

6. Sections 23(2) and 150 of the Act on which great emphasis is laid by the counsel for the respondent read as under :-

Section 23. Remission of duty on lost, destroyed or abandoned goods. (1) …….

"(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehousing under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

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Section 150. Procedure for sale of goods and application of sale proceeds. — *(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall after notice to the owner thereof, be sold by*

public auction or by tender or with the consent of the owner in any other manner.

(2) The proceeds of any such sale shall be applied -

(a) firstly to the payment of the expenses of the sale.

(b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold to the carrier, if notice of such charges has been given to the person having custody of the goods.

(c) next to the payment of the duty, if any, on the goods sold.

(d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods.

(e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods."

7. On a bare reading of the provisions, it is clear that they have no application to the facts of the case. Section 23(2) deals with a case of relinquishment of a title in the goods by the owner of the goods. "Relinquish" means to give over possession or control of, to leave off. According to Tomlins' Law Dictionary it means forsaking, abandoning or giving over. In *Home* v. *Booth 3 M&G 742 11 LICP 78,* it was observed that "relinquish" is not a word of Art, and an abandonment or non-claim would amount to relinquishment, and may be satisfied by an abandonment or non-claim. Admittedly, there was no relinquishment and at least that is not the stand of the Department and there has been no relinquishment. It was faintly suggested that the petitioner did not lift the goods and that amounts to relinquishment. Such a stand is hardly acceptable. Section 150 operates in a different field altogether. It relates to sale of goods not being confiscated goods, and which are to be sold under any provisions of the Act. Even this provision postulates a notice to the

owner before action is taken. That has also undisputedly been not done.

As prescribed in sub-section (1) of Section 150 it relates to conditions of sale and procedure thereof in respect of confiscated goods which are to be sold by public auction or tender or by consent of the owner. That is not the fact situation in the present case. The petitioner had deposited the redemption fine, duty and penalty. If it was the stand of the respondent that it was a case of under-valuation then there was no question of returning the redemption fine, duty already paid as indicated above.

8. In the aforesaid background, petitioner is entitled to receive the value of the goods as fixed by the Department i.e. Rs. 6,44,997/- and at the same time it is liable to pay redemption fine and duty which amount to Rs. 3,80,000/-. Penalty of Rs. 50,000/- has already been paid. Therefore, the Customs Authority shall return to the petitioner a sum of Rs. 2,64,997/- (i.e. the difference between Rs. 6,44,997/- and Rs. 3,80,000/-). The amount shall be remitted to the petitioner within a period of six weeks form today".

8. This Tribunal in the case of **M/s. Intersales vs. Commissioner Of Central Excise, Bangalore-II** (supra) observed as:

"**7.** After considering the submissions of both the parties and perusal of the material on record and the various decisions relied upon by both the parties, we find that in the present case, since the goods have been auctioned during the pendency of the appeal before the Tribunal and the said seized goods are not available for redemption, therefore, at this stage, the question of going into the issue of undervaluation is not required as the goods being not available for assessment and home clearance, hence the question of assessment does not arise. Precisely, for this reason, the learned counsel for the appellant has even though made submissions on undervaluation but did not press the issue of undervaluation and has only confined to the restitution of value of the seized goods along with interest. This is the

third round of litigation before the Tribunal and in the first round of litigation, the Tribunal vide Final Order No.129/2002 dated 31.1.2002 had categorically observed the contention of the appellant with regard to the goods of mixed origin which should be verified by the certificate of country of origin submitted by the appellant and remanded the matter back to the original authority to decide the issue afresh. Further, we find that it is not in dispute that the goods worth ₹ 28,26,001/- seized on the allegation of mis- declaration of the country of origin and undervaluation have been auctioned by the department for ₹ 20,000/- in a very haste manner and that too without prior notice and without seeking permission from the Tribunal when the appeal was pending before the Tribunal on the date of auction. Further, we find that it is a settled law as held in various decisions relied upon by the appellant cited supra that once the goods are seized or confiscated and the proceedings against the same are pending before the authority / Court then the only option available to the department is to obtain necessary permission from the court before whom the proceedings are pending and also to issue notice to the assessee from whose possession goods have been seized before auctioning the goods. In this regard, I rely upon the decision of Shilp Impex vs. UOI: 2001 (128) ELT 54 (Del.) wherein it has been held that the assessee is entitled to receive the value of the goods as fixed by the department when the goods have been auctioned / sold by the department without notice at much lesser price than the one declared by the assessee and much less than the value of the goods adjudicated by the authorities. This decision of the Tribunal has been upheld by the Hon'ble apex court in Shilp Impex vs. UOI: 2002 (140) ELT 3 (SC). Further, in the case of CCE, Allahabad vs. Pidilite Industries Ltd.: 2007 (212) ELT 38 (Tri. – Del.), the Tribunal set aside the order of confiscation of the seized goods without issuing the notice to the assessee. The said decision of the Tribunal was upheld by the High Court of Allahabad as reported in 2014 (309) ELT 598 (All.) wherein in para 6 and 7, the Hon'ble High Court has held as under:

> *"6. It may be mentioned that Hon'ble Supreme Court in the case of Northern Plastics Ltd. v. Collector of Customs & Central*

Excise - 1999 (113) E.L.T. 3 (S.C.) as well as in the case of Shilp Impex v. U.O.I. - 2002 (140) E.L.T. 3 (S.C.) held that during the pendency of the appeal confiscated goods could not have been auctioned without prior permission of the appellate court.

7. In the instant case, the matter was sub judice before the appellate court, but the Department in a haste manner has disposed of the goods without seeking permission from the appellate court where the matter was sub judice. Thus, the Department has committed a serious blunder by auctioning the goods which was a subject matter of an appeal and without prior permission of the appellate court, is not permissible to sale the same, as per the case laws and the circulars which have already been discussed by the appellate authority in their orders."

7.1 Further, in the case of Northern Plastics Ltd. vs. CC & CE: 1999 (113) ELT 3 (SC) cited supra, the Hon'ble Supreme Court observed that the department cannot be permitted to take advantage of its own wrong especially when they have auctioned the goods during the pendency of the proceedings before the apex court. Consequently, directed the department to refund the value of the goods".

This Tribunal in the case of Mohammed Yaseen Versus Commissioner of Customs, Bangalore observed as follows:-

"6. We have gone through the records of the case carefully. Every citizen knows that the order passed by a judicial authority is not final. There is always recourse to appellate forum. When an Assistant Commissioner passes an order it is not a final order. There is a provision for appeal. When an Additional Commissioner passes an order that is also not final. The appellant can always appeal to the Commissioner (Appeals) under Section 129 of the Customs Act. When the Commissioner (Appeals) orders pre-deposit of an amount it means that he is going to take up the case for examining the Order in Original

passed by the Additional Commissioner. When the Additional Commissioner absolutely confiscated the car and imposed a penalty of Rs. one lakh on the appellant the appellant approached the Commissioner (Appeals) who ordered depositing an amount of Rs. 50,000/-. The appellant deposited the amount ordered by the Commissioner on 22-1-2000. In these circumstances, one can never hold that the absolute confiscation of the car by the Additional Commissioner has become final and the department can dispose of the car even without informing the Appellant and also the Commissioner (Appeals). …….

8. In our view it is an irresponsible act on the part of the Revenue to have disposed of the car without notice to the appellant even when the appeal is pending. If the interpretation of the Commissioner of Customs is to be accepted then there would be no necessity to have an elaborate judicial system. Such a view of the Commissioner is also subversive of the judicial system. Once the absolute confiscation ordered by the adjudicating authority has been set aside by the Commissioner (Appeals) and when the Commissioner (Appeals) order has become final the Commissioner of Customs, Bangalore cannot hold that the absolute confiscation was in accordance with the law. We would like to reiterate that in this case the order of the Commissioner (Appeals) only has reached finality and not that of the Additional Commissioner.

9. In the Kailash Ribbon Factory Ltd. case (referred supra), the Hon'ble Delhi High Court held that it is a serious lapse on the part of the department when it auctioned confiscated goods without permission of the Tribunal during pendency of the appeal without even giving notice to the appellants. It was held that the department has to refund the declared value of the goods with interest per annum from the date of auction of the goods.

10. In the Spring RPG India Ltd. case, while passing strictures against the Customs Department, the Delhi High Court has observed:

"It had, in our opinion, a moral obligation to inform the CEGAT as also the Supreme Court of India that the goods in question have already been sold in auction. It failed and/or neglected to do so. Prior to putting the goods in question to auction, it was expected that the petitioner would atleast be put to notice that on payment of additional duty it could get the imported goods cleared. It is really also a matter of great surprise that the Airport Authorities also sold the goods within two days of the receipt of the list of such goods."

11. The observations of the Hon'ble Apex Court in the Shilps Impex case are reproduced below:

"2. After hearing the Counsel for the parties, it is quite evident that the petitioner-firm was entitled to receive from the respondents Rs. 4,35,000/-, being the price of the goods, Rs. 1,80,000/- which he had paid as duty, Rs. 2,00,000/- for the redemption fine which was paid and a sum of Rs. 50,000/- which was levied as penalty which has also been paid by the petitioner-firm. The petitioner having paid the duty, redemption fine and penalty was entitled to the return of the goods but as the goods had disappeared they were not returned. It is for this reason that the petitioner has become entitled to get back what he had paid and, in addition thereto the value of the goods. Mr. Mukul Rohtagi, the learned Additional Solicitor General states that some money has already been paid to the petitioner-firm. The balance amount will be paid within a period of four weeks. List the matter after six weeks."

12. In the Bhogilal Mehta v. UOI - 2004 (164) E.L.T. 239 (Cal.) = 2004 (60) RLT 6 (Cal.) the Calcutta High Court has ordered that when the goods were sold during the pendency of appeal before CEGAT, the value as indicated in seizure memo and not sale proceeds of the goods should be paid to the petitioner.

13. The above decision has been followed by the Hon'ble Tribunal in the case of Sufal Dutta v. CC, (Prev.), W.B., reported in 2004 (167) E.L.T. 283 (T) = 2004 (63) RLT 196 (T-Kol.).

14. Normally, an appellate order is not expected to worsen the situation of an appellant. In this case, had the appellant not appealed, his liability would be only Rupees one lakh penalty without the car. Strangely, after getting Appellate order, due to the departmental action, the Appellant ends up with a liability of Rs. 1,29,478/- (Rs. 5,39,578/- - Rs. 4,10,000/-). Strange are the ways of bureaucracy. It appears that the remedy is worse than the disease.

15. In view of our observations, we hold that the ratio of all the above-mentioned cases is squarely applicable to the present case. It is very clear that the department has sold the goods on the understanding that the first order of the original authority is the final order. In other words when the appeal was pending the car has been sold without informing the petitioner and also the Commissioner (Appeals). Hence the appellant is entitled for the full mahazar value of the car. Since the goods were not released to the appellant as per the order in appeal neither the duty nor the penalty is chargeable from the appellant, as the goods have disappeared for no fault of the Appellant. Hence, we order payment of Mahazar value and interest @ 12% p.a., from the date of auction. As regards the penalty deposited, the same is liable to be refunded in view of the ratio laid down by Hon'ble Supreme Court in the Shilps Impex case. The impugned order is set aside and appeal allowed on the above terms".

9. In view of the above, we allow the appeal and direct the Respondent to restore the sale value of the impugned goods. Accordingly, the impugned order is set aside and the Appeal is allowed.

(Order pronounced in Open Court on 30.04.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)