

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

REGIONAL BENCH – COURT NO. III

**CUSTOMS APPEAL No. 40017 of 2022**

(Arising out of Order-in-Appeal Seaport C.Cus.II No.748/2021 dated 07.12.2021 passed by the Commissioner of Customs (Appeals-II), Chennai)

**M/s. SK Enterprises**

No.23/A/1, 1966, Basav Nagar,  
Kagwad, Belgum  
Karnataka 591 223.

**Appellant**

VERSUS

**The Commissioner of Customs (Gr.3)**

Chennai II Commissionerate,  
No.60, Rajaji Salai,  
Chennai 600 001.

**Respondent**

**APPEARANCE :**

Shri S. Baskaran, Advocate  
For the Appellant

Shri S. Balakumar, AC (AR)  
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI, MEMBER (JUDICIAL)  
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)**

**DATE OF HEARING : 10.06.2022  
DATE OF PRONOUNCEMENT :24.06.2022**

**FINAL ORDER No. 40263 / 2022****PER: P. ANJANI KUMAR**

M/s.SK Enterprises have imported a consignment of Kids Shoes, Plastic Goggles, Hot Fix Stone, ModelingColor Clay, Sandle, PU belt, Party Fun items etc. and filed a Bill of Entry No.3199945 dated 18.03.2021. During the course of examination of the goods by SIIB, it was found that there were 25 bales of optical lenses and 6 bales of soft toys with foam and 2 bales of soft toys without foam. The issue was adjudicated by the Joint Commissioner on 09.07.2021 and in appeal filed by the appellant, the Commissioner (Appeals) passed an order dated 07.12.2021 confirming the order of the lower authority. The appellants have approached the Hon'ble High Court of Madras seeking to set aside reassessment and detention certificate for waiver of demurrage charges. The Hon'ble High Court vide order dated 18.04.2022 has remanded the matter back to this Bench to dispose of the appeal.

2. Learned Advocate Shri S. Bhaskaran appearing for the appellants submits that the original order has enhanced the declared value and ordered confiscation of the goods and allowed the same to be redeemed in respect of goods for which the appellants did not have BIS

certificate. The original authority has confiscated the goods and allowed the redemption for re-export on payment of fine of Rs.55,000/- and also imposed penalty under Section 112 (a) of the Customs Act, 1962.

2.1 Learned Counsel for the appellants submits that as far as the order at para 18 (iii) of the Order-In-Original dated 09.07.2021 relating to the confiscation of goods imported for which the appellants could not produce the necessary BIS certification is not agitated by them. He submits that they are agitating other issues involved. He submits that though the original authority at para-13 mentions that SIIB has found the actual value of the goods in para-8.2 and also suggested classification, Learned Adjudicating Authority has not supplied a copy of the report given by SIIB and moreover the said para-8.2 is also not found in the impugned OIO.

2.2 He further submits that in respect of shoes and sandals, the IGST rate was levied at 18% whereas the same requires to be levied at 2.5%. Ld. Counsel submits that appellate authority has also blindly confirmed the OIO without going into the details of the case or the submissions of the appellants. He submits that the OIA and OIO may be set aside and the Department may be directed to issue a detention order as goods have been detained and could not be cleared at the instance of the department.

2.3 Ld. Counsel relies on the following cases :

- (i) *Assistant Commissioner of Customs, Chennai Vs Kanishka Enterprises*  
2018 (361) ELT 465 (Mad.)

- (ii) *CC Chennai-II Vs Novel Impex – 2019 (365) ELT 312 (Mad.)*
- (iii) *Max Enterprises Vs Deputy Commissioner of Customs, Chennai 2019 (367) ELT 753 (Mad.)*
- (iv) *P. PerichiGounder Memorial Vs CC Chennai - 2019 (368) ELT 495 (Mad.)*
- (v) *Isha Exim Vs A.D.G., D.R.I, Chennai – 2018 (13) G.S.T.L.273 (Mad.)*
- (vi) *Giridhari Homes Pvt. Ltd. Vs Principal Commissioner of Customs, Chennai-III – 2018 (361) ELT 463 (Mad.)*
- (vii) *Hero Cycles Ltd. Vs UOI – 2009 (240) ELT 490 (Bom.)*  
[This was judgement was confirmed by Apex Court as reported in 2010 (252) ELT A103 (SC)]
- (viii) *Share Medical Care Vs UOI – 2007 (209) ELT 321 (SC)*
- (ix) *Eicher Tractors Ltd. Vs CC Mumbai – 2000 (122) ELT 321 (SC)*
- (x) *CC Calcutta Vs South India Television (P) Ltd. – 2007 (214) ELT 3 (SC)*
- (xi) *Century Metal Recycling Pvt. Ltd. Vs UOI – 2019 (367) ELT 3 (SC)*

3. Learned Authorised Representative Shri S. Balakumar appearing for the Department reiterates the findings of OIO and OIA.

4. Heard both sides and perused the records of the case. We find that there are three issues involved in the case. (i)The valuation of goods which are not requiring BIS certifications and confiscation of the same and allowing to be redeemed; (ii) Confiscation and allowing of redemption of goods to which BIS specifications are applicable, for the purposes of export and (iii) imposition of penalty.

5. Coming to the first issue, we find that valuation of the goods was made in arbitrary manner without giving any cogent reasons whatsoever. The lower authorities have also not adhered to the principles of natural justice. The revaluation of goods was done at the

back of the importer. Though the original authority cursorily states that he has gone through the various the sequential Customs Rules for valuation, there is no evidence to that effect to indicate such diligent application of rules by the lower authorities. The reason for rejection of the declared value is also not brought out clearly. The value adopted was arbitrary on the basis of report claimed to have been submitted by SIIB. Thus, we find that revaluation of goods by the lower authorities do not show any application of own mind.

6. The careless manner in which duty is confirmed on the appellants is evident from the fact that valuation of shoes and sandals was made at Rs.85 per pair and the Notification No.1/2017 prescribes a rate of 2.5% for the shoes and sandals which are priced below Rs.500/- or the Notification No.18/2018 which prescribes a rate of 2.5% for shoes and sandals which are priced less than Rs.1000/- was not followed.

7. For these reasons and for the reason of non-adherence to the principles of natural justice, the impugned order to the extent of revaluation of goods which are not subjected to BIS specifications cannot be sustained. Therefore, we hold that orders given at para-18 (i) (ii) and (iv) do not stand scrutiny of law and therefore need to be set aside. The order given at para 18 (iii) is not agitated by the appellants. Therefore, we are not giving any findings on the same. We find that the orders passed by the lower authorities are contrary to the law and the ratio of various decisions by Tribunal, High Court and Supreme Court. Therefore, we find that the goods which are not liable

for BIS specifications shall be valued at the value declared by the appellants and the rate of duty in respect of shoes and sandals shall be 2.5% as per the notifications issued from time to time.

8. We also find that the appellants vehemently requested for issuance of a detention certificate. However, we find that the impugned order does not show if the appellants have made any such request to the department and the Department has disallowed the same. In the absence of any order either permitting or rejecting the issuance of detention certificate, this Tribunal cannot entertain the request of the appellants. However, from the facts and circumstances of the case, it is evident that the detention of the goods was because at the instance of the Department and subsequent proceedings initiated by the Department. Therefore, the appellants are within their right to seek detention certificate from the Department. However, this Tribunal not be a writ court cannot *suo motu* direct the authorities to issue a detention certificate in respect of impugned goods. We find that the appellants are well advised to approach the concerned authority for issuance of the same.

9. In the result, we pass the following order :

(i) The orders issued by lower authority at sub-para (i), (ii) and (iv) of para-18 of Order-in-Original No.70/2021-Gr.3 dated 09.07.2021 are set aside. It is directed that the goods shall be assessed at the value declared by the appellants and the rate of duty shall be as applicable to such goods.

(ii) The order at sub-para (i) of para-18 of the said order is modified to the extent that after the imposition of redemption fine, the department cannot put any conditions for re-export or whatsoever else. The condition is thus set aside.

10. The appeal is partly allowed with consequential relief, if any, in above terms.

(Pronounced in Court on 24.06.2022)

**Sd/-**  
**(SULEKHA BEEVI C.S.)**  
**MEMBER (JUDICIAL)**

**Sd/-**  
**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**