

Maggie Marketing Private Limited vs Commissioner Of Customs (Export) & Anr on 18 March, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CUSAA 53/2025 &

MAGGIE MARKETING PRIVATE LIMITED

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COMMISSIONER OF CUSTOMS (EXPORT)
& ANR.

Through: Mr. Anurag Ojha, SS
Dipak Raj, Mr. Subh
Kuldeep Mishra and
Advocates.

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+ CUSAA 54/2025 &

SIDHARTH SHARMA

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CUSAA 53/2025 & connected matter

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CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA
ORDER

% 18.03.2025

1. This hearing has been done through hybrid mode. CM APPL. 15585-86/2025 (for exemption) in CUSAA 53/2025 CM APPLs. 15758/2025 & 15759/2025 (for exemption) in CUSAA

2. Allowed, subject to all just exceptions. Accordingly, the applications stand disposed of.

CUSAA 53/2025 & CM APPL. 15584/2025 CUSAA 54/2025 & CM APPL. 15757/2025

3. These two appeals have been filed by the Appellants under Section 130 of the Customs Act, 1962, challenging the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') dated 21st August, 2024. The Appellant-Siddarth Sharma (CUSAA 54/2025) is a director of the Co-Appellant company-Maggie Marketing Private Limited (CUSAA 53/2025).

4. The brief background is that certain goods were imported by the Appellant-Maggie Marketing Private Limited in the year 2017 via various bills of entry . These goods were seized by the Respondent/Department on 24th April, 2017 under Section 110 of the Customs Act, 1962 on the ground of mis-declaration. This seizure was challenged before this Court by the Appellant in W.P. (Civil) 4956/2017 whereby vide orders dated 30th May, 2017 and 31st May, 2017 provisional release of the seized goods were This is a digitally signed order.

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5. Thereafter a show cause notice dated 17th October, 2017 ('SCN') was issued in respect of said goods based on the suspicion that the imported goods infringed intellectual property rights of some well known brands. Objections were also received against release of goods, from various brand owners. In the SCN proceeding, an interim reply was filed by the Appellants, raising a preliminary objection in respect of limitation. It was pleaded that the time prescribed under Section 28 of the Customs Act, 1962 for adjudication of the SCN had already lapsed and thus the SCN proceedings deserve to be dropped. In the said so called Interim reply, the Appellants sought to reserve the right to file a detailed reply later. The relevant paragraph reads as under:

"5.0 In the light of the submissions made above, we submit that the proceedings arising out of the present Show Cause Notice be dropped in favour of the Noticees. We reserve our right to contest the present Show Cause Notice on merits after deciding the objections raised hereinabove in case the need arise. We may be heard in person before passing of the order in the matter."

6. However, no detailed reply on merits was filed by the Appellants in SCN. The Order-in-Original dated 29th June, 2021 then came to be passed in terms of which, the preliminary objection of limitation was rejected and the Appellants were inter alia fastened with a penalty along with the entire customs duty. The operative portion of the Order-in-Original reads as under:

"In the light of the above findings, the following is ordered :

(1) The declared value of the goods under BE 9230900 dt.

8.4.17, 9230914 dt. 8.4.17, 9230883 dt. 8.4.17, 9371704 dt. 19.4.17, 9229993 dt. 8.4.17, 9230885 dt. 8.4.17, 9141745 This is a digitally signed order.

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The declared value is reassessed at Rs.10,79,87,045/- (Rupees ten crore seventy-nine lakh, eighty-seven thousand and forty-five only) under rule 5 and 7 of Customs Valuation (Determination of Value of Imported Goods) Rules 2007 read with section 14 & 17 of Customs Act.

(2) The goods of value Rs.59,78,850 /- (Rs.13,08,546/- involving IPR violation and Rs.46,70,304/- involving watches without IMEI slot numbers) are held as prohibited under section 111(d) read with section 11 (2a & 2n) of Customs Act and these are absolutely confiscated and to be destroyed. Destruction charges of confiscated goods will be paid by importer.

(3) The duty liability of goods, other than which are absolutely confiscated, is determined as Rs.3,24,64,415/- (Rupees three crore twenty-four lakh sixty-four thousand four hundred and fifteen only) under section 28(4) of Customs Act. The interest on delayed payment is liable from 1.5.2017 - with goods provisionally released during April 2017 with goods provisionally released during April 2017 (involving duty liability of Rs.1,66,68,492/- for BE 9230900, 9230914, 9230883, 9371704, 9229993) and from 1.8.2017 with goods provisionally released during July 2017 (involving duty liability of Rs. 1,57,95,923/- in other five BE). The differential duty liability is adjudged as Rs.2,50,05,961/- (Rupees two crore fifty lakh five thousand nine hundred & sixty-one only) after adjusting for duty paid at time of import assessment.

(4) The duty paid by TR-6 challans of Rs.2,44,13,437/- and bank guarantee of Rs.5,92,524/- are appropriated towards This is a digitally signed order.

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payment of differential Customs duty. Post adjustment, no interest is liable under section 28AA of Customs Act. (5) Goods other than prohibited goods of value Rs.10,20,08,195/- (Rupees ten crore twenty lakh eight thousand one hundred and ninety-five only) are liable to confiscation under section 119 of Customs Act as being used to conceal prohibited goods and under Section 11 l(m) for misdeclaration. A fine of Rs.10,00,000/- (Rupees ten lakh only) is levied on party in lieu of confiscation under section 125 of Customs Act. As the goods have already been released to the party, the redemption fine is appropriated from remaining bank guarantee of Rs.30,69,423. (6) A penalty of Rs.2,50,05,961/- (Rupees two crore fifty lakh only) is imposed under section 112(ii) read with section 114A of Customs Act on M/s Maggie Marketing Pvt. Ltd. Amount of remaining bank guarantee of Rs.20,69,423/- is appropriated against this penalty.

(7) I do not impose penalty on M/s Maggie Marketing Pvt. Ltd. under section 112 (a)(ii) of the Customs Act, 1962 as not liable as per fifth proviso of section 114A.

(8) A personal penalty of Rs.20,00,000/- (Rupees twenty lakh only) is imposed on Shri Siddharth Sharma under section 112(a) (i)&(ii) of Customs Act.

(9) A personal penalty of Rs.10,00,000/- (Rupees Ten lakh only) is imposed on Shri Siddharth Sharma under section 114 AA of Customs Act.

(10) No penalty is imposed on Shri Naresh Kumar under section 112(a)(i) (ii) of Customs Act."

7. Thereafter, the Appellants approached CESTAT assailing the Order in Original dated 29th June, 2021 and raising the ground of limitation. It is relevant to note that even before the CESTAT the Appellants did not file any reply on merits. The CESTAT vide the impugned Order in Appeal dated 21st August, 2024 adjudicated the issue of limitation against the Appellants This is a digitally signed order.

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8. The submission of Id. Counsel for the Appellants is that the delay between 2017 to 2021, in adjudication of the show cause notice, would itself make the show cause notice liable to be quashed and set aside. Reliance is placed on the decisions of this Court in M/s Vos Technologies India Pvt. Ltd. v. The Principal Additional Director General &Anr., 2024 SCC OnLine Del 8756 and other judgments which followed the said ruling.

9. It is also the grievance of the Appellants that they were not given an opportunity to reply to the matter on merits and thus the Respondent/Department, vide the Order-in-Original, could not have adjudicated the issues on merits.

10. Heard. This Court is not inclined to entertain the present appeal on the question of limitation in-as-much as the delay between 2017 to 2021 is not so long that it would result in any prejudice to

the Appellant. Moreover, contrary to the submissions, the Appellants, in fact, had an opportunity to file a reply on merits and they failed to do so. The Appellant's exclusive reliance on the argument of limitation clearly indicates that the Appellants may not have a case on merits.

11. However, considering the fact that-

- (i) a provisional assessment was
- (ii) a substantive amount of Rs. deposited with the Department
- (iii) the Appellants did not file reasons;

This Court is inclined to remand the matter to CESTAT for giving an opportunity to the Appellants to file a reply on merits.

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12. On this issue, Id. Counsel for the Respondent/Department wishes to seek instructions in the matter.

13. List on 25th March, 2025.

PRATHIBA M. SINGH, J RAJNEESH KUMAR GUPTA, J MARCH 18, 2025/MR/Ar.

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