IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75644 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/97/2024 dated 15.02.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. All Sky Marketing Private Limited **: Appellant**
29B, Rabindra Sarani,
4th Floor, Room No. 416,
Kolkata – 700 073

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri N.N. Chakraborty, Consultant,
Ms. A.R. Karmakar, Authorized Representative,
For the Appellant

Shri Faiz Ahmed, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 75582 / 2026

DATE OF HEARING: 11.05.2026

DATE OF DECISION: 15.05.2026

ORDER: [PER SHRI RAJEEV TANDON]

Aggrieved by the Order-in-Appeal No. KOL/CUS(PORT)/KS/97/2024 dated 15th February, 2024, the appellant, a proprietary concern, has filed the impugned appeal. Vide the impugned Order-in-Appeal, the Ld. Commissioner (Appeals) has upheld the Order-in-Original passed by the ld. adjudicating authority and disposed of the appeal filed by the

appellant herein by rejecting the same. The ld. adjudicating authority vide the Order-in-Original No. KOL/CUS/PORT/(JC)/Gr.3/42/2023 dated 11th April, 2023 had ordered re-classification of the imported goods apart from directing confiscation of 9,360 pairs of 'All Sky (Local Brand)' Gents Shoes, 240 pairs of 'D&B' brand Gents Shoes and 300 pairs of 'Eleprint' brand Gents Shoes under Section 111(m) of the Customs Act, 1962. The said confiscated goods were allowed to be redeemed upon payment of a redemption fine of Rs.1,00,000/- (Rupees One Lakh only). Absolute confiscation of 570 pairs and 140 pairs of undeclared Ladies Shoes of 'PUMA' brand and Gents Sports Shoes of 'Converse All Sky' brand respectively was also ordered for infringement of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007[1]. A penalty of Rs.75,000/- (Rupees Seventy Five Thousand only) was imposed on the appellant-importer under Section 112(a)(i) and Section 112(a)(ii) of the Customs Act, 1962.

2. It is the case of the appellant that in the usual course of their business, they had imported one consignment of 10710 pairs of canvas shoes (600 pairs of Ladies Shoes + 10110 pairs of Gents Shoes) of Chinese origin and had filed Bill of Entry No. 2049242 dated 17.08.2022 for import clearance thereof. The appellant submits that after a rigorous process of negotiation, the value declared for the imported goods was arrived at, based on mutual acceptance of the value of goods between the exporter and the importer and had accordingly filed the Bill of Entry aforesaid classifying the imported goods under CTH 6402 9990.

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1 - The Rules

3. It is noted from records that the said goods were subjected to 100% examination in the presence of SIIB Officers on 23.08.2022, whereupon 100 pairs of shoes were found short with reference to the declared quantity. A brief of the examination report is as under: -

(A)	Gents Canvas Shoes embossed as All Sky	-----9360 pairs
(B)	"Puma" brand Lady's Shoes	-----570 pairs
(C)	"Converse All Star" brand Shoes marked as "Made in Vietnam"	-----140 pairs
(D)	D&B (Dibu) brand Shoes	-----240 pairs
(E)	Eleprint brand Shoes	-----300 pairs
	Total	10,610 pairs

(100 pairs of shoes were found short with reference to declared quantity)

4. It is the case of the Revenue that the imported goods at Sl. Nos. (B) and (C) above were registered in terms of Rule 4 of the Notification No. 47/2007-Cus.(N.T.) dated 08.05.2007 and had violated the provisions of Rule 7(1)(b) of the Rules, for which purpose a Notice under Rule 7(2) of the Rules was issued to the right holders; the goods were got inspected by the right holders and a technical report obtained. The same was relied upon by the Revenue and has been mentioned in the Order-in-Original in paragraph 4 (4.1 & 4.2).

4.1. The Ld. Counsel for the appellant submits that the said report was never made available to them and was obtained behind their back.

5. The following questions therefore emerge in the matter, which have been contested by the appellant: -

(a) Enhancement of value of the imported goods along with change in classification; and

(b) Infringement of the provisions of the Rules.

6. The Ld. Counsel for the appellant as well as the Ld. Authorized Representative of the Revenue have been heard by us in the matter and the case records perused.

7. The Ld. Counsel for the appellant has submitted that the value of the imported goods was arbitrarily enhanced without following the provisions of Section 14 of the Customs Act, 1962 and the prescriptions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. She further submitted that the value enhancement was done without any basis, least of all on the basis of any recommendation of the investigating officers, after absolutely confiscating the imported 570 pairs of 'Puma' brand and 140 pairs of 'Converse All Star' brand shoes.

7.1. In respect of classification of the goods, it is the appellant's case that though they had indicated the classification as CTH 6402 9990, as noted from the samples drawn from the import shipment, the Revenue sought to change the impugned classification

to CTH 6404 1910. It is their case that the said change in classification would not materially bring out any consequential change in the duty quantum leviable thereon as BCD under the two Tariff Heads continues to be leviable at the rate of 35% ad valorem. It is therefore the case of the appellant that as there is no change in the rate of duty, no malafides can be attached to them for the purported wrong classification.

7.2. They have further submitted that they had no malafide intentions in importing any goods other than those stated by Shri Shital Kumar Saha in his testimony before the authorities, who, upon enquiry from the overseas supplier, had submitted before the authorities that it was a mistake on the part of the suppliers; therefore, no malafide could be attached to the importer. To buttress their argument, the appellant have further pointed to the fact of shortage of 100 pairs of 'Converse All Star' brand Gents Shoes.

7.3. As for the IPR violations, the appellant has submitted that on the basis of the report of the right holders, both 570 pairs of 'PUMA' brand Ladies canvas shoes and 140 pairs of 'Converse All Star' brand Gents canvas shoes, as stated above, were absolutely confiscated by the authorities; however, neither have they been provided with any documentary evidence establishing the right holders right on the trademark / brand of the said goods nor were reports certifying the counterfeit nature of the said brands furnished to the appellants. They have also pointed out that the physical examination of the goods was not conducted in the presence of the right holders and the technical report obtained was based solely on the images shared by the Department with the right holders. The

appellant has therefore taken strong reservations on the manner and the practice adopted for determination of the imported goods as 'counterfeit' or 'pirated', that too behind their back. Moreover, the said report is also not backed by any Panchanama or a witness's statement. The appellant therefore has strongly argued that the allegation of import of counterfeit goods / IPR infringing goods does not stand the test of legal scrutiny and thus the question of legality and reliability of the proceedings drawn by the authorities are clouded and of doubtful intent. We further note that no notice was issued in terms of Rule 3 of the Rules and obligations under Rule 5 of the said Rules remained unfulfilled; accordingly, the appellant has prayed that the said goods should have been released to them in terms of Rule 7(4), there being no ground to confiscate these goods.

8. We also note that the impugned order passed by the ld. adjudicating authority is completely silent with regard to the confiscation of 9,360 pairs of 'All Sky' brand Gents Shoes, 240 pairs of 'D&B' brand Gents Shoes and 300 pairs of 'Eleprint' brand Gents Shoes. There is not a word as to why the said goods have been confiscated. In the absence thereof, such confiscation is no more than arbitrary and therefore, cannot be sustained. The fact of change in classification, with no impact on the quantum of duty leviable, cannot be held to be a valid ground for confiscation, under Section 111(m), of the imported goods.

9. The order of the lower authority also suffers from a grave legal infirmity as it seeks to dispute the transaction value without any categorical and cogent evidence. As for IPR infringements, while it is a fact

that based on the reports of the right holders, the goods were found to be counterfeit and accordingly, by virtue of Rule 6 of the Rules read with Section 11 of the Customs Act, the said goods are rendered prohibitive and the same cannot be released to the importer, it indeed was desirable for the authorities that the said reports were shared with the appellant in compliance with the doctrine of natural justice, even though the appellant may have voluntarily waived their right of seeking a formal written Show Cause Notice. The fact of physical shortage of 100 pairs of shoes, as noticed in the examination Panchanama, is again a straight pointer to the appellants not playing any role in mis-declaration of goods or import of certain counterfeit / duplicate pairs of shoes. The exporter has intimated the lapse to be on account of a mix up of supplies at their end. It is also borne out from records that the offending and non-offending goods were separately packed and placed. It therefore, cannot be held that the non-offending goods were used to conceal and camouflage the offending goods. Thus, we are of the view that the said non-offending goods are not liable for confiscation and the importer cannot be subjected to levy of redemption fine thereagainst.

10. Though the appellant has taken the plea that the process of ascertainment of the violation of Intellectual Property Rights of the right holders was carried out at the back of the appellant, they have however not disputed the plea or the fact of violation in this regard. Moreover, the supplier’s response that the same were loaded by an error of judgement / mistake, therefore, clearly goes in to establish that but of course there has been an infringement of the IPR provisions. Nonetheless, the fact remains that no

mala fides can be attached to the appellant-importer under the circumstances for the said lapse. The said goods have therefore been rightly ordered to be absolutely confiscated by the authorities.

11. We would like to place on record, that there has been a series of lapses on the part of the Revenue authorities in adhering to the laid down procedures in this regard. Thus, for instance, while the imported goods were examined on 23.08.2022, the Seizure Notice was issued to the importers after a lapse of about 49 days of the actual detention, on 12.10.2022. Moreover, there have been time lags at various stages of the adjudication process in the matter, for which the appellants have submitted that they had to pay a ground rent of Rs.6.75 lakh to the CFS and container rent of over Rs.10.32 lakh to the Shipping Line.

12. In view of the discussions supra, it is clear that there is no case for confiscation of the aforesaid 9,360 pairs of 'All Sky (Local Brand)' Gents Shoes, 240 pairs of 'D&B' brand Gents Shoes and 300 pairs of 'Eleprint' brand Gents Shoes and their release on payment of redemption fine of Rs.1,00,000/-. The confiscation thereof is therefore set aside.

13. The absolute confiscation of 570 and 140 pairs of counterfeit pairs of undeclared Ladies Shoes of 'PUMA' brand and Gents Sports Shoes of 'Converse All Sky' brand is maintained.

14. In so far as imposition of penalty on the appellant is concerned, we find that in view of having allegedly suffered severely for lapses on the part of the Department and consequential delays in the clearance process, a penalty of Rs.5,000/- (Rupees Five Thousand only) on the importer would meet the ends of justice. We therefore lower the same to Rupees Five Thousand from the Rupees Seventy Five Thousand as imposed on the appellant under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962, by the lower authority.

15. The order of the lower authorities is modified to the aforesaid extent and the appeal filed is disposed of in the aforesaid terms.

(Order pronounced in the open court on **15.05.2026**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sdd