

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

Customs Appeal No.40400 of 2021

(Arising out of Order-in-Appeal AIR C. Cus. I No. 83/2021 dated 26.2.2021 passed by the Commissioner of customs (Appeals – I), Chennai)

M/s. Perfect Trading Company

Shop No. 3, WZ – 32 Asalatpur
Janakpuri, New Delh – 110 058.

Appellant

Vs.

Commissioner of Customs (AIR)

Chennai VII Commissionerate
New Custom House
Meenambakkam
Chennai – 600 027.

Respondent

APPEARANCE:

Shri Gaurav Prakash, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40065 / 2022**

Date of Hearing : 7.1.2022
Date of Pronouncement: 10.2.2022

Per Ms. Sulekha Beevi C.S.

Based on specific intelligence by SIIB, Chennai, the goods imported by the appellant were subjected for examination and a mahazar drawn in March 2020. On opening the container, brown colour carton boxes stuffed with goods were seen stacked in the container. The carton boxes being huge in number, the goods were destuffed and some cartons were randomly selected for open examination of the contents of the boxes. After opening the boxes, it was noticed that the cartons contained "used / old mini tower computer cases with motherboard / system board having brand names such as Dell, HP etc.

attached with power supply port, hard disk / CD / DVD drive, USB ports, audio port, VGA port and accessories". The goods declared as per the bill of entry was "mini tower computer case with power supply accessories". There were undeclared goods along with declared items.

2. it appeared that the importer had misdeclared the goods and attempted to misuse the facilities extended to FTWZ so as to avoid customs examination of undeclared goods. The importer was thus trying to evade customs duty on undeclared goods and also attempting to smuggle the goods before they are taken to FTWZ. During course of investigation vide letter dated 20.3.2020, the importer inter alia stated that due to COVID situation and he is aged about 67 years, he cannot present himself before the authorities. It was submitted by him that the shipper had provided information that the Container No. CAIU7487227 had wrongly been exported to them and it was actually to be shipped to another customer of another country. They requested for re-export of the container and also requested for waiver of Show Cause Notice. After adjudication, the adjudicating authority passed the following order:-

"(i) I order the confiscation of the imported goods imported vide Bill of Entry No. 2005430 dated 27.2.2020 under sections 111(d) and 111(m) of the Customs Act, 1962

(ii) However, I give an option to M/s. Perfect Trading Company to redeem the said imported goods imported vide Bill of Entry No. 2005430 dated 27.2.2020 on payment of redemption fine of Rs.4,20,000/- (Rupees four lakhs twenty thousand only) under section 125 of the Customs Act, 1962, for re-export to the suppliers at the importer's cost.

(iii) I impose a penalty of Rs.2,00,000/- (Rupees two lakhs only) under section 112(a) of Customs Act, 1962 on M/s. Perfect Trading Company."

3. The adjudicating authority, as seen above, had allowed to re-export the goods on payment of redemption fine of Rs.4,20,000/- and

imposed penalty of Rs.2 lakhs. Against the imposition of redemption fine and penalty, the appellant preferred appeal before Commissioner (Appeals). The department had not filed any appeal against the order passed by the adjudicating authority. However, the Commissioner (Appeals) set aside the order passed by the adjudicating authority allowing re-export of the goods and directed for confiscation of the goods without option to redeem the same. The penalty imposed was upheld. Aggrieved by such order, the appellant is now before the Tribunal.

4. The learned counsel Shri Gaurav Prakash appearing for the appellant submitted that the appellant had challenged the order passed by the adjudicating authority with regard to the redemption fine and penalty imposed. However, the Commissioner (Appeals) has set aside the order allowing re-export of the goods when the department has not filed any appeal. Against the order of the adjudicating authority, which allowed re-export of the goods on payment of redemption fine, the Commissioner (Appeals) cannot set aside the direction of re-export in the appeal filed by this appellant.

5. With regard to the redemption fine imposed by the adjudicating authority, the learned counsel submitted that when the goods are redeemed only for the purposes of re-export, the authorities cannot impose any redemption fine. The goods are not cleared for home consumption. The redemption fine is imposed under section 125 on the basis of the calculation of margin of profit when the goods are cleared for home consumption. In the present case, as the goods are not cleared for home consumption and the goods having been allowed for re-export, the redemption fine cannot sustain. To support his argument, he relied upon the decision of the Tribunal in Siemens Public

Communication Networks Ltd. Vs. CC, Calcutta – 2001 (137) ELT 623. The Tribunal in the said case had relied upon the decision of the Hon'ble Supreme Court in the case of Siemens Ltd. – 1999 (113) ELT 776 (SC) wherein it was held that redemption fine cannot be imposed when the goods are allowed to be re-exported. Similar view was taken in the case of HCL Hewlett Packard Ltd. Vs. Collector of Customs, Delhi – 1997 (92) ELT 367.

6. With regard to the penalty, he submitted that the adjudicating authority has allowed for re-export on the request made by the appellant stating that the goods were in fact intended to be supplied for a customer of another country and was wrongly shipped in the name of the appellant. On this score, there is no mens rea on the part of the appellant to avail undue benefit. Penalty can be imposed only where the person has deliberately done in defiance of law or for his contumacious conduct. When the re-export has been allowed, the penalty imposed is harsh and excessive. He prayed that the appeal may be allowed.

7. The learned AR Shri R. Rajaraman supported the findings in the impugned order.

8. Heard both sides and perused the records.

9. The adjudicating authority after considering the facts of the case and the representation given by the appellant that the goods were intended to be supplied to another customer of another country has accepted the request for re-export put forward by the appellant. The department has not filed any appeal against the order passed by the adjudicating authority. The appellant has filed appeal before Commissioner (Appeals) challenging only the imposition of redemption fine and the penalty. The contention raised by appellant in the appeal

before the Commissioner (Appeals) was that when the adjudicating authority allowed re-export of the goods, there was no requirement to impose any redemption fine. It was also contended by the appellant that the department has failed to bring out any mens rea against the importer, for the reason which penalty cannot sustain.

10. Even though there was no appeal filed by the department, after going into the merits of the case, the Commissioner (Appeals) has set aside the order passed by the adjudicating authority allowing the appellant to re-export the goods. I find that this conclusion arrived at by the Commissioner (Appeals) to set aside the order of the adjudicating authority is highly erroneous in absence of an appeal filed by the department. The said order passed by the Commissioner (Appeals) to confiscate the goods without option to redeem the goods for re-export requires to be set aside, which I hereby do.

11. The learned counsel has relied upon various decisions. In the case of Siemens Public Communication Networks Ltd. (supra), the Tribunal held as under:-

"5. We have heard the submissions made from both the sides. During the course of the arguments the ld. adv. appearing for the appellant made it clear that the appellants have opted for re-export of the goods. Accordingly they have challenged the order of the Commissioner imposing a redemption fine and penalty for the said re-export, which according to the appellants is not permissible to be imposed in view of the various case laws relied upon by them. It is seen that in the case of Siemens Ltd. v. CC - 1999 (113) E.L.T. 776 (S.C.), their Lordships have held that since goods have been allowed to be re-exported, neither redemption fine nor duty was required to be paid. The Tribunal in the case of HCL Hewlett Packard Ltd. - 1997 (92) E.L.T. 367 (T) has held that no redemption fine is imposable when re-export of the goods is allowed. To the same effect is the decision of the Tribunal in the case of Padia Sales Corpn. v. CC - 1992 (61) E.L.T. 90 and in the case of Skantrons (P) Ltd. - 1994 (70) E.L.T. 635. We further find that the Tribunal in the case of G.V. International and Another - 2000 (118) E.L.T. 517 = 2000 (39) RLT 272, following the earlier decisions of the Tribunal, has set aside the orders passed by the lower authorities ordering confiscation of goods and their release on payment of redemption fine and penalty. Further in the case of Commissioner of Customs, Calcutta v. J.V. (P) Ltd. - 2000 (39)

RLT 1074, the order of the lower authorities allowing re-export of the goods without fine and penalty was upheld.

6. As discussed above the issue is squarely covered in favour of the appellants by the various decisions of the Tribunal and the Hon'ble Supreme Court. Inasmuch as the Commissioner vide his impugned order has given an option to the appellants to re-ship the goods back to the supplier, we hold that the redemption fine and the penalty imposed by him was not justified. We accordingly set aside the same and allow re-export of the consignment in question without any redemption fine or penalty or duty. Appeal is thus allowed in above terms."

12. In the above decision, the Tribunal has held that when the goods are allowed to be re-exported, the imposition of redemption fine cannot sustain. In the present case, the adjudicating authority has also imposed penalty of Rs.2 lakhs. The adjudicating authority after considering the submissions made by the appellant that the goods were intended to be supplied to another customer of another country has allowed the request for re-export. On such score, when the goods have not been intended to be imported by the appellant, no penalty can be imposed. Similar view has been taken in the decision cited supra.

13. For these reasons, I hold that the impugned order cannot sustain. The same is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 10.2.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)