

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

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40292 of 2015

(Arising out of Order-in-Appeal C.Cus.II No. 390/2014 dated 24.12.2014 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Gencor Pacific Auto Engineering Pvt. Ltd.

S.No. 214 & 218, ADJ-SIDCO Industrial Estate Office,
Thirumudivakkam,
Chennai – 600 044.

...Appellant

Versus

Commissioner of Customs

Export Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. S. Krishnanandh, Advocate

For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER No. 40381 / 2024

DATE OF HEARING/ DECISION: 03.04.2024

Order :-[Per Ms. SULEKHA BEEVI C.S.]

Brief facts are that the appellant placed order for import of 'Aluminium Alloy Ingots' and filed Bills of Entry declaring the goods as 'Aluminium Alloy Ingots'. On examination by the Dock Officers, it was found that the consignment contained Stone Chips and not Aluminium Alloy Ingots. The appellant stated that as per Letter dated 10.09.2013, the supplier abroad

had sent the credit note for the value of the shipment and that they do not intent to make any payment to the supplier as the supplier has sent a wrong shipment to the appellant. The appellant requested the Department to permit them to abandon the consignment and remission of duty as per Section 23 of the Customs Act, 1962. They also requested to re-credit the duty that has been debited in the DEEC Advanced Authorisation Scrips. The appellant requested to waive the issuance of Show Cause Notice. After personal hearing, the Adjudicating Authority held that there is no offence committed by the appellant and that redemption fine is not imposable. However, the appellant's claim for re-credit of the Advance Authorisation was not permitted. The duty amount of Rs.19,90,620/- was debited from the Advanced Authorisation Scrips. Besides this, a penalty of Rs.30,000/- was also imposed. The appellant paid the penalty and filed an appeal before the Commissioner (Appeals) as they were aggrieved by the order of the Original Authority not permitting to re-credit the duty amount in the Advance Authorisation Scrips. The Commissioner (Appeals) *vide* Order impugned herein held that since the goods have been confiscated, the Adjudicating Authority ought to have imposed redemption fine and imposed redemption fine of Rs.19 Lakhs. It was observed by the Commissioner (Appeals) that the appellant is eligible for re-credit of duty in the Advance Authorisation, but however, limited the amount of duty as applicable to the Stone Chips and not of the duty of Aluminium Alloy Ingots. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 The Ld. counsel Mr. S. Krishnanandh appeared and argued for the appellant. The findings of the Adjudicating Authority in Paragraphs 13 and 14 was adverted to by the Ld. counsel to submit that there is a clear finding by the Adjudicating Authority that there is no offence committed by the importer and that redemption fine is not imposable. The Commissioner (Appeals) ought not to have imposed redemption fine in an appeal filed by the appellant. An appellant cannot be put into a worse situation than that of the earlier order on which the appeal has been filed. The decision of the Hon'ble Supreme Court in the case of *Jaswal Neco Ltd. Vs. Commissioner of Customs, Visakhapatnam [2015 (322) ELT 561 (SC)]* was relied to support this argument.

2.2 The Ld. Counsel submitted that the appellant had placed order for Aluminium Alloy Ingots and the shipment contained Stone Chips. The appellant had not made any payment to the supplier and had totally abandoned the goods. The appellant paid penalty and did not contest the penalty only to buy peace with Department. The appellant requested to the Adjudicating Authority for re-credit of the duty that was debited from their Advance Authorisation Scrips. The Adjudicating Authority did not permit the same. However, the Commissioner (Appeals) held in the impugned order that the appellant is not liable to pay duty and is eligible for re-credit in the Advance Authorisation Scrips. The Commissioner (Appeals) allowed re-credit and limited it to the duty applicable to the Stone Chips. It is submitted that the duty applicable to the Aluminium Alloy Ingots having been debited from the Scrips, the same may be permitted to be re-credited. The Ld. counsel prayed that the appeal may be allowed.

3. The Ld. Authorised Representative Mr. M. Selvakumar appeared and argued for the Department. The findings in the impugned order was reiterated. It is submitted that the Adjudicating Authority having confiscated the goods under Section 111(m) of the Customs Act, 1962 and also having imposed penalty ought to have imposed redemption fine. The Commissioner (Appeals) has therefore imposed redemption fine under Section 125 of the Customs Act, 1962 which is legal and proper. The appellant has already been given a relief to the extent of re-credit of the duty applicable to the Stone Chips and the amount is to be quantified. The Ld. Authorised Representative submitted that the impugned order does not call for any interference.

4. Heard both sides.

5. The facts narrated above bring out that the shipment did not contain the goods for which the appellant had placed the order to the foreign supplier. For this reason, the appellant had filed Letter before the Adjudicating Authority to permit them to abandon the goods as provided under Section 23 of the Customs Act, 1962. The said request was acceded to by the Adjudicating Authority. It has been held by the Adjudicating Authority that no offence has been committed. The Commissioner (Appeals) imposed redemption fine of Rs.19 Lakhs observing that the goods having been confiscated and penalty imposed, the appellant has to pay redemption fine. As per Section 125 of the Customs Act, 1962 redemption fine is imposed in lieu of confiscation for the value of the goods which is being

redeemed by the importer. In the present case, the goods having been abandoned there is no situation of redeeming the goods. The Adjudicating Authority has ordered for confiscation of the goods only because the goods have been abandoned. In such situation, the goods are taken into possession by the Central Government and disposed of in accordance with law. The goods can be taken into possession only if confiscated. The Adjudicating Authority has ordered for confiscation only to facilitate the custody of goods to the Central Government. The Commissioner (Appeals) has misconceived the provisions under Customs Act, 1962, that as there is confiscation of goods, redemption fine has to be imposed. When the appellant has abandoned the goods, there is no requirement to give option to redeem the goods. When the goods are not being redeemed and abandoned, the goods have to taken custody by the Central Government. In such situation of confiscation, imposition of redemption fine does not arise. Again, even though Adjudicating Authority has imposed penalty of Rs.30,000/-, there is no finding rendered as to the offence committed by the importer. Instead, it has been categorically stated in Paragraph 14 that no offence is committed by the importer. The appellant has paid the penalty and does not contest the same. So, the observation made by the Commissioner (Appeals) that since goods have been confiscated and penalty imposed, redemption fine has to be imposed is erroneous. Further, there is no appeal filed by the Department against the order of the Adjudicating Authority who refrained from imposing redemption fine. The Commissioner (Appeals) ought not to have imposed redemption fine in an appeal filed by the importer. In the case of Jaswal Neco Ltd. (*supra*) the Hon'ble Apex

Court held that the appellant cannot be worse off by reason of filing an appeal. The relevant Paragraph reads as under:-

"18. *However, Shri Lakshmikumaran is on firmer ground when he submitted before us that the Commissioner has held that the appellant is liable to pay Anti-dumping duty only under the Notification dated 27-10-1998. The rate prescribed in the said Notification is lesser than the rate that would apply under the Notification dated 19-5-2000. As there was no appeal by the revenue against this finding of the Commissioner, the Tribunal could not have enhanced the rate at which the appellant would have to pay Anti-dumping duty in the appellant's own appeal. The appellant cannot be worse off by reason of filing an appeal. To this limited extent, the appellant succeeds and the Tribunal's order is set aside. The appellant will have to pay Anti-dumping duty calculated at the rates specified only in Notification No. 81/98, dated 27-10-1998."*

6. For these reasons, I am of the view that the redemption fine of Rs.19 Lakhs imposed by the Commissioner (Appeals) is not justified and requires to be set aside, which I hereby do.

7. The Ld. Counsel for the appellant has requested for re-credit of the duty applicable to Aluminium Alloy Ingots that has been debited in the Advance Authorisation Scrips. The Original Authority has denied the permission for such re-credit. However, the Commissioner (Appeals) has considered the request and allowed the re-credit of the duty applicable to Stone Chips. The appellant having not imported Aluminium Alloy Ingots is not liable to pay such duty. The appellant had placed order for Aluminium Alloy Ingots and they have not received the goods. However, the duty was debited in the Scrips. The appellant is therefore eligible for re-credit of duty that in the Advance Authorisation Scrips.

8. The impugned order is modified to the extent of setting aside the redemption fine and also setting aside the order directing re-credit of duty applicable to Stone Chips. The appellant is eligible for re-credit of duty that has been debited and applicable to Aluminium Alloy Ingots. It is made clear that as the appellant has not contested the penalty, the same is not disturbed. The appeal is allowed in above terms with consequential reliefs, if any, as per law.

(Order dictated and pronounced in open court)

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

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