Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10631 of 2021- DB

(Arising out of OIO-AHM-CUSTOMS-000-COM-017-20-21 dated 03.03.2021 passed Principal Commissioner of Customs - Ahmedabad)

P I Industries Limited **.....Appellant**
Plot No. SPM-28, Sterling, SEZ & Infrastructure
Limited, Village-Saroda, Jambusar, District-Bharuch
Gujarat - 391810

VERSUS

Principal Commissioner of Customs **.....Respondent**
Customs House, Near All India Radio,
Navrangpura, Ahmedabad-380009

APPEARANCE:
Shri Ashok Dhingra with Ms. Sonia Gupta, Advocates for the Appellant
Shri R.K. Agarwal, Authorised Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. 11146 /2024

DATE OF HEARING: 09.04.2024
DATE OF DECISION: 05.06.2024

RAJU

This appeal has been filed by P I Industries against demand of Customs duty on the goods lost in fire accident.

2 Learned counsel for the appellant pointed out that the appellant is a unit located in Special Economic Zone (SEZ) engaged in manufacture of agro chemicals. He pointed out that undisputedly a fire accident happened in the unit on 05.06.2018 on account of which certain indigenous and imported raw material procured duty free, and some semi-finished goods were destroyed. The appellants informed the specified officer of the SEZ on the same date along with details of stock lying in the factory on the date of fire accident valued at Rs. 16,54,77,557/-. The Preventive Officer of SEZ conducted investigation and stock verification on 07.06.2018 and drew punchnama on the same. On 14.05.2019 and 12.09.2019, the appellant submitted details of the material destroyed in fire and valued it at Rs. 7,95,76,996/-. The

material destroyed consisted of raw material, packing material, stock in process both indigenous and imported. The material also includes stock in process which required further reprocessing. A show cause notice was issued to the appellant on 06.06.2020 wherein demand of customs duty on the loss of goods on account of fire accidence was made, in respect of entire quantity in stock of material time valued at Rs. 16,54,77,557/- which was lying in their factory on the day of fire. The value of actual loss reported by the appellant amounting to Rs. 7,95,76,996/- was ignored. The said demand was confirmed by the Principal Commissioner vide order dated 03.03.2021. Aggrieved by the said order, the appellants are before Tribunal.

2.1 Learned counsel pointed out that no custom duty is payable on the material destroyed in the fire accident. He pointed out that the Commissioner wrongly relies on Rule 22(2) read with Rule 25 and Rule 34 of SEZ Rules, to confirm the duty on the ground that the appellant have failed to account for the said material in terms of aforesaid rules. Learned counsel pointed out that in terms of Rule 22(2) of SEZ Rules, the appellant have maintained proper and regular account financial year wise clearly indicating value of goods imported procured or DTA. Consumption or utilization, details of production of goods including waste and scrap and disposal of goods manufactured or produced by way of export or DTA clearances. He argued that the material lost in fire accident was duly explained and should be treated as material accounted for and in those circumstances, no demand of customs duty can be invoked. He pointed out that only ground that the demand has been confirmed is that the goods lost in fire accident were neither utilized in authorized operation nor have been accounted for in the manner prescribed under Rule 22 of the SEZ Rules. Rule 22, 25,27 and 34 of SEZ rules read as under:-

- **Rule 22 of SEZ Rules, 2006**

  22. Terms and conditions for availing exemptions, drawbacks and concessions to every Developer and entrepreneur **for authorized operations**
  (1) Grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to the following conditions, namely:-
  (i) the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning;

(ii)..;
(iii)…;
Provided that the Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-developer shall cover one or more of the following activities, namely:-

(a) the movement of goods between port of import or export and the Special Economic Zone;

(b) the authorized operations, as applicable to Unit or Developer;

(c) temporary removal of goods or goods manufactured in Unit for the purposes of repairs or testing or calibration or display or processing or sub-contracting of production process or production or other temporary removals into Domestic Tariff Area without payment of duty;

(d) re-import of exported goods.

(iv) The procedure for execution of Bond-cum-Legal Undertaking shall be as under:-

(a)..;

(b)..;

(c)..;

(d)..;

(e)...;

(1)...;

(g)...

(2) Every Unit and Developer shall maintain proper accounts, financial yearwise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock:

- **Rule 25 of SEZ Rules, 2006**

  Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act,

1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange eaming, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

- **Rule 27 of SEZ Rules, 2006**

27. Import and Procurement-

(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

- **Rule 34 of SEZ Rules, 2006**

"34. Utilization of goods-

The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption.

Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable".

2.2 He pointed out that on the basis of aforesaid rules, the Commissioner came to the conclusion that exemption of duty in respect of goods imported/ procured by any SEZ Unit is available only when such goods are utilized in authorized operations and accounted for "by way of exports, sales or supplies in the domestic tariff area or transfer to SEZ or EOU or EHTP or HTP". He pointed out that the impugned order holds that in terms of Rule 34 of SEZ Rules duties shall be chargeable on such goods which are not utilized for authorized operation as if such goods

have been cleared for home consumption. It further holds that as per Rule 47 of SEZ Rules 2006, valuation and assessment cleared into domestic tariff area shall be made in accordance with Customs Act and Rules made there under.

2.3 Learned Counsel pointed out that when the Section 23 of the Customs Act deals with the remission of duty in case of fire, Section 23 of the Customs Act reads as under:

> "**Section 23 of the Customs Act**, provide for remission of duty on goods lost or destroyed and reads: "23. Remission of duty on lost, destroyed or abandoned goods.
> (1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods."

2.4 He argued that they are entitled to remission of customs duty in terms of Section 23 of the Customs Act. Learned counsel relied on the decision of Tribunal in the case of ONGC Petro Additions Ltd [2023 (12) TMI 530 (Tri. Amd)] and also relied on the decision of Satguru Polyfab Pvt. Limited [2011 (267) ELT 273(Tri.)] wherein in para 4-4.3 and para 12-13 respectively following has been observed:

ONGC Petro Additions Ltd [2023 (12) TMI 530 (Tri. Amd)]

> *"4. We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute that the fire incident has taken place in the appellant's factory located in SEZ units. As per survey report, it is clear that there is no negligence on the part of the appellant as the fire broken out suddenly beyond the control of the appellant. Therefore, the allegation that the appellant have not taken the proper precaution to avoid fire incident is absolutely baseless and imaginary. Moreover, it is the appellant who has to be most careful about their goods as it is not only the duty but the huge stake of value of the goods is involved. Therefore, it cannot be imagined that the appellant was careless and negligent due to which fire incidence has taken place. It is also fact that the extensive survey was conducted by the survey officer for the insurance purpose. However, there is no such inspection or analysis done by the Customs department to arrive at a conclusion that the appellant have not taken the proper precaution.*
>
> *4.1 We find that once after carrying out thorough inspection and survey, the insurance company has satisfactorily granted the insurance claim that itself is evidence to establish that the fire incidence was beyond the control of the appellant. Therefore, the ground that the appellant was negligent in the matter of fire incident cannot be accepted.*
>
> *4.2 As regard, the contention of the Learned Commissioner that the Section 23 shall not apply for remission of duty in the SEZ unit. We find that since the entire assessment of customs duty is done under the Customs Act. The provision for remission of custom duty shall automatically apply. We agree with the submission of the learned counsel*

that only those provisions of other Act shall not apply, which are inconsistence with the provision of the SEZ Act. In the present case the grant of remission in respect of customs duty in terms of Section 23 does not contradict any of the provision of the SEZ Act. Therefore, the contention of the Adjudicating Authority about nonapplicability of the Section 23 of the Customs Act, is not sustainable.

4.3 As regard the contention that the appellant have not insured the customs duty along with the value of the goods, we find that it is obvious that only the value of the goods is liable to be insured, which is appearing in the invoices. If the invoice contain any taxes or duties, obviously the gross value inclusive of all these elements shall be taken for the purpose of insurance. However, in the case of SEZ, when the goods are imported and entered into SEZ, the value of goods remain the only principle value and since no duty was payable, question of inclusion of duty does not arise. However, this cannot be the reason for denying the remission of duty. The judgment relied upon by the learned counsel directly applies to the effectthat in SEZ unit the remission of customs duty is applicable in terms of Section 23 of the Customs Act. Therefore, we are of the view that appellant has made out very strong case of remission of customs duty in respect of the destroyed goods in fire."

Satguru Polyfab Pvt. Limited [2011 (267) ELT 273(Tri.)]

"12. *The next submission that is to be considered is the submission that the deemed fiction has to be given full effect to. The learned advocate relied upon the decision of the Hon'ble Supreme Court in the case of Jalyan Udyog referred to above. In this case the Hon'ble Supreme Court observed as follows :*

> *"It is not disputed that it is this exemption notification which is applicable herein. Now what does the notification say? In our opinion, it is couched in simple and clear language. It admits of no ambiguity or doubt. It says that ocean-going vessels other than vessels imported to be broken-up are exempt from payment of customs duty leviable thereon. It then says that where any such ocean-going vessel is subsequently broken-up it shall be chargeable with the duty which would be payable if it were imported then for being broken-up. The idea behind the notification evidently was to encourage the import of ocean-going vessels. The notification also contemplates and provides for the situation where an imported ocean-going vessel becomes 'not sea-worthy' after a few years and the ship-owner decides to scrap/break it. It provides that in such a situation it would be deemed as if the ship is imported for breaking-up when it is broken up and the customs duty is charged on that basis. The notification thus creates a fiction viz. the vessel must be deemed to have been imported for being broken-up when it is broken up, though as a matter of fact the import was at an earlier point of time. Ordinarily speaking, no doubt, customs duty is levied with reference to the date of actual import but the exemption notification says that if the ship imported is an ocean-going vessel it shall be exempt from customs duty on the date of its import but in case it is subsequently broken-up the duty shall be paid as if it were then imported for being broken-up - which necessarily means that duty will be levied on the value and at the rate prevailing on the date of breaking-up. Indeed, in our opinion, the notification was quite clear even before it was amended in 1962; at any rate it has become clearer beyond any doubt after the said amendment. By virtue of the fiction created by the proviso in the notification, the vessel is deemed to have been imported for breaking-up on the date it is broken-up. It is well settled that where a fiction is created by a provision of law, the court must give full effect to the fiction, and as is often said, it should not allow its imagination to be boggled by any other considerations. Fiction must be given its due play; there is to be no half-way stop. According to this notification, therefore, the date relevant for determining the value and rate of the customs duty chargeable in the case of two ships concerned in Jalyan Udyog is the date on which they were broken-up."*

13. *It is the submission of the learned advocate that Section 76A of Customs Act specifically provides that SEZ is to be treated as outside*

customs as territory of India provided in this chapter. The notification issued by the Central Government or by the CBE & C has been issued to implement the provisions of Customs Acts and the relevant provisions relating to SEZ in the Customs Act. It was necessary to provide for a system for movement of goods from the port/airport/SEZ to DTA and therefore a procedure has been designed whereby SEZ units have been required to file bill of entry for home consumption. Since SEZ is located within India and there is a possibility of diversion of the goods to DTA, exemption notification has also been issued under Customs Act even though the relevant exemption notification covering the present imports and goods lying in the SEZ have not been produced before us. In fact, in this case this non-availability of exemption to the SEZ unit which has created a problem for the appellants. As can be seen Rule 8 of SEZ Rules 2003 and Notification No. 52/2003-N.T. dated 22-7-03 provides that where goods admitted duty free in the SEZ are used for the purposes other than authorised operations or where the units fail to account the goods, duty has to be paid as if the goods have been removed for home consumption. In this case the custom's notification is recognizing the fact that when the goods are lying in the SEZ they have to be treated as existing in the foreign territory and only when the same are not used or not accounted for, they have to be treated as cleared for home consumption. Therefore the whole issue in this case boils down to the fact as to whether the fire accident which lead to the destruction of goods can be said to be a breach of Rule 8 of SEZ Rules 2003. We take note of the fact that the Rule does not provide for a situation other than unauthorized use or failure to account for. In this case there is no denial of the fact that the Customs Authorities were informed of the fire accident on 5-12-04. In fact on the same day, stock verification was done in one of the three appellant units. In respect of the remaining the stock verification was done on 31-12-04 and 6-1-05. In none of the three orders there is an observation that the fire was manmade or there was a mala fide intention or it was not accidental. Rule 8 provides for charging of duty when the goods imported/procured are utilized for the purposes other than authorised operations or failure to account for the goods. In this case it cannot be said that goods were utilized for purposes other than authorised operations since the expression used clearly means a deliberate utilization or misuse of the goods procured duty free for unauthorized operations. When there is an accidental fire resulting in destruction of goods, it cannot be said that it amounts to use of goods for unauthorized operations. Similarly the second term namely failure to account for also cannot be applied since the shortage has been accounted for by fire accident and no evidence has been brought out by Revenue to show that goods have been procured or released elsewhere. Therefore there is no contravention of provisions of Rule 8 at all and this is the rule which authorizes Revenue to demand duty.

13. *We also find considerable force in the argument advanced by the learned advocate and his reliance upon the decision of the Hon'ble Supreme Court. In this case SEZ is a fiction created and in that fiction if there is contravention of provisions of SEZ Rules, the fiction itself provides for taking action. Once the action to the SEZ units or the loss of goods by fire is not covered by Rule 8 of SEZ Rules 2003, the deemed fiction of SEZ being a foreign territory comes into picture. As already considered earlier, duty becomes payable only when the goods are cleared into DTA or failure in terms of provisions of Rule 8 of SEZ Rules 2003. Once the event is not covered by these provisions at all, we have to hold that goods are still in foreign territory which is the status of SEZ and it is a deemed fictional status. As observed by Hon'ble Supreme Court, the fiction has to be given full effect to unless there is a valid reason supported by law to do otherwise. Therefore the goods which have been destroyed have to be held to have been destroyed in the deemed foreign territory and if that is so no customs duty can be demanded."*

2.5 Learned counsel further argued that the demand can only be made under Provisions of Rule 8 of the SEZ rules 2003. He argued that SEZ is deemed to be a foreign territory and customs duty can only be demanded if the goods are moved from the foreign territory to domestic area.

2.6 Learned counsel further pointed out that their Insurance Claim has been settled at Rs. 5,45,11,492/-. He pointed out that while the Revenue has taken the value of goods loss as Rs. 16,54,77,557/- however actual loss was reported by them was Rs. 7,95,76,996/-. He pointed out that the Insurance Company has settled the claim @ Rs. 5,45,11,492/-. He pointed out that assertion that the value of goods loss was Rs. 16,54,77,557 is without any basis.

3. Learned Authorized Representative relies on the impugned order. He also relied on the Tribunal in case of Sandoz Private Limited [2014 (308) ELT 617 (Tri Mum.)]. He pointed out that the said decision has been affirmed by the Hon'ble High Court of Mumbai as reported i [2016 (336) ELT A192].

4. We have considered rival submissions. We find that there is no dispute that there was a fire in the factory of the appellant. There is no dispute that certain quantity of goods were lost in the fire. There is a dispute regarding the quantum of goods lost in the fire. Consequently, there is a dispute on the amount of remission required.

5. The impugned order holds that the goods procured in the SEZ have to be disposed of in terms of the prescription under Rule 22 of SEZ Rules 2006 which prescribes the terms and condition for availing exemption, draw back and concession for the foreign operations. The impugned order holds that the only way to avail exemption is to use the goods for authorized operations and follow the procedure prescribed under Rule 22 (2) and Rule 34 of the SEZ Rules 2006. He is of clear opinion that loss of goods by fire cannot be deemed as accountal of goods and should be treated as non-utilization of goods for authorized operations.

6. It is seen that the issue regarding remission of duty arising on account of loss of goods due to fire has been examined in the case of Satguru Polyfab Private Limited [2011 (267) ELT 273(Tri.)]. In the said case, there was a fire in three units located close to each other and consequently there was a loss of goods. In the said case also the units were located in SEZ and the demand was raised on the ground that the goods lost in fire were not utilized for the purpose of authorized operations. In the said case the scope of Rule 8 of SEZ Rules was examined in para 12-14 following has been observed:

> ***"12.*** *The next submission that is to be considered is the submission that the deemed fiction has to be given full effect to. The learned*

advocate relied upon the decision of the Hon'ble Supreme Court in the case of Jalyan Udyog referred to above. In this case the Hon'ble Supreme Court observed as follows :

> *"It is not disputed that it is this exemption notification which is applicable herein. Now what does the notification say? In our opinion, it is couched in simple and clear language. It admits of no ambiguity or doubt. It says that ocean-going vessels other than vessels imported to be broken-up are exempt from payment of customs duty leviable thereon. It then says that where any such ocean-going vessel is subsequently broken-up it shall be chargeable with the duty which would be payable if it were imported then for being broken-up. The idea behind the notification evidently was to encourage the import of ocean-going vessels. The notification also contemplates and provides for the situation where an imported ocean-going vessel becomes 'not sea-worthy' after a few years and the ship-owner decides to scrap/break it. It provides that in such a situation it would be deemed as if the ship is imported for breaking-up when it is broken up and the customs duty is charged on that basis. The notification thus creates a fiction viz. the vessel must be deemed to have been imported for being broken-up when it is broken up, though as a matter of fact the import was at an earlier point of time. Ordinarily speaking, no doubt, customs duty is levied with reference to the date of actual import but the exemption notification says that if the ship imported is an ocean-going vessel it shall be exempt from customs duty on the date of its import but in case it is subsequently broken-up the duty shall be paid as if it were then imported for being broken-up - which necessarily means that duty will be levied on the value and at the rate prevailing on the date of breaking-up. Indeed, in our opinion, the notification was quite clear even before it was amended in 1962; at any rate it has become clearer beyond any doubt after the said amendment. By virtue of the fiction created by the proviso in the notification, the vessel is deemed to have been imported for breaking-up on the date it is broken-up. It is well settled that where a fiction is created by a provision of law, the court must give full effect to the fiction, and as is often said, it should not allow its imagination to be boggled by any other considerations. Fiction must be given its due play; there is to be no half-way stop. According to this notification, therefore, the date relevant for determining the value and rate of the customs duty chargeable in the case of two ships concerned in Jalyan Udyog is the date on which they were broken-up."*

13. *It is the submission of the learned advocate that Section 76A of Customs Act specifically provides that SEZ is to be treated as outside customs as territory of India provided in this chapter. The notification issued by the Central Government or by the CBE & C has been issued to implement the provisions of Customs Acts and the relevant provisions relating to SEZ in the Customs Act. It was necessary to provide for a system for movement of goods from the port/airport/SEZ to DTA and therefore a procedure has been designed whereby SEZ units have been required to file bill of entry for home consumption. Since SEZ is located within India and there is a possibility of diversion of the goods to DTA, exemption notification has also been issued under Customs Act even though the relevant exemption notification covering the present imports and goods lying in the SEZ have not been produced before us. In fact, in this case this non-availability of exemption to the SEZ unit which has created a problem for the appellants. As can be seen Rule 8 of SEZ Rules 2003 and Notification No. 52/2003-N.T. dated 22-7-03 provides that where goods admitted duty free in the SEZ are used for the purposes other than authorised operations or where the units fail to account the goods, duty has to be paid as if the goods have been removed for home consumption. In this case the custom's notification is recognizing the fact that when the goods are lying in the SEZ they have to be treated as existing in the foreign territory and only when the same are not used or not accounted for, they have to be treated as cleared for home consumption. Therefore the whole issue in this case boils down to the fact as to whether the fire accident which lead to the destruction of goods can be said to be a breach of Rule 8 of SEZ Rules 2003. We take note of the fact that the Rule does not provide for a situation other than unauthorized use or failure to account for. In this case there is no denial of the fact that the Customs Authorities were informed of the fire accident on 5-12-04. In fact on the same day, stock verification was done in one of the three appellant units. In respect of the remaining the stock verification was done on 31-12-04 and 6-1-05. In none of the three orders there is an observation that the fire was manmade or there was a*

mala fide intention or it was not accidental. Rule 8 provides for charging of duty when the goods imported/procured are utilized for the purposes other than authorised operations or failure to account for the goods. In this case it cannot be said that goods were utilized for purposes other than authorised operations since the expression used clearly means a deliberate utilization or misuse of the goods procured duty free for unauthorized operations. When there is an accidental fire resulting in destruction of goods, it cannot be said that it amounts to use of goods for unauthorized operations. Similarly the second term namely failure to account for also cannot be applied since the shortage has been accounted for by fire accident and no evidence has been brought out by Revenue to show that goods have been procured or released elsewhere. Therefore there is no contravention of provisions of Rule 8 at all and this is the rule which authorizes Revenue to demand duty.

13. *We also find considerable force in the argument advanced by the learned advocate and his reliance upon the decision of the Hon'ble Supreme Court. In this case SEZ is a fiction created and in that fiction if there is contravention of provisions of SEZ Rules, the fiction itself provides for taking action. Once the action to the SEZ units or the loss of goods by fire is not covered by Rule 8 of SEZ Rules 2003, the deemed fiction of SEZ being a foreign territory comes into picture. As already considered earlier, duty becomes payable only when the goods are cleared into DTA or failure in terms of provisions of Rule 8 of SEZ Rules 2003. Once the event is not covered by these provisions at all, we have to hold that goods are still in foreign territory which is the status of SEZ and it is a deemed fictional status. As observed by Hon'ble Supreme Court, the fiction has to be given full effect to unless there is a valid reason supported by law to do otherwise. Therefore the goods which have been destroyed have to be held to have been destroyed in the deemed foreign territory and if that is so no customs duty can be demanded."*

We find that the facts in the instant case are similar to the facts in the case of Satguru Polyfab Private Limited (supra). We come to the conclusion that the goods have been destroyed in foreign territory and no customs duty can be demanded on the said goods. The Revenue has relied on the decision in the case of Sandoz Private Limited (supra). The facts of the said case are different from the facts in the instant case. In the said case the goods were imported in Section 58 of the Customs Act 1962 (bond), whereas in the instant case, the goods have been imported into SEZ. Thus, the law applicable to the two situations is significantly different, therefore, the decision in the case of Sandoz Private Limited (supra) cannot be applied to the instant case.

7. Another reason for rejection of the application of remission is that section 23 of the Customs Act is not applicable as the goods in the instant case have been ordered to be deposited in a warehouse under Section 60 of the Customs Act, 1962 which are entitled to be utilized in the manufacture under bond under Section 65 of the Customs Act, 1962. We do not understand as to how the provisions of Section 58 and Section 60 of Customs Act 1962 are applicable to the SEZ Act. SEZ Act is a separate legislation and does not specifically import section 58 of 60 as there are other parallel provisions within the SEZ Act which allow import storage and manufacture of goods without paying import duty.

8. We find that duty has been demanded on entire stock of good at the time of fire. The Revenue had visited and made a punchnama after the fire. The insurance authorities have also estimated the loss and paid insurance accordingly. There is no evidence on record to suggest entire stock of raw material, in process goods and finished goods was destroyed. In these circumstances demand of entire stock is without any basis.

9. In view of above, we do not find any merit in the impugned order and the same is set aside and appeal allowed.

(Order pronounced in the open court on 05.06.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha