

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH : COURT NO - 1

Customs Appeal No. 9 of 2011-DB

(Arising out of OIO no. KDL/COMMR/10/DENOVO/10-11 dated 27/09/2010 passed by Commissioner of CUSTOMS-KANDLA)

Texool Wastesavers

Appellant

49, World Trade Centre, Cuffe Parade,
Mumbai
Maharashtra, 400005

-VERSUS-

C.C. - Kandla

Respondent

Custom House,
Near Balaji Temple,
Kandala, Gujarat

WITH

Customs Appeal No. 10 of 2011-DB

(Arising out of OIO no. KDL/COMMR/10/DENOVO/10-11 dated 27/09/2010 passed by Commissioner of CUSTOMS-KANDLA)

Surinder S Sajdeh

Appellant

C/O Texool Wastesavers, 49, World Trade Centre, Cuffe Parade,
Mumbai
Maharashtra, 400005.

-VERSUS-

C.C. - Kandla

Respondent

Custom House,
Near Balaji Temple,
Kandala, Gujarat

Present For the Appellant : Shri J.C. Patel, Advocate

Present For the Respondent : Shri Gobind Jha, Authorised Representative

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

ORDER NO. A/ 12199-12200 / 2019

Date of Hearing: 06/08/2019

Date of Decision: 15/11/2019

RAJU

This appeal has been filed by Texool Wastesavers & Ors. & Shri Surinder S. Sajdeh against confiscation of goods, imposition of redemption fine and penalty.

2. M/s Texwool Wastesavers is a unit in SEZ in Kandla. On 29/09/2000, Texwool Wastesavers were granted permission to undertake reconditioning of cloth and processing of industrial rags in Kandla Free Trade Zone, which was later converted into Kandla SEZ. In the project report submitted by them, Texwool

Wastesavers stated that they would inter alia import "crush packed clothing" which would comprise "Export Surplus" of garment manufacturers and surplus of Departmental Stores remaining after clearance sales which are sold on Kilo basis. He claimed that project report also specified that reconditioning to be undertaken in respect of clothing which does not require any repairing/recycling and which require only cleaning, pressing and packing. In the case of garments which require repair and the process of reconditioning would comprise alteration, sewing before cleaning and pressing. The project report clearly stated that after reprocessing, the aforesaid goods would be re-exported. He pointed out that the Development Commissioner has granted permission dated 29/09/2000 for the manufacture of 'Reconditioned clothing' and for processing "Rags".

2. Learned Counsel for the appellant pointed out that in May, 2009, M/s Texool Wastesavers imported "old and used clothing rags" and filed Bill of entry bearing no. 1763 dated 25/05/2009 alongwith the foreign supplier's invoice. As per the invoice, following was revealed:

- (a) The goods were imported in two containers bearing nos. MSKU 9258007 and MSKU 9441168 containing 47 bales and 41 bales respectively,
- (b) Some of the bales were tied with plastic strips, some were given support of paper carton waste inside the strips and some were given support of plastic woven fabrics inside the strips,
- (c) All the bales in container no. MSKU 9441168 contained Old and used Clothing,
- (d) 21 bales in container MSKU 9258007 contained old and used clothing and
- (e) 26 bales in container MSKU 9258007 contained unused T-Shirts of various colors and sizes, some with full sleeves, some with half sleeves, some with round neck, some with V neck, some being unbranded and some bearing illegible brand labels or cut labels. The T shirts carried stickers with the work "Irregular" and some of the shirts had holes in them.

The said 26 bales were seized on the charge that the unused T-shirts were being sought to be cleared as old and used clothing rags in the said BOE. Rest of the goods, though old and used rags, were seized as goods used to hide the unused clothing. Learned Counsel for the appellant Texool Wastesavers, pointed out that the said order of the Commissioner was challenged in Tribunal. The Tribunal vide order dated 18/05/2010 remanded the matter to the Commissioner for fresh consideration and also ordered that the appellant was entitled to clear the goods on payment of duty to the SEZ. In the remand proceeding vide order dated 27/09/2010, 26 bales of T-Shirts imported in containers MSKU 9258007 under section 111 (d) and (m) of the Customs Act, 1962 and redemption fine of Rs. 25

lakhs was imposed, apart from payment of duty on T-Shirts. The remaining 21 bales in the said container no. MSKU 9258007 were also confiscated under section 119 and 111(d) of Customs Act and redemption fine of Rs.50,000/- were imposed on that. The 41 bales in containers MSKU 9441168 were also confiscated and offered for release on payment of Rs. 50,000/-. Aggrieved by the said order, the appellants appealed before the Tribunal again. Learned Counsel pointed out that the letter of permission needs to be read along with project report, on the strength of which the letter of permission was issued. He pointed out that the appellants were permitted to manufacture "reconditioned clothing". He pointed out that the letter of permission permits that clothing which did not require any repair/recycling, process of reconditioning is to be undertaken which comprises of cleaning, pressing and packing. Only in cases where garments require repair, the process of reconditioning would require alteration, sewing, etc before cleaning and pressing. He pointed out that the project report clearly contemplated import of surplus called by manufacturers and departmental stores which may be new and in respect of which no repairs are required. He pointed out that the T-shirts in the 26 bales in question were of assorted size, colors and types, some having round neck, v- neck, some of them were unbranded and other had illegible or cut brand labels. He pointed out that some had holes, etc and some had stickers with the word 'Irregular' printed on it. He further pointed out that the manner of packing of goods viz in bales with plastic strips.

2.1 Learned Counsel pointed out that in this context the Commissioner has erred in holding that the goods are new and unused and did not require re-conditioning. He pointed out that the Joint Commissioner who was appointed by the Commissionerate to examine the goods has in his report dated 16/08/2010 found on a random examination that the T-shirts which were improperly stitched, had holes, dyeing defects and disturbed or broken knits. He argued that the Commissioner had erred in proceeding with the examination report dated 16/08/2010, showed that 95% of the shirts were free from dyeing and weaving defects. He argued that only two to four shirts in each bundle was examined and conclusion made on the basis on that, 95% shirts were free from defects is totally incorrect. Learned Counsel argued that even new T-shirts from old stock of mixed and rejected T-shirts were permissible for import as per project report. He pointed out that in this circumstances, invocation of section 111(m) of the Customs Act, 1962 is wrong. He further pointed out that the impugned order wrongly holds that new T-shirts that were surplus/assorted/defective/irregular were not classifiable under Tariff Heading 6309 00 00. He argued that the question of classification becomes irrelevant since the goods were intended for clearance from SEZ and to be re-exported after reconditioning. He argued that in this background, order of payment of duty under section 125 (2) of the Custom Act, 1962, is misplaced. He

argued that in this regard, the impugned order disregards the Tribunal's order dated 18/05/2010. He further argued that the impugned order wrongly order confiscation under section 119 under Customs Act, 1962 of the remaining 21 bales container no. MSKU 9258007 consisting of old and used clothing. He argued that the T-Shirts were not packed in the same bales as the old T-Shirts but were packed in separate bales and thus cannot be said to have concealed any other T-shirts. He relied on the decision in the following cases:

1. Mazda Chemicals v CC-1996 (88) ELT 767
2. Vikas Road Carriers v CC- 2004 (164) ELT 298

He further argued that the impugned order wrongly holds goods liable for confiscation under section 111 (d) of the Customs Act 1962 for the fact that the goods were not accompanied by Pre-shipment Certificate as per Public Notice no. 12 (RE-2001)/1997-2002 dated 03/05/2001 to the effect that the imported goods did not contain any hazardous dye. He argued that the said public notice clearly prescribes that in case the pre shipment certificate is not available, the goods shall be allowed to be cleared after getting tested from the specified agencies. Only if on such testing, any prohibited dyes are found, the goods become liable for confiscation.

3. Learned Authorized Representative from the Revenue relies on the impugned order.

4. We have considered rival submissions. We find that the appellants are a unit functioning in the Kandla SEZ under letter of permission issued by Development Officer, KASEZ, Gandhidham for manufacturing of following goods:

S1.	Items for manufacture	Annual Capacity
1	Fiber from Virgin material	1350.00MT
2.	Reconditioned Clothing	1500.00MT
3.	Rags	3825.00MT

The appellant filed a Bill of Entry in the office of the Dy. Commissioner of Customs, Kandla Free Trade Zone, Gandhidham, claiming exemption under Rule 26 of the SEZ Rules, 2007. The officers of Customs House, Kandla carried out detailed examination of goods at A.V. Joshi CFS, Gandhidham. During the examination, it was found that out of 47 bales declared as "old and used clothing rags", 26 bales were found to contain new/unused branded/unbranded T-shirts of different colours and sizes. The goods were placed in seizure for confiscation under section 111(m)

of the Custom Act, 1962 also as the goods were not accompanied by pre-shipment certificate prescribed by the Public Notice no. 12 (RE-2001)/1997-2002 dated 03/05/2001. After issue of Show Cause notice, the market value of the T-shirts was ascertained. The 27 bales of alleged new T-Shirts were confiscated under section 111 (d) and 111(m) of the Customs Act, 1962. The market value of the said goods was revised to 1.44 crores at the rate of 150 per piece and redemption fine was fixed at Rs. 35 lakhs. The balance 21 bales of old and used clothing rags in the said container were also confiscated under section 111(d) of the Customs Act. The 41 bales in the second container were also confiscated indicating section 111(d) of the Customs Act, 1962. Various penalties were imposed on the appellants and the request for re-export of goods was rejected. Aggrieved by the said order, appellant's approached the Tribunal which remanded back the matter to the Commissioner observing the following:

"4. Learned advocate for the appellant submitted that the Customs authorities had no jurisdiction to examine the containers at all as per the Rule 27 of SEZ Rules and Commissioner had no authority to adjudicate. However, he fairly admitted that this point was not raised before the original adjudicating authority and there is no discussion in respect of the same in the order-in-original. He also submitted that the appellants had made request to allow re-export the goods, which was also not allowed. Further, while submitting request for speedy adjudication and waiver of show cause notice, the appellant had pointed out that the goods were in the category which was permitted to be imported and only omission was wrong declaration and therefore they may be permitted to clear the goods to SEZ without payment of duty. This has also been considered.

5. We find that the grievance of the appellant fully justified. The request for clearance to SEZ unit without payment of duty has not been considered and the Commissioner has simply demanded duty. Further, grievance made by the appellant regarding enhancement of value for which also, there is no justification and there is no evidence to show that the appellants were provided the basis for enhancement for value. In any case, there was no ground for duty demand separately in the order in view of the fact that it is settled law that when the goods are allowed to be released on payment of fine, the duty liability has to be paid. But for the orders specifically demanding duty, the appellants could have cleared the goods without payment of duty to SEZ.

6. It was submitted by the learned advocate that the appellants are incurring heavy demurrage and being a unit in SEZ and having regard to the facts and circumstances, they may be allowed to clear the goods to SEZ pending adjudication and he also requests for speedy adjudication. The Commissioner is directed to consider this request for removal to SEZ pending adjudication and further we also direct the Commissioner to adjudicate the issue afresh after giving an opportunity to the appellant within sixty days of the receipt of this order. Needless to say that the appellants shall be given opportunity to present their case before the matter is adjudicated afresh. The appellants are directed to co-operate fully with the Commissioner for speedy adjudication without further delay."

In the remand proceeding, the Commissioner has ordered confiscation of the said goods alleged to be the new T-shirts and the same were confiscated under section 111(d) and 111(m) of the Customs Act. The market value of the said goods

were fixed at Rs.91 lakhs approximately @ 95/- per piece of cotton T-shirts and Rs. 110/- per piece for polyester T-shirts. The goods were offered for redemption on payment of fine of Rs. 25 lakhs. The balanced 21 bales in the same container and 41 bales in a different container were also confiscated under section 119 of the Customs Act and under section 111 (d) of the Customs Act, 1962 respectively and were offered for redemption of payment of Rs. 50,000 only. A penalty of Rs. 15 lakhs under section 112(a) of the Customs Act, 1962 was imposed. Penalty of Rs. 5 lakhs was imposed against Shri S.S. Sajdeh, Chairman & Managing Director of the company under section 112(a) of the Customs Act. The order also rejected the request for re-export of goods. The order further directed that in terms of section 25(2) in addition to redemption fine a appellant's shall be liable to pay duty on 91,450 pieces of new T-shirts.

4.1 A perusal of letter of permission under Free Trade Zone Scheme dated 29/09/2000 shows that the appellant is permitted to establish new Industrial undertaking at Kandla free trade zone for the manufacture of following items:

S1.	Items for manufacture	Unit	Annual Capacity
1	Fibre from Virgin material	MT	1350.00
2.	Reconditioned Clothing	MT	1500.00
3.	Rags	MT	3825.00

It is seen that the said letter of permission has been granted in terms of Project Report made before the Development Commissioner. The appellants have placed the said project report as exhibit-B to this appeal. The said project report described one of the processes as follows:

Import if Crush Packed Clothing-Tariff ITC:63090000

This category of clothing is the Export Surplus" created by the Garment manufacturing industry and also by the large department stores, after their "Clearance Sale/s, sell their stocks almost by the "KILOS".

This is yet another labour intensity activity that we propose to undertake at the SEZ.

These garments are almost "NEW" but could be "OUT of Fashion" in terms of time, as far as the country of production, is concerned also the garments could be slightly damaged away or saved.

This category of the merchandise will be imported the garments repaired and reconditioned and exported to the developed countries who are not able to do this process for obvious reason.

This outlet apart this grade of clothing has ready market in most of the developing countries, not to mention the DTA market. Import of garments, fall under OGL and covered under Tariff head 63090000.

PROCESSING OR RECONDITIONED CLOTHING

1. *The garments, which require no recycling, will be sent directly to the cleaning department for cleaning, pressing and packaging.*
2. *The garments, which require repair before they can be reused, will be sent to the sewing and finishing department where repairs and alterations, sewing buttons etc will be carried out before sending to the cleaning department for cleaning and pressing.*

This will be "RE-EXPORTED" as "RE-CONDITIONED CLOTHING"

4.2 The appellants are taking shelter of this proposal in the project report which they claim, has been approved in the letter of permission. Though we find that the said project report placed before us is un-signed and is not addressed to any particular authority Revenue has not disputed. In these circumstances, we rely on this project report. From the said project report, it is seen that the appellants were permitted to import garments that are almost new but could be out of fashion in terms of time as far as the country of production is concerned. The entire case of Revenue is based on the allegation that the part of the consignment was almost new and, therefore, it was in violation of the policy. We find that the letter of permission read with Project Report does not prohibit import of such goods.

4.3 It is seen that the Bill of Entry describes the goods as old and used clothing rags. In the instant case, the new clothes cannot be called rags and, therefore, there is a mis-declaration to this extent. Nonetheless, the said goods are covered by the letter of permission granted by the Development Commissioner and the appellants are entitled to take the same to the SEZ without payment of duty. The Tribunal order had specifically observed in para 5:

"5. We find that the grievance of the appellant fully justified. The request for clearance to SEZ unit without payment of duty has not been considered and the Commissioner has simply demanded duty. Further, grievance made by the appellant regarding enhancement of value for which also, there is no justification and there is no evidence to show that the appellants were provided the basis for enhancement for value. In any case, there was no ground for duty demand separately in the order in view of the fact that it is settled law that when the goods are allowed to be released on payment of fine, the duty liability has to be paid. But for the orders specifically demanding duty, the appellants could have cleared the goods without payment of duty to SEZ."

The impugned order in para 17.7 comes to the conclusion that the T-shirts imported by them do not confirm to the letter of permission. We find that contrary to the facts, the letter of permission is specifically issued referring to the project report. Letter of permission also permits them to manufacture reconditioned clothing. The project report clearly states that some of the reported garments that new and could be out of fashion in terms of time in these circumstances the conclusion of the Commissioner in the impugned order that the said T-shirts are not

by letter of permission is mis-placed. In these circumstances, we find that the appellants are entitled to clear the goods to SEZ in terms of letter of permission and Rule 27 of the SEZ Rules. Thus, the charge under section 111(m) of the Customs Act, 1962 cannot be sustained in the instant case as the payments. As the appellants were clearly entitled to clear the said goods at SEZ at nil rate of duty.

4.4 As far as the charge under section 111(d) is concerned the Revenue has relied on Public Notice no. 12 (RE-2001)/1997-2002 dated 03/05/2001. The appellants have pointed out that the said circular permits Revenue to test goods at the time of import for pre shipment certificate. In these circumstances, confiscation can only be ordered if the goods do not confirm. In this case no testing was done by Revenue and, therefore, confiscation under section 111(d) cannot be justified.

5. In view of above, we do not find anything in support for the charges made for invoking section 111(m) and section 111(d). Consequently, all the charges in the Show Cause Notice including imposition of Redemption fine and penalties⁴ fail. The appeal is, therefore, allowed and appellants are allowed and appellants are permitted to take the goods to SEZ.

(Pronounced in the open court on 15/11/2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha