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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.12906 of 2018

(Arising out of OIA-MUN-CUSTM-000-APP-135-18-19 dated 03/08/2018 passed by Commissioner (Appeals) Commissioner Of Central Excise, Customs And Service Tax-AHMEDABAD)

M/s. Radhe Exim Pvt Ltd **........Appellant**
Rupaheli, Nh-79
Village Rupaheli,
Bhilwara, Rajasthan

VERSUS

C.C.-Ahmedabad **.......Respondent**
Office of the Principle Commissionerate of Customs,
Port User Buld, Custom House Mundra,
Mundra, Kutch, Gujarat-370421

APPEARANCE:
Shri Amal Dave, Advocate for the Appellant
Shri. Gobind Jha, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10399 /2020

DATE OF HEARING: 10.10.2019
DATE OF DECISION:05.02.2020

RAMESH NAIR

The brief facts of the case are that the appellant have imported "20MM Used Tyre Rubber Shreds" falling under CTH 40040000 and filed Bill of Entry No.3161720 dated 08.09.2017 for clearance of the said imported items. The said Bill of Entry was assessed on second check. During the course of assessment by the Apprising Officer, it was noticed that the imported items were "20MM Used Tyre Rubber Shreds" which is restricted item and import of such item are allowed only under license issued by the DGFT.

02. In view of above it was contended that since the appellant did not possess the license the goods were imported is in contravention of the import policy issued by the DGFT. Accordingly the adjudicating authority confiscated the goods with option to redeem on payment of redemption fine of Rs. 2,50,000/- under section 125 of the Customs Act, 1962 and penalty of Rs. 1,35,000 was imposed under section 122(a) of the Customs Act,1962.

03. Being aggrieved by the Order-In-Original, appellant filed appeal before the Commissioner (appeals) who dismissed the appeal holding that there is no infirmity in the Order-In-Original. Therefore, the present appeal.

04. Shri.Amal Dave, Learned Counsel Appearing on behalf of the appellant submits that at the time of filing Bill of Entry i.e. 08.09.2017, the appellant were in possession of license issued by DFGT on 01.03.2017 therefore, there is no reason to confiscate the goods for want of license. He submits that the entire case was decided on the basis that the Bill of Lading date is 04.08.2016 which is a date of import. At that time there was no license, therefore, the goods were confiscated. In this regard he submits that the import completed only at the time of filling of Bill of Entry therefore, date of Bill of Lading is not relevant .In support of his submission he placed reliance on the following Judgments :-

- Extracts of Foreign trade Policy
- Interia impex V/s. Commissioner of Customs, Faridabad 2009 (239) E.L.T.71 (Tri-Del.)
- Jasmat parshottam Ganesh V/s. State of Gujarat 1995 (76) E.L.T.548 (Guj.)
- Saci Allied Production Ltd. V/S. Commissioner of C.Ex., Meetut 2005 (183) E.L.T.225 (S.C.)
- Reckitt & Colman of India Ltd. V/s. Collector of Central Excise 1996 (88) E.L.T.641 (S.C.)
- Koluthara Exports Ltd. V/s. Commissioner of C.Ex. & CUS., Erankulam –II

05. Shri G.Jha, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He relied upon the following Judgments:-

- Royal Impex V/s. Commissioner of Customs, Chennai-II 2019 (366) ELT 820 (Mad)
- Ahmedabad Tribunal Order No.A/10003/2019 Dated 02.01.2019.

06. I heard both the sides and perused the records. I find that there is no dispute about the dates that the goods were shipped under Bill of Lading dated 04.08.2016. Bill of Entry on arrival of the goods was filed on 08.09.2017. At the time of filling of Bill of Entry the appellant was in possession of license issued by DGFT. As per the various judgments cited by

Learned Counsel I am of the view that at the time of import the appellant should possess a valid license, if it is required as per the policy. In the present case though the Bill of Entry date is 08.09.2017 but it is not coming out from the documents that what is the date of import of the goods. As per the section 2 (23) of Customs Act, the definition of import is as under.

> *"(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;]"*

07. From the plain reading of the definition of import it is clear that when the goods enter into territorial water of India that is the stage of completion of import into India and not the date of filling of Bill of Entry, therefore, if the appellant possess the license on or before date of import, the goods imported are covered by the license and same will not be liable for confiscation. Though in the policy the date of reckoning the import is given is as per the date of Bill of Lading but the import gets completed only when goods enters into India. Therefore, the contention of the lower authorities that the appellant was not possessing the license on the date of Bill of Lading is not correct. However, to finally decide the issue, the date import is very relevant which is not available on record.

08. Therefore, I set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after verifying the date of import.

09. Considering the above observations, appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 05.02.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul