

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

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 10833 of 2016-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-173-231-15-16 dated 12.02.2016 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Shri Gautam Ship Breaking Industries Pvt Ltd **...Appellant**

Jivan Mansion, Lati Fuwara,
Bhavnagar,
Gujarat

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,
Gujarat

WITH

- i. Customs Appeal No. 10925 of 2016 (Panchvati Ship Breakers)**
- ii. Customs Appeal No. 10991 of 2016 (Gupta Steel Ship Breakers)**
- iii. Customs Appeal No. 10992 of 2016 (Priyank Ship Breaking Co Pvt Ltd)**
- iv. Customs Appeal No. 11065 of 2016 (Alang Ship Breaking Corporation)**
- v. Customs Appeal No. 11093 of 2016 (K P G Enterprise)**
- vi. Customs Appeal No. 11112 of 2016 (Kumar Steel India)**

APPEARANCE:

Sh. Rahul Gajera, Advocate, Shri Sarju Mehta, CA for the Appellant
Sh. Anand Kumar, Superintendent (Authorized representative) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
 HON'BLE MEMBER (JUDICIAL), SOMESH ARORA**

Final Order No. A/ 11337-11343 /2023

DATE OF HEARING: 15.06.2023
DATE OF DECISION: 15.06.2023

RAJU

These appeals have been filed by the appellants against dismissal of their appeal by Commissioner (Appeals) on the ground of limitation.

2. Learned Counsels appearing for the appellant pointed out that the Commissioner (Appeals) has taken the date of payment of redemption fine and penalty by the appellants as the date of receipt of the Order in Original. Learned Counsels pointed out that, it cannot be done that way in the instant case proper speaking orders were passed after the bill of entry was assessed. He pointed out that in the case of M/s. K P G Enterprise recycles LLP and M/s. Priyank Ship Breaking Co Pvt Ltd, the date of payment of redemption fine and penalty precedes the date of the Order-In-Original. He pointed out that the redemption fine and the penalty was paid under protest by them and that is a reason a proper speaking orders were issued after the assessment was done on bill of entry.

3. Learned AR relied on the impugned order.

4. We have considered the rival submissions. We find that in the instant case the assessment was done on bill of entry and thereafter redemption fine and penalty was paid by the appellant under protest. In some cases the Redemption fine and penalty was paid before the issue of speaking order and another cases on the date of speaking order. In these circumstances, we find that the Commissioner (Appeals) cannot presume that the speaking order was received on the date on which Redemption fine and penalty penalty was paid. In that context the actual date of receipt of speaking order becomes a relevant date for the purpose of limitation in filing appeal before the Commissioner (Appeals).

5. In view of above, we do not find any merit in the rejection of the appeal on the ground of limitation by the Commissioner (Appeals) in the case of appellants herein. The order of Commissioner (Appeals) is so far relates to the appellants is set aside and matter remanded back to the Commissioner (Appeals) to consider the limitation after determining the actual date of receipt of the OIO. The appeals are allowed by way of remand.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)