

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

REGIONAL BENCH – COURT NO. 1

CUSTOM Appeal No. 13142 of 2018

[Arising Out Of OIA-MUN-CUSTM-000-APP-185-18-19 Dated- 17/09/2018 Passed By
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-
AHMEDABAD]

C.C.-Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Appellant

VERSUS

Gamesa Renewable Pvt Ltd

(Now Known As Siemens Gamesa Renewable Power Pvt Ltd),
No. 7, Pazhamathur Village, Maduranthakam Taluka,
KANCHEPURAM, TAMILNADU

.....Respondent

APPEARANCE:

Shri. Himanshu P Shrimali, Superintendent (AR) for the Appellant
Shri. Manish Jain, Advocate for the Respondent

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

FINAL ORDER NO. A / 12310 / 2023

DATE OF HEARING: 13.07.2023

DATE OF DECISION: 18.10.2023

RAJU

This appeal has been filed by the Revenue against the reducing in redemption fine and penalty imposed on the respondents.

2. Siemens Gamesha Renewable Power Pvt. Ltd were engaged in import of "Prime hot rolled steel plates shotblasted/ coated with Zinc Silicate" falling under Tariff Heading No. 72103092. Notification No. 38/2015 dated 05.02.2016 issued by Directorate General of Foreign Trade (DGFT), Department of Commerce, Ministry of Commerce & Industry prescribed Minimum Import Price (MIP) of Iron and Steel under Chapter 72 of ITC (HS),

2012-Schedule-1 (Import Policy). In the said notification at Serial No. 125 the subject goods were subjected to Minimum Import Price (MIP) of US \$ 643 per MT under Customs Tariff Heading No. 72103090. The importer namely Gamesha Renewable Power Pvt. Ltd (GRPL) imported the said goods declaring a price of US \$ 398 per MT. As against, the Minimum Import Price prescribed by DGFT US \$ 643 Per MT. The goods were confiscated by the original adjudicating authority for violating of import policy. The original adjudicating authority revised the assessable value of the goods based on Minimum Import Price and demanded Customs Duty on the said revised price. The original adjudicating authority also imposed a redemption fine amounting to Rs. 3 Crores and imposed penalty of Rs. 1 Crores under Section 112(a) of Customs Act, 1962.

3. The Commissioner (Appeals) relying on the earlier order of Tribunal in the case of Crystal Granite & Marble Pvt. Ltd vide Order No. A/11657-11659/2018 dated 06.08.2018 came to the conclusion that the assessable value cannot be revised on account of Minimum Import Price fixed by DGFT. Relying on the decision of Tribunal in appellants own case, the Commissioner (Appeals), revised the redemption fine and penalty drastically on the lower side on the ground that CESTAT in its earlier order had done the same.

4. This appeal has been filed by the Revenue. It has been argued by the learned AR that the redemption fine imposed by the original adjudicating authority was proper. It has been argued that by learned AR that the grounds of reduction of redemption fine and penalty are not elaborated in the order of Commissioner (Appeals) who has merely stated that looking at the gravity of offence and the earlier order of Tribunal the redemption fine and penalty has been revised downwards. He argued that it could not have been done after having observed that, the goods are liable to confiscation and that the respondents have violated the provisions of imported policy deliberately. It has been argued that in terms of Section 125 of Customs Act, 1962 the redemption fine cannot be exceed the market price of the goods confiscated

less the amount of duty chargeable thereon, so as neutralize any benefit that may accrue to the importer from such illegal act of importation of impugned goods. It has been argued that the adjudicating authority has imposed redemption fine amounting to 17.98% of the declared transaction value and only 6% on the declared value as penalty. As against this, the Commissioner (Appeals) has reduced the said amount of redemption fine to 1.8% of the declared assessable value and penalty equal to 0.6% of the value declared value. It has been argued that such low of penalty do not discourage the importers from deliberately violating provisions of Customs Act and Foreign Policy. Reliance has been placed on the decisions of Hon'ble High Court of Delhi in the case of JASPREET SINGH JOLLY-2013 (288) ELT 379 (Del.). It has been argued that the quantum of redemption fine the penalty cannot be reduced without giving justification. Reliance was placed on following decisions of Hon'ble Apex Court and Hon'ble High Court as follows:-

"i) Hon'ble Supreme Court of India in the case of Commissioner of Customs, Kolkatta Vs. Diascans(India) Ltd 20 15(320) E.L.T 177(S.C.) in respect of penalty.

ii) Hon'ble High court of Punjab and Haryana in the case of Commissioner of Customs, Amritsar Vs. Ragini Steels (P) Ltd., Delhi 2015(325) E.L.T. 326(P & H) in respect of penalty.

iii) Hon'ble High court of Madra in the case of HRB Boarding & Lodging Pvt Ltd Vs. Union of India 2015(322) E.L.T. 452(Mad.) in respect of confiscation of goods."

5. Learned Counsel appearing for the respondent has relied on the decision of Tribunal in their own case M/s Siemens Gamesha Renewable Power Pvt. Ltd Vs. Commissioner of Customs, Mundra reported at 2019 (365) ELT 631 (Tri-Ahmd.). It was argued that the goods was not prohibited but only restricted. Learned Counsel further argued that, it has mandatory for the lower authorities to follow the decision of the higher forum as has been held by the Hon'ble Apex Court in the case of KAMLAKSHI FINANCE CORPORATION LTD.- reported in 1991 (55) ELT 433 (S.C.). He further argued that it has been held by the Hon'ble Apex Court in the case of SANT LAL GUPTA V. MODERN CO-OP. G.H. SOCIETY LTD-2010 (262) ELT 6 (S.C.) that it

is not desirable or permissible for the coordinate benches to disapprove of the earlier decisions and take view contrary to it.

5.1 Learned appellant also argued that no confiscation could have been done as the goods are not available for confiscation as the same have been cleared. He relied upon the decision of Hon’ble Apex Court in case of WESTON Component Ltd-2000 (1) STR 26=2000 (115) ELT 278 (S.C.)

6. We have considered the rival submission. We find that the instant case involves import of “Prime hot rolled steel plates shot blasted/ coated with Zinc Silicate”. In respect of the said items Notification No. 38/2015-20 dated 05.02.2016 places restriction in nature of the prescribed Minimum Import Price. The notification prohibits imports at price less than USD 643/MT for the impugned item by placing the minimum import price as condition of import. The appellants have imported the goods at USD 398/MT, practically half the price prescribed by DGFT by the aforesaid notification. The goods were, therefore, confiscated and offered for release on payment of redemption fine and penalty to the respondents. Initially the assessable value was also revised by the original adjudicating authority to the Minimum Import Price prescribed by the DGFT. However, in appeal the valuation at the declared import price was accepted by Commissioner (Appeals) and no appeal on that ground has been filed by revenue. The Commissioner (Appeals) had reduced the redemption fine and personal penalty in line with the earlier orders of Tribunal in following members.

OIO No & No. date	Value of the goods	Redemption fine-OIO	Penalty-OIO	Redemption fine-OIA	Penalty- OIA
MCH/ADC/GPM/52/ 2017-18 dated 08.09.2017	16,67,62,872/-	3,00,00,000/- (300 Lakhs)	1,00,00,000/- (100 Lakhs)	30,00,000/- (Thirty Lakhs)	10,00,000/- (Ten Lakhs)

6.1 Aggrieved by the reduction of redemption fine and penalty order by the Commissioner (Appeals) in the impugned order, the revenue is in appeal

before the Tribunal. No appeal has been filed by the respondents nor any cross-objection have been filed.

7. Respondents have relied on in earlier decision of Tribunal in their own case, involving identical dispute in which the following relief was granted by Tribunal:-

Appeal No.	Value of Goods	As per impugned order in earlier appeals		Reduced by CESTAT order	
		R.F.	Penalty	R.F. Penalty	
C/11799/2017	28,86,87,612,68	2,50,00,000/-	70,00,000/-	25,00,000/-	7,00,000/-
C/11800/2017	56,44,64,784,58	3,75,00,000/-	45,00,000/-	37,00,000/-	5,00,000/-
C/11801/2017	10,89,46,360	1,70,00,000/-	50,00,000/-	17,00,000/-	3,00,000/-

7.1 It is seen that in the earlier order of Tribunal, the penalty imposed was reduced by 90%. In the instance case, the Commissioner (Appeals) has accepted the declared value of the goods setting aside the proposition of the Order-In-Original to levy of Customs Duty at assessable value equal to the Minimum Import Price. The Commissioner (Appeals) has in this regard followed the earlier decision of Tribunal regarding valuation of such goods imported in violation of Minimum Import Price requirement. No appeal has been filed by Revenue and therefore, as far as the valuation of goods is concern the declared value of the goods stands accepted.

8. In case of INDO-CHINA STEAM NAVIGATION CO. LTD.-1983 (13) ELT 1392 (S.C). Following has been observed.

"33. In this connection, we may mention one consideration which has weighed in our mind. It is true that modern criminology does not encourage the imposition of severe or savage sentences against criminals, because the deterrent or punitive aspect of punishment is no longer treated as a valid consideration in the administration of Criminal law. But it must be remembered that ordinary offences with which the normal criminal law of the country deals are committed by

persons either under the pressure of provoked and unbalanced emotions, or as a result of adverse environments and circumstances, and so, while dealing with these criminals who, in many cases, deserve a sympathetic treatment and in a few cases, are more sinned against than sinners, criminal law treats punishment more as a reformatory or corrective than as a deterrent or punitive measure. But it may not be appropriate to adopt the same approach in dealing with every offence committed by a vessel which contravenes Section 52A. Illegal importation of gold has assumed the proportions of a major problem faced by the country, and the manifold, clever and ingenious devices adopted in carrying out these illegal operations tend to show that the organization which is responsible for them is inspired merely by cupidity because it conducts its operations solely for the purpose of making profit, and so, it would be open to the Customs Authorities to take the view that the best way to check the spread of these illegal operations is to impose deterrent fines whenever these offences are discovered and proved. Having regard to this aspect of the matter, if the Customs Authorities took the view that the fine of Rs. 25 lakhs was called for in the present case, we see no reason whatever to entertain the plea made by Mr. Choudhary that the said fine should be reduced. The argument that the impact of such heavy fines may adversely affect the trade of the country, seems to us to be wholly misconceived and ill-founded."

9. In the case of BHAGWAN ELECTOR PHOTOCOPIERS Vs. COMMISSIONER OF CENTRAL EXCISE -2017 (346) ELT 565 (P & H) Hon'ble High Court has observed as follows:-

"14. *It is no doubt true that a repeat violator has to be imposed appropriate fine and penalty in order that the same acts as a deterrent to the repeated violation of law, however, at the same time, the Tribunal could not lose sight of the fact that in similar cases it had reduced redemption fine to 10% and penalty to 5%. Without going into the issue whether the restriction imposed vide notification dated 5-6-2012 was applicable or not in view of the period involved being prior to 5-6-2012, we hold that the ends of justice would be met if the quantum of redemption fine and penalty is reduced from the excessive rate at which it has been imposed to 20% each of redemption fine as well as penalty imposed vide the order-in-original. Our view finds support from the decision of this Court in Customs Appeal No. 14 of 2011 (M/s. BE Office Automation Products Limited, Baddi v. Commissioner of Central Excise, Gurgaon), decided on 18-11-2013 [2014 (300) E.L.T. 1486 (P & H) as well as of the Madras High Court in the case of Commissioner of Customs Tuticorn v. M/s. Sai Copiers and others [2008-TIOL-98-HC-MAD-CUS = [2008 \(226\) E.L.T. 486](#) (P&H)]. Accordingly, order dated 28-6-2013 passed by the Tribunal is modified to the extent as indicated above."*

9.1 In this case too while the earlier order in case of a different assessee was taken note of but redemption fine was enhanced for repeat offence. In this case the offence has been repeated five times earlier and the instant case being the sixth violation.

10. On the above, it is apparent that the key factor for determination the quantum of redemption fine is that it should discourage the importer from repeating the offence. The general consensus of the higher Court is that the redemption fine should be sufficient to discourage people from violating the law repeatedly. It is seen that appellant has already violated exim policy in following cases.

Sr. No.	Appeal No.	Bill of Entry No/Date	Minimum Import Price Notified for the goods per MT (US \$) (A)	Declared Value US \$/MT (B)	Degree of violation US \$/MT (A)-(B)
1.	C/11800/2017	6549473/- 30.08.2016	643	494	149
2.	C/11800/2017	6548674/- 30.08.2016	643	494	149
3.	C/11800/2017	6549967/- 30.08.2016	643	462	181
4.	C/11799/2017	6028168/- 17.07.2016	643	460	183
5.	C/11801/2017	7441850 14.11.2016	643	398	245

10.1 It is noticed that the appellant has been regularly importing by violating the Minimum Import Price (MIP) condition prescribed by the DGFT. It is noticed that the original authorities have been imposing redemption fine roughly equal to the amount of differential duty demanded. However, the Tribunal in the earlier cases had reduced the redemption fine and personal penalty by 90%. The impugned order in the instance case has followed the earlier order of Tribunal and reduced the redemption fine and personal penalty by 90% relying on the Tribunal order in appellant’s own case. It is noticed from the pattern of continuing violation that the redemption fine and penalty imposed earlier are not discouraging the repeat of offence. It is seen that the appellants continue to violate the import policy in respect of Minimum

Import Price with impunity. The amount of redemption fine and penalty imposed in terms of the earlier order of the Tribunal does not seem to be discouraging to the appellant from violating the import policy provision. In this instant case this is sixth violation of the policy by the appellant. The severity of violation is also gradually increasing. The redemption fine imposed earlier has not deterred the appellant from violating the policy.

11. We find that one of the contentions of the respondent is that the earlier orders of the Tribunal has granted similar benefit and are binding on revenue. We find that the earlier orders of the tribunal have failed to take notice of the fact that the appellant is a repeat offender and is violating law with impunity. The severity of the offence is also increasing. It has failed to notice that the quantum of redemption fine and penalty imposed is not deterring the appellant from repeating the offence. Therefore there is a difference in facts and circumstances. In these circumstances, we find merit in the appeal made by the revenue. The impugned order is set aside and the matter is remanded to the original adjudicating authority to go into the facts of the case and come up with proper quantification of fine and penalty which is adequate to deter the appellant from repeating the offence.

12. The appeal of revenue is allowed by way of remand to the original adjudicating authority in above terms.

(Pronounced in the open Court on 18.10.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)