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

REGIONAL BENCH – COURT NO. 02

Customs Appeal No. 10671 of 2014-SM

[Arising Out Of OIA-644-2013-CUS-COMMR-A—KDL Dated-17/10/2013 Passed By Commissioner of CUSTOMS-KANDLA]

Imran Impex **.....Appellant**
Plot No. 25, Sector-8,
Behind B.M Petrol Pump, Gandhidham
Kutch, ,Gujarat

VERSUS

C.C.-Kandla **.....Respondent**
CUSTOM HOUSE, NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

APPEARANCE:
Shir. Vikash Mehta, Consultant for the Appellant
Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Appellant

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

FINAL ORDER NO.A / 12677 /2023

DATE OF HEARING:30.11.2023
DATE OF DECISION:30.11.2023

SOMESH ARORA

The matter pertains to inadvertent import of battery scrap which was declared at the time of import as Cast Iron Scrap. The same was found in one of the container out of 15 imported through high seas sales by the present appellant-importers. While description and quantity was found to be correct in 14 containers, in one container it was found to be mis-declared through adjudication and appeal. Department accepted the position that the wrongful import was due to inadvertence and accordingly permitted re-export of the same on imposition of redemption of fine and penalty which at the appeal stage stands reduced to Rs. 3,00,000/- and 1,00,000/- on the value of Rs. 13,73,463/- of the goods.

2. Learned Advocate relies on various case law on the point of seeking extinction/reduction of redemption fine as follows:-

- Goyal Trading Co. Vs. Commissioner of Customs, Nhava Sheva-III-2023 (10) TMI 294-CESTAT, Mumbai
- Royal Imports and Exports Vs. Commissioner of Customs, Tuticonrin-2021 (377) ELT 865 (Tri- Chennai)
- Eminence Technologies Vs. Commissioner of Customs., C.EX. & Service Tax, Noida-2019 (370) ELT 825 (Tri-All.)
- Sankar Pandi Vs. Union of India-2002 (141) ELT 635 (Mad.)
- Ajanta Watch Co Vs. C.C.C, Ahmedabad.-2004 (171) ELT 350 (Tri-Mumbai)
- Siemens Ltd. Vs. C.C.-1999 (113) ELT 776 (S.C.).

3. On the point of imposition of penalty, the learned seeks to rely on the judgments of SANDEEP GARG & COMPANY VS. C.C JAMNAGAR (PREV), GUJARAT-2023 (7) TMI 642-CESTAT-AHMEDABAD pleading that since at this stage, there is no *mens rea,* no penalty is imposable under Section 112 (a). In any case, he also relied upon the decision in the matter of Siemens Public Communication Networks Ltd (supra) to emphasize that on re-export no redemption fine is imposable. Reliance was also placed on the decision in the matter of Ajanta Company reported in 2004 (171) ELT (350) (Tri.) to emphasize that having allowed re-export only token penalty for customs violations was imposable and the penalty of Rs. 1,00,000/- in the instant case was on the higher side when mens *rea* was also not proved.

4. Learned AR opposing the prayer stated that considering the offending nature of the goods which were hazardous in nature and were restricted under the provisions of Foreign Trading Policy and Regulations, both imposition of redemption fine for attempted profits as well as imposition of penalty and its quantum was justified.

5. Considered, the flow of the decisions in the recent past on redemption fine on re-export is in favor of assessee based on the proposition that on re-export no import takes place on the soil of India and therefore the goods are not redeemed within the territory of India and therefore the redemption fine no more remains imposable. This Court is inclined to agree with the proposition of the learned advocate based on the above quoted decisions and is inclined to do away with the redemption fine of Rs. 3 Lakhs imposed at the time of re-export of goods. However, considering the nature of offending goods which are covered under Hazardous Substances Act, the imposition of fine of Rs. 1 Lakhs appears proper. Even if it is conceded that Section 112(a) requires *mens rea*, it is trite law that quoting improper Section cannot be reason not to impose penalty when residuary penal Section like Section 117 exist in the legislation, which does not require *'mens rea'.* Considering the offending nature of the goods which can create environment perils for Indians, the wrong quoting of section by the department should not come in the way of imposition of penalty, the same is found reasonable and is maintained, in the facts and circumstances of this matter.

6. Appeal allowed in above terms.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi