Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO. 3
Excise Appeal No. 638 of 2012

(Arising out of OIA-97/2012-AHD-III-/KANPAZHAKAN/COMMR-A-/AHD Dated 27/04/2012 passed by Commissioner of Central Excise-AHMEDABAD-III)

C.C.E. & S.T.-Ahmedabad-iii ....**Appellant**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

VERSUS

Gyscoal Alloys Ltd ....**Respondent**
Ubkhal, Kukarwada, Taluka-Vijapur,
MEHSANA, GUJARAT

APPEARANCE:
Shri J.A.Patel, Superintendent (Authorised representative) for the Appellant
Shri D.K.Trivedi (Advocate) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR M, MEMBER (TECHNICAL)
Final Order No. A/ 12526 /2021

DATE OF HEARING:16.11.2021
DATE OF DECISION:16.11.2021

RAMESH NAIR

By these appeal revenue wants to impose redemption fine. The fact is that the appellant have cleared the goods and did not pay the duty in time therefore, the recovery was proposed under Rule 8(3A) of Central Excise Rules, 2002. The respondent paid the duty however, belatedly along with interest. Both the lower authorities have not imposed the redemption fine on the ground that the goods are not available for confiscation. Therefore, the present appeal filed before this tribunal.

02 Shri J.A.Patel, learned superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the grounds of appeal. He submits that since the goods were cleared without payment of duty, goods are liable for confiscation therefore, redemption fine should have been imposed by the adjudicating authority. He placed reliance on WESTON COMPONENTS LTD v/S. COMMISSIONER OF CUSTOMS, NEW DELHI-[2000 (115) 278 (SC)]

03. Shri Devashish Trivedi, learned counsel appearing on behalf of the respondent submits that this is not a case of clandestine removal. The goods were cleared on the invoices, however there is only delay in payment of duty and the demand is under Rule 8(3A). The appellant have paid the duty along

with interest for the delay in payment. Since, the goods were cleared and not available for confiscation redemption fine cannot be imposed. He placed reliance on the following judgments:-

- ARIHANT SYNTHETICS Vs. COMMISSIONER OF C.EX.,SURAT- 2013 (298) ELT 278 (Tri.-Ahmd.)
- COMMISSIONER OF C.EX., SURAT-II Vs. MILLAT FIBRES- 2012 (278) ELT 465 (Tri.-Ahmd.)
- DUPONT SYNTHETICS PVT. LTD. Vs. COMMISSIONER OF C.EX., SURAT- 2010 (259) ELT 408 (Tri.-Ahmd.)
- COMMISSIONER OF C.EX., SURAT Vs. SHEKHANI SYNTHETICS INDUSTRIES- 2009 (248) ELT 712 (Tri.-Ahmd.)
- SHIV KRIPA ISPAT PVT. LTD. Vs. COMMISSIONER OF C.EX.& CUS., NASIK- 2009 (235) ELT 623 (Tri.-LB)
- COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Vs. FINESSE CREATION INC.- 2009 (248) ELT 122 (Bom.)
- COMMISSIONER OF CUS., EXPORT Vs. NATIONAL LEATHER CLOTH MFG. CO.- 2015 (321) ELT 135 (Bom.)

04. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute that goods have been cleared under the cover of invoice. The goods were never seized or released provisionally under bond. Since the goods are not available for confiscation, redemption fine cannot be imposed. This has been consistently held in various judgments as cited by learned counsel particularly in the case of SHIV KRIPA ISPAT PVT. LTD. Vs. COMMISSIONER OF C.EX.& CUS., NASIK- 2009 (235) ELT 623 (Tri.-LB). The judgment cited by the revenue in case of WESTON COMPONENTS LTD (supra), the facts are totally different from the facts of the present case therefore, it is not applicable.

05. Accordingly, the impugned order is upheld, revenue's appeal is dismissed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(P.ANJANI KUMAR M)
MEMBER (TECHNICAL)

Mehul