CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 12956 OF 2019-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-043-19-20 dated 09.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

SADGURU THINNERS ...Appellant

Plot No. 3-4, Khasra No. 43/4, Village: Mudrapura,
P.O. Nalkhurd
Amritsar, Punjab

VERSUS

C.C.-KANDLA ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

With

CUSTOMS Appeal No. 10277 of 2020-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-114-116-19-20 dated 09.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

SADGURU THINNERS ...Appellant

Plot No. 3-4, Khasra No. 43/4, Village: Mudrapura,
P.O. Nalkhurd
Amritsar, Punjab

VERSUS

C.C.-MUNDRA ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

And

CUSTOMS Appeal No. 10278 of 2020-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-114-116-19-20 dated 09.09.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

SADGURU THINNERS ...Appellant

Plot No. 3-4, Khasra No. 43/4, Village: Mudrapura,
P.O. Nalkhurd
Amritsar, Punjab

VERSUS

C.C.-MUNDRA ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

Appearance:
Present for the Appellant : Shri Vikas Mehta, Consultant
Present for the Respondent: Shri A R Kanani, Superintendent (AR)

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

Date of Hearing/ Decision : **09/09/2024**

FINAL ORDER NO. 11997-11999/2024

SOMESH ARORA

In the present appeals direction has been given by the Commissioner (Appeal) at the behest of the Appellant-Department to reconsider RF and PP to Adjudicating Authority. The Department had filed appeals in two cases i.e. in present Appeal No. C/10277/2020 and C/10278/2020 on grounds of lesser RF and PP having been imposed. However, as shown from the records by the learned Counsel in Appeal No. C/12956/2019, department had only taken the ground and prayed for enhancement of personal penalty, whereas no appeal was filed for enhancement of redemption fine. This situation being part of the record has been accepted by the AR.

In Appeal No. C/12956/2019 department had imposed redemption fine of 10% of the value which was also imposed in other two matters also. Commissioner (Appeals) under erroneous impression that RF has also been challenged in Appeal No. C/12956/2019 remanded the matter in respect of enhancement of redemption fine as well as personal penalty.

2. The learned Counsel is aggrieved by the direction given by the Commissioner (Appeals) despite the fact that there was no prayer for enhancement of redemption fine in the above cited appeal. It was his plea in this regard that the redemption fine of 10 % has attained finality as department in Appeal No. C/12956/2019 had not come up for enhancement

of redemption fine. If it is so treated, then by the same standard being contemporaneous standard of redemption fine, same can also be adopt for other two appeals and direction can be given that the 10% RF imposed by the Adjudicating Authority having attained finality should also be adopted for other two appeals.

3. In the peculiar situation of matter the learned AR reiterates the finding the Commissioner in the impugned order while accepting there was no prayer specifically for redemption fine to be enhanced in Appeal No. C/12956/ 2019.

4. Considered. The stated position by both sides is that for redemption fine imposed of 10% in Appeal No. C/12956/2019, was not specifically contested by the Department before Commissioner (Appeals) as was done in other two appeals.

This being the situation, the quantum of redemption fine imposed which as per the learned Advocate is also quantum as per practice of the concerned port is also required to be adopted, in any case. We are not aware of any general practice of 10% redemption fine being imposed by the port and such generality in any case will be improper and against the trite law which laid down the criteria as to how RF should be considered on the basis of the margin of profit etc. However, we have seen that the RF of 10% as imposed in Appeal No. C/12956/2019 has attained finality as department has not come up in appeal before Commissioner (Appeals). Accordingly, we modify directions given by the Commissioner (Appeals) to the extent requirement of redemption fine has been directed to be reworked by the Adjudicating Authority and direct that while considering remand conditions, Adjudicating Authority should confine itself to only considering quantum of personal penalty in the matters and redemption fine will be as originally imposed by Adjudicating Authority. Impugned orders are modified to this extent only.

5. Appeal is partly allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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