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

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 10524 of 2022-DB
(Arising out of AHM-CUSTM-000-18-19-22-23 Dated-29.06.2022 passed by Commissioner of Customs (Appeals) - Ahmedabad)

KPG Enterprise Recyclers LLP **........Appellant**
Plot No. 91/M Ship Breaking Yard,
Sosiya, Bhavnagar-Gujarat

VERSUS

C.C., JAMNAGAR (PREV) **........Respondent**
Sharda House, Bedi Bandar Road,
Jamnagar-Gujarat

AND
CUSTOMS Appeal No. 10525 of 2022-DB
(Arising out of AHM-CUSTM-000-18-19-22-23 Dated-29.06.2022 passed by Commissioner of Customs (Appeals) - Ahmedabad)

KPG Enterprise Recyclers LLP **........Appellant**
Plot No. 91/M Ship Breaking Yard,
Sosiya, Bhavnagar-Gujarat

VERSUS

C.C., JAMNAGAR (PREV) **........Respondent**
Sharda House, Bedi Bandar Road,
Jamnagar-Gujarat

APPEARANCE:
Shri Rahul Gajera, Advocate appeared for the Appellant
Shri Prashant Tripathi, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. A/ 12046-12047 /2024

DATE OF HEARING:13.09.2024
DATE OF DECISION:13.09.2024

RAJU

These appeals have been filed by KPG Enterprises Recyclers LLP against order of Commissioner (Appeals) rejecting the refund application filed by the appellant.

2. Learned counsel pointed out that the appellant is in a business of ship breaking and during the import they had also imported MGO which was a restricted item at the material time. Since the MGO was also imported around with ship, the said MGO was seized, confiscated and thereafter redemption fine and personal penalty was imposed in respect

of the said imported MGO. The appellant did not file any appeal against the said orders imposing redemption fine and personal penalty. Subsequently, in the case of AG Enterprise 2014 (308) ELT 418 (Tri. Amd.), it was decided that no action under IPC can be taken in such circumstances for confiscation etc. After seeing the said judgment, the appellant filed refund claim of the redemption fine and personal penalty already paid. Lower authorities have rejected the said refund claim and consequently the appellants are in appeal before us.

3. Learned counsel seeks orders as the issue has been decided in their favour in the case of AG Enterprise (supra).

4. Learned Authorized Representative relies on the impugned order. He pointed out that since no appeal has been filed by the assessee against the order which has been passed by the lower authorities, no refund can be granted on the basis of subsequent decision of Tribunal.

5. We have considered the rival submissions. We find that it is not in dispute that the appellant had paid the redemption find and personal penalty consequent to an order of lower authorities. The said order has not been challenged by the appellant. Subsequently, on receipt of an order in the case of AG Enterprises (supra), the appellant decided to file a refund claim. Since the matter has already attained finality by order of lower authorities and no appeal was filed by the appellant, the matter cannot be re-open by way of refund. The appeals are therefore dismissed.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha