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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10890 of 2022 - DB

(Arising out of OIO-AHM-CUSTM-000-COM-013-22-23 dated 31/08/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

YASHASHVI RASAYAN PVT LTD ....Appellant
Plot No Z*96 E Dahej Sez -Ii Taluka Vagra
Bharuch, Gujarat

VERSUS

COMMISSIONER of CUSTOMS – AHMEDABAD ......Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12156/2024

DATE OF HEARING: 06.08.2024
DATE OF DECISION: 24.09.2024

RAMESH NAIR

The appellant has a manufacturing unit in Dahej, SEZ for production of Diet Chlorophenol, Diet Campa, etc. Two blast and fire incidents took place at factory premises on 03.06.2020 and 22.08.2020 wherein the imported goods on which the duty was foregone were destroyed. The case against the appellant is that they had procured duty free goods indigenously by availing exemption in terms of various provisions goods under the SEZ Act, 2005 and SEZ Rules, 2006 and did not use the subject goods for authorized operations thereby violating the said provisions. Therefore, the demand of custom duty amounting to Rs. 8,11,12,992/- along with interest , redemption fine and penalty was confirmed in the impugned Order-In-Original. Therefore, the appellant filed the present appeal.

2. Shri Manish Jain, Learned Counsel appearing on behalf of the appellant submits that the demand of duty on imported goods destroyed in fire in SEZ units is not sustainable as SEZ is a deemed foreign territory, in this regard reliance is placed upon decision on the following judgments :-

- PTI Industries Ltd vs. Commissioner of Customs, Ahmedabad – 2024 (6) TMI 203 – CESTAT Ahmedabad
- ONGC Petro Additions Ltd vs. C. C, Ahmedabad -2023 (12) TMI 530 – CESTAT Ahmedabad
- Satguru Polyfab Pvt Ltd vs. C.C, Kandla - 2011 (267) ELT 273 (Tri.-Ahmd)
- Arihant Studes Ltd vs. Commissioner of Central Excise , Ghaziabad-2016 (332) ELT 827 (Tri. Del)
- Jindal International vs. C.C Kandla – 2013 (290) ELT 729 (Tri.-Ahmd)
- Sami Labs Ltd vs. C.C – 2007 (216) ELT 59 (Tri. Bangalore)

2.2 As regard the redemption fine imposed by adjudicating authority, he submits that since the gods were not available, confiscation of the same is not correct. He submits that the contention of Commissioner in this regard is inconsistent and contrary to the binding dictum of the Hon'ble Supreme Court in the case of Weston Components vs. C.C – 2000 (115) ELT 278 (SC). Moreover, the facts of the present case differ from the facts of the Visteon Automotive Systems India Ltd- 2017 SCC OnLine Mad 37615, CESTAT- Chennai case relied upon by the Learned Commissioner due to which the same does not have application in the present case.

3. Shri P. Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that this Tribunal has taken a consistent view that in case of any destruction due to natural cause in the SEZ, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Customs Act, 1962. Therefore, as of now there is no dispute on the legal issue that the SEZ unit is eligible for the remission of the customs duty in case the goods is destroyed in the SEZ unit. However, the appellant have not opted for the remission of duty by filing appropriate application before the competent authority. Therefore, for this limited purpose, the matter needs to be remanded to the Adjudicating Authority. Liberty is granted to the appellant to file an appropriate application in terms of Section 23 of the Customs Act, 1962 and rules made thereunder , if any, along with all the relevant documents for seeking remission of duty which shall be disposed of by the competent authority in accordance with law.

5. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority for passing a fresh order after observance of principles of natural justice.

(Pronounced in the open court 24.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha