

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

REGIONAL BENCH- COURT NO. 3

CUSTOMS APPEAL NO. 10155 of 2024-DB

(Arising out of Order in Appeal MUN-CUSTM-000-APP-264-23-24 Dated 12/03/2024 passed the by Commissioner(Appeals)of Customs, Ahmedabad)

EXTREME ELECTRONICS PVT LTD

49, GALI NO. 3 BLOCK-H,
LAXMI NAGAR, NEW DELHI-110092

.....Appellant

VERSUS

Commissioner of CUSTOMS - Mundra Customs Respondent

5-B, PORT USER BUILDING (PUB),
AP & SEZ, PORT ROAD, MUNDRA PORT,
MP & SEZ, MUNDRA-370421

APPEARANCE:

Shri Prem Ranjan, Advocate appeared for the Appellant

Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
 HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

FINAL ORDER NO. 12711/2024

DATE OF HEARING:07.11.2024

DATE OF DECISION: 14.11.2024

RAMESH NAIR

The brief facts of the case are that the appellant had imported the goods declared as "Printed Circuit Board" (PCB) and filed 41 bills of entry for warehousing the said imported goods at the warehouse of M/s Sea Shore Logistics, SEZ Mundra. Officers of DGRI gathered intelligence which indicated that the consignment of goods declared as Printed Circuit Board imported by the appellant and warehoused at M/s Sea Shore Logistics, SEZ Mundra were mis-declared with respect to description, quantity, value and other material particular. The intelligence also suggested the concealment in the subject consignments. Therefore, the officers of DGRI carried of 100% examination of the goods at M/s Sea Shore Logistics, SEZ Mundra, upon the examination of goods imported in 7 containers, the quantity of the PCB were found to be 276525 as against declared quantity of 296251.

1.1 It was also noted that maximum number of PCBs were old and used, also a number of packages and sheets were having marking as rejected and/or containing 'X' mark as a sign of being rejected. It was noticed that many packages were having slips containing date/ year of manufacturing as 2009, 2010, 2013 etc. The PCBs were having marking of M/s Genus or M/s Philips. The officers also drew representative samples from the consignment as the goods appear to be old and used and the appellant had declared the value of the entire consignment as Rs.184,25,76,231/-. The services of chartered engineers and government approved valuer M/s. B. G. Bhatt & Co. Ahmedabad were taken to ascertain approximate value of subject consignment. The chartered engineer vide report dated 08.10.2022 reported that estimated C & F value of the consignments as Rs.18.67 Crores, therefore, it appears that the appellant had mis-declared the goods with respect to description and value of goods and accordingly, the goods were liable to confiscation under Section 111 (m) of the Customs Act, 1962.

1.2 Further, it appeared that the goods appeared to be restricted and importable against authorization issued by the DGFT as per the DGFT Notification No.05/2015-2020, dated 07.05.2019. However, as the appellant failed to submit any authorization issued by the DGFT, such goods having declared value of Rs.9,21,28,811/- and actual value of Rs.93.35 Lakhs appeared to be liable to confiscation under Section 111 (d) of the Custom Act, 1962. Therefore, the subject goods imported vide 41 bills of entry in seven containers were placed under seizure vide seizure memo dated 11.01.2023 under the provisions of Section 110 (1) of the Customs Act, 1962. On conclusion of investigation a show cause notice dated 18.08.2023 was issued to several noticees including the appellant by the Additional Commissioner of Customs, Custom House, Mundra. The appellant vide letters dated 07.09.2023 and 16.09.2023 had requested the adjudicating authority for permission to re-export the goods. The Assistant Commissioner

of Customs, Adjudication Section, Mundra Port, MP & SEZ, Mundra vide latter dated 19.09.2023 inter alia informed the appellant that competent authority has accorded permission for provisional release of the seized goods for re-export purpose only subject to execution of Bond for full value of Rs.19.60 Crores and Bank Guarantee of Rs. 4 Crores. Being aggrieved by the impugned order dated 19.09.2023, the appellant have preferred an appeal before the Commissioner (Appeals). The Ld. Commissioner (Appeals) vide impugned order in appeal No. MUN-CUSTOM-000-APP-264-23-24 dated 12.03.2024 rejected the appeal, therefore, the present appeal filed by the appellant.

2. Shri Prem Ranjan, Learned Counsel appearing on behalf of the appellant through e-hearing submits that the goods were imported for warehousing at SEZ and the same was warehoused, therefore, there is no duty implication and the appellant have proposed to re-export the goods in such case irrespective of any outcome of the investigation the re-export should be allowed without any security only on the execution of Bond for the value of the goods. He submits that for imposing of Rs. 4 Cr. Bank Guarantee the appellate authority has referred to CBIC Circular No.35/2017-CUS dated 16.08.2017 however, the same is contrary to the provision of law in as much as the Circular does not specify any amount of Bank Guarantee or Security Deposit. The Circular refers to only securing the interest of the revenue in case of dutiable goods, in such situation the differential duty leviable is required to be taken into consideration. In the present case, since the goods were imported by the SEZ and the same is to be exported, no duty involvement is there, therefore the question of any revenue interest is not involved. He further submits that the entire basis of seizure of the goods is Chartered Engineer certificate wherein, Chartered Engineer found that the 5% goods are rejected. He submits that there is no evidence of arriving at the conclusion by the Chartered Engineer, therefore, only on the basis of the

Chartered Engineer certificate, goods are not liable for seizure. He submits that since the goods are meant for export from SEZ, question of confiscation, redemption fine, penalty does not arise. He placed reliance on the following judgments:-

- Hazel Mercantile Ltd vs. Commissioner of Custom, Kandla 2022 (379) E.L.T. 357 (Tri.-Ahmd.)
- SankarPandi vs. Union of India 2002 (141) E.L.T. 635 (Mad.)
- Selvam Industries Ltd vs. Commissioner of Customs, Tuticorin 2021 (377) E.L.T. 458 (Tri- Chennai)
- M/s. Rose Mary International vs. Commissioner of Customs, Final Order No. 40148/2020
- M/s. Simplex Engineers & Traders vs. Commissioner of Customs (Import) Final Order No.41581/2019
- M/s. O.M.S. Sivajothi Mills vs. The Commissioner of Customs, Final Order No.41028/2019
- Lalkamal Enterprises vs. Commissioner of Customs, Chennai 2018 (364) E.L.T. 856 (Tri.- Chennai)
- Regal Impex vs. Commissioner of Cus., ICD, TKD, NEW Delhi, 2016 (332)E.L.T.835 (Tri. Delhi)
- Siemens Limited vs. Collector of Customs 1999 (113)E.L.T. 776 (S.C.)

3. Shri Sanjay Kumar, Ld. Superintendent (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order. He placed reliance on the following judgments:-

- 2024 (387) E.L.T. 76 (Tri. Chennai) in the matter of Ocean Sky Impex Pvt. Ltd Vs. CC, Chennai
- 2023 (386) E.L.T. 780 (Tri. Bang.) in the matter of Hardex Vs. CC, Kerala

- 2021 (377) E.L.T. 145 (S.C.) in the matter of Union of India Vs. Raj Grow Impex LLP
- 2024 (390) E.L.T. 3 (S.C.) in the matter of Navayuga Engineering Co. Ltd Vs. Union of India.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case, the limited issue to be decided is that in the facts and circumstances of the present case, the appellant is eligible for relaxation from the security of Rs.4 Crs. demanded in the provisional release order or otherwise. We find that undisputedly, the appellant's imported goods are meant for warehousing in SEZ unit and the bills of entry were filed for warehousing of goods in the SEZ. The appellant have sought to re-export of these goods imported from abroad. In case of the of the imported goods into the SEZ and thereafter, re-export of the same is not subject to levy of any duties either custom duty or excise duty. Therefore, irrespective of any nature of alleged offence, if any, on the part of the appellant, will not involve any duty implication. On the identical fact where the goods were proposed to be re-exported, the redemption fine was set aside and penalty either was set aside or reduced to very minimal amount. Some of the judgments are cited below:-

- In the case of SankarPandi (supra) the Madras High Court held as under:

"Heard the learned Counsel for the parties.

2.*The petitioner in this Writ Petition is aggrieved by the orders passed directing the petitioner to pay penalty regarding payment of redemption value for the articles which are brought from Singapore. Subsequently, the petitioner contended that he is no longer interested to take return for the purpose of use or consumption within India, but he wanted to re-export the same. Therefore, he prayed that he need not pay any redemption value. No order has been passed in the revision petition where such prayer has been made. Hence, the present Writ Petition has been filed.*

3.*It appears that the question relating to re-export is covered by the decision of the Supreme Court rendered in the case of Siemens Limited v. Collector of Customs reported in S.C. [1999 \(113\) E.L.T.](#)*

[776](#). Keeping in view the abovesaid decision there cannot be any doubt that the petitioner is entitled to re-export the articles in question and for the abovesaid purpose, it is not necessary for him to pay redemption fine as imposed by the authorities.

4. The learned Counsel for the petitioner further submitted that since the petitioner is not going to import the articles and use or sell the articles within India, the imposition of penalty of Rs. 33,000/- should be quashed.

5. The learned Counsel appearing for the Department has opposed to this stating that the petitioner has violated and the penalty has been rightly imposed.

6. In the facts and circumstances of the case, I feel the imposition of penalty of Rs. 33,000/-, keeping in view the relevant value of the articles concerned, appears to be grossly high and interest of justice would be met by reducing the penalty to Rs. 15,000/- and such amount should be paid by the petitioner within a period of two weeks from the date of receipt of this order. Only after the amount is paid, the petitioner would be permitted to re-export the items concerned.

7. In the result, the Writ Petition is partly allowed. No costs. Consequently, connected W.M.Ps. are closed."

The above decision of the Madras High Court has been upheld by the Hon'ble Supreme Court reported at Union of India vs. Sankar Pandi 2018 (360) E.L.T. A214 (S.C.)

- Selvam Industries Ltd (supra), the Chennai bench of this Tribunal passed the following order:-

"6. From the judgment of the Hon'ble Jurisdictional High Court in SankarPandi, it is seen that when the goods are re-exported no redemption fine can be imposed. The said decision was affirmed by the Hon'ble Supreme Court as reported in [2018 \(360\) E.L.T. A214](#) (S.C.). The Tribunal in the decisions relied by the Ld. Counsel for appellant has followed the said decisions to hold that redemption fine cannot be imposed when the goods are released only for the purpose of re-export. Following the above decision, I am of the view that the imposition of redemption fine to the tune of Rs. 3 lakhs cannot sustain and requires to be set aside, which I hereby do.

7. As regards the penalty imposed under Section 112(a) of the Customs Act, I find that the Commissioner (Appeals) has already taken a lenient view by reducing the penalty from Rs. 4 lakhs to Rs. 2 lakhs. However, it is noted in para 22 that the appellant has suffered huge charges towards demurrage and detention besides having to incur freight charges on the re-export. Taking this into consideration and also the fact that the appellant has not profited from the import as the goods were re-exported, I am of the view that the penalty can be reduced from Rs. 2 lakhs to Rs. 1,00,000/- (Rupees one lakh only).

8. The impugned order is modified to the extent of setting aside the redemption fine totally and reducing the penalty from Rs. 2 lakhs to Rs. 1,00,000/- (Rupees one lakh only). The appeal is partly allowed in the above terms."

- In the case of M/s. Simplex Engineers & Traders Final Order No.41581/2019 dated 26.11.2019, by the CESTAT Chennai bench following order was passed:

"5. The first issue is with regard to the redemption fine imposed. The appellant is willing to re-export the goods and is not contesting the order passed directing the appellant to re-export the goods. The Hon'ble Apex Court in the case relied upon by the Id. counsel for appellant has affirmed the decision of the Hon'ble High Court wherein it was held that redemption fine cannot be imposed when the goods have to be redeemed only for the purpose of export. Following the said decision, I am of the view that the redemption fine imposed is unjustified and requires to be set aside, which I hereby do.

6. The second issue is with regard to the penalty imposed. Ld. counsel has adverted to the contract entered into between the appellant and the overseas supplier to argue that there was no intention to import goods which do not conform to the FSSAI Regulations. However, the appellant ought to have made all efforts to import only goods which conforms to FSSAI Regulations. There being violation of said Regulations, I am of the view that the facts attract imposition of penalty under Section 112(a) of the Customs Act, 1962. However, the penalty of Rs.2 lakhs imposed is on the higher side. In the interest of justice, the penalty is reduced to Rs.50,000/- (Rupees fifty thousand only). The impugned order is modified to this extent. Appeal is partly allowed in above terms."

- The identical view was taken by the Chennai bench of the CESTAT in the case of M/s. O.M.S. Sivajothi Mills, Final Order No.41028/2019 dated 22.08.2019, wherein the Tribunal has passed the following order:-

5. I have heard the rival contentions, perused the orders of the lower authorities and have also gone through the various decisions relied upon by both the parties.

6. The scope of the appeal and the issue therefore to be decided is the liability of the appellant to redemption fine under Section 125 of the Customs Act, 1962 over and above confiscation and the penalty under Section 112 (a) ibid.

7.1 Section 125 of the Customs Act, which renders an option to an importer to pay fine in lieu of confiscation, reads as under : —

"SECTION 125. Option to pay fine in lieu of confiscation. — (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which

are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. — For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.”

7.2.1 Clearly, as the heading itself points out, the fine i.e., redemption fine, is an option in lieu of confiscation and hence, both cannot run simultaneously, which means redemption fine is leviable only as an alternative to confiscation. The appellant here in this case has not questioned the confiscation and hence, there is no option available to it. Consequently, there is no question of exercising any option in lieu of confiscation. When the order as to the confiscation remains unchallenged, the importer accepts the order of confiscation and even the exporter offers willingness to accept back (re-export) the consignment, there cannot be any question of redemption fine. Therefore, the redemption fine imposed and upheld by the First Appellate Authority cannot sustain and is accordingly set aside.

7.2.2 This view is supported by various judicial precedents relied on by the Ld. Advocate for the assessee.

7.3 In the order of this Bench in the case of M/s. Chennai Marine Trading Co. P. Ltd. (supra) relied upon by the Ld. AR, the very imported consignment itself was a restricted item for import. In the peculiar facts and circumstances of the case, the binding decision of the Hon’ble jurisdictional High Court and the Hon’ble Supreme Court (supra) prevails and therefore, the appeal as regards this issue is allowed.

8.1 The next issue agitated by the appellant is the levy of penalty under Section 112 (a) of the Customs Act. For the sake of convenience, the same is extracted hereinbelow : —

SECTION 112. Penalty for improper importation of goods, etc. —

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or ...”

8.2.1 A reading of the above Section makes it clear that the penalty under Section 112 (a) would be imposed in the case of improper importation of goods which has rendered the imported goods liable to confiscation under Section 111 and for this, I am of the opinion that abetment is not a criterion. Apparently, Clause (a) of Section 112 has two limbs – the first being "improper importation of goods by any person who, in relation to any goods ... would render such goods liable to confiscation"; and the second limb starts with "or abets the doing or omission or such an act." Hence, a mere importation that would render such goods liable to confiscation, as indicated above, is sufficient to attract penalty. Therefore, I am of the view that the penalty appears to be justified.

8.2.2 In this regard, I draw support from the decision of the Hon'ble jurisdictional High Court, relied on by the Ld. Advocate for the appellant in the case of SankarPandi (supra) which decision has thereafter been upheld by the Hon'ble Apex Court, as reported in 2018 (360) E.L.T. A214 (S.C.), wherein similar penalty has been upheld.

8.3 But however, considering the facts and circumstances of this case and the undisputed bona fides of the appellant, the penalty under Section 112 (a) is reduced to Rs. 10,000/- only. The impugned order of the First Appellate Authority on the penalty under Section 112 (a) is therefore modified to this extent.

9. In the result:

- (i) The impugned order as regards the redemption fine is set aside;
- (ii) The impugned order as regards the penalty under Section 112 (a) is modified to the extent as indicated above;

10. The appeal is partly allowed."

- In case of Lalkamal Enterprises, the division bench of Chennai CESTAT passed the following order:-

"5.1 The main contention of the department is that the imported goods have been misdeclared as copper scrap, lead scrap and insulated material whereas they are actually "Copper Wire Scrap with PVC sheathing of Druid grade" which can be imported without a license only by the units registered with the Ministry of Environment and Forests but the importer herein does not possess such license.

5.2 On the other hand, Ld. Advocate has been at pains to contend that the importer was very much registered under the same Hazardous Wastes Rules with TNPCB and that all the requirements of Rules including submission of Form-9 and submission of pre-shipment inspection certificate has been complied with original importer M/s. Sterling Steels at the time of import. Be that as it may, this entire imbroglio appears to have occurred due to the fact that registration certificate granted to M/s. Lalkamal was for inter alia import of copper scrap of B-1010 whereas the department contends that the imported item does not meet those specifications; that they are in fact falling within the description of Sl. No. 7 of Schedule IV of the Hazardous Waste Rules namely that they are copper wire scrap of "Druid" grade. We find that the entire dispute has arisen only because of this apparent discrepancy. While the imported goods were in fact copper wire scrap only, even as per the commercial invoice, pre-shipment inspection certificate etc. and Form-9 submitted under Rule 16(5) of the Hazardous Wastes Rules, the declaration of the goods in the Bill of Entry as copper waste scrap, lead scrap and insulation material

separately has not helped their case with the department. Very possibly, the appellant had made such a declaration taking into account that the percentage of copper in the imported goods was 41%, lead 37% and plastic and ferrous 22% as per the transboundary movement documents and load port certificate. Nonetheless, in our considered opinion when the goods are allowed for re-export, there should not be any redemption fine because redemption fine is for enjoyment of the goods in the manner of home consumption even when a law is violated. Redemption fine in a way redeems the violation committed by the importer and paves the way for unencumbered enjoyment of the imported goods thereafter. However, this is not a case where the goods have been cleared for home consumption. This being so, we find merit in the argument of the Ld. Advocate in respect of non-imposability of redemption fine when the goods have been ordered for re-export. The redemption fine imposed notwithstanding, is an overkill and will require to be set aside, which we hereby do. So ordered.

5.3 *Coming to the matter of penalty, we do note that even though "Druid" was not specifically mentioned in the Bill of Entry, all the other documents including those required under Hazardous Wastes Rules were furnished at the time of import. Nonetheless, we find that Lalkamal, the High sea buyer, M/s. Sterling Steels, the original importer will surely require a rap on the knuckles at least for the wrong declaration in the Bill of Entry. However, the penalties imposed on these persons under Section 112(a) of the Customs Act, 1962 of Rs. 2 lakhs each, in our view, is excessive and interest of justice would be served by reducing the penalties on them to Rs. 1,00,000/- (Rupees one lakh only). So ordered. We further note that the penalties on the other appellants Vimal Kumar, Asif Rehman cannot be sustained since they are proprietors of Sri Lalkamal Enterprises and Sterling Steels respectively and it is settled law that both proprietor and the proprietaryship firm cannot be penalized in such matters. Hence penalties imposed on these persons are set aside.*

5.4 *Appellant Shri Abdul Saleem has been indicated as friend of Shri Asif Rehman, Proprietor of Sterling Steel who had allegedly arranged import consignment from Qatar. In our view, the said appellant was only in the nature of a broker or agent who brought sellers and buyers together and it would be unfair to penalize him. The penalty imposed on him is also therefore set aside.*

6. *Appeals are partly allowed on above terms."*

- In case of Regal Impex (supra) the Principle bench of New Delhi in the case of re-export of the irregularly imported goods, the following order was passed:

"5. *We have considered the contentions of both sides and perused the relevant records. It is evident that the orders for 49.5 MT + 49.5 MT of LDPE were placed on 20-7-2009 and part payment was also made in advance. There is evidence of confirmation of receipt of those orders by the supplier on 20-7-2009 itself. The supplier in this case is a well established multi-national on M/s. Basell International Trading FZE. It is also seen that the documents relating to the import goods were released by the bank after receiving the balance amount from the appellant. It is also an admitted fact that when the appellant took*

up the matter with the supplier immediately on coming to know that goods imported were different from the goods ordered, the supplier immediately confessed to the mistake having been made and returned the money through bank and also agreed to bear the expenses with regard to re-export of these goods. The contention of the Revenue that whole exercise might have been to avoid anti-dumping duty on PP imposed vide Notification No. 82/2009, dated 30-7-2009 is devoid of any basis and is pure conjecture because there was no way the appellant could predict the imposition of anti-dumping duty after placement of orders. Also, even in a case where anti-dumping duty is imposed after the orders for supply of goods are placed but before their import the importer can legitimately request for re-export on the ground that the import has become economically unviable due to anti dumping duty. Further it has been mentioned in the primary adjudication order that LDPE was more expensive than PP and therefore, it appeals to reason that the appellant would not collude for getting the supply of cheaper goods while paying for more expensive goods. Indeed we find that primary adjudicating authority after taking into account the facts and circumstances of the case has stated that "since the goods so found are not as per the order placed by the importer, I allow the said goods to re-export". It is obvious from this observation of the primary adjudicating authority that no foul play was suspected, let alone established, by him. Indeed, the facts and circumstances of the case clearly point towards the absence of any mala fide on the part of the appellants. We find that that CESTAT in similar circumstances has held repeatedly that for allowing re-export, RF and penalties are not warranted as is evident from the following judgments :

(a) *Simens Public Communication Networks Ltd. v. C.C. (Airport), Calcutta - 2001 (137) E.L.T. 623 (Tri.-Kolkata).*

(b) *Guru Ispat Ltd. v. C.C (Port), Calcutta - 2003 (151) E.L.T. 384 (Tri.-Kolkata).*

(c) *HCL Comnet Systems & Services Ltd. v. C.C., New Delhi - 2003 (158) E.L.T. 349 (Tri.-Del.).*

Our attention was also drawn to the Circular of the Board No. 100/2003, dated 28-11-2003 wherein the C.B.E. & C. has observed that in case of wrong shipments where no mala fide is suspected re-export may be allowed on payment of a nominal penalty or without penalty. The judgment of CESTAT in the case of *Authentic Impex v. C.C. (General), Mumbai (supra)* cited by the Id. AR for Revenue is related to the import of goods which required import licence and therefore has no applicability with regard to the present case. In the case of *Sripathi Papers and Boards Pvt. Ltd. (supra)* cited by the Id. AR, the goods is found to be hazardous and there was no indication that the supplier had admitted to any mistake on its part and even there CESTAT only stated that such goods could also be liable to confiscation and redemption fine.

6. *In the light of the analyses above, we are of the view that there is no reasonable ground for imposition of fine and penalty as a condition for re-export of the goods and therefore we set aside the impugned order and allow re-export of the impugned goods without any fine and penalty. The appeal is thus allowed."*

4.1 From the above judgments, it can be seen that in case of re-export of the goods the redemption fine was set aside and minimal amount of penalty was imposed. The case of the appellant is on better footing for the reason that in all the cases cited above are in respect of the DTA importer whereas, in the present case the goods were meant for warehousing in SEZ. The SEZ is governed by the SEZ Act along with Customs Act because any movement of the goods into and from SEZ is controlled by officers. Therefore, it cannot be expected that any person operating in the SEZ or warehousing in the SEZ can have malafide intention to evade duty. Therefore, in our considered view Bond for the total value of the goods is sufficient for releasing the seized goods for re-export thereof. As regard the judgments cited by the revenue, we find that none of the judgments is related to the SEZ unit or SEZ warehouse. Therefore, the ratio of those judgments is not applicable in the facts of the present case.

4.2 Having observed above, we make it clear that the above observation is limited to the decision for provisional release of the goods that too only for re-export of the goods and the said observation shall not be used or influenced the adjudication of the case under show cause notice No. I/1358283/2023, DIN No.20230871MO000000D75F dt.18.08.2023.

5. As per above discussions and finding, we hold that the appellant is allowed to re-export the goods only on execution of Bond for the value of the goods without any bank guarantee or any other security. The appeal is allowed in the above terms.

(Pronounced in the open court on 14.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)