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

REGIONAL BENCH- COURT NO. 3

CUSTOM APPEAL NO. 11129 of 2015-SMB

(Arising out of OIA-MUN-CUSTM-000-APP-035-14-15 Dated 11/02/2015 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

Jindal Arya Impex P Ltd **........Appellant**
D-16, 3rd Floor, Prashant Vihar,
Rohini, Outer Ring Road,
DELHI

VERSUS

Commissioner of C.-Mundra **........Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:
Shri P D Rachchh, Advocate appeared for the Appellant
Shri N P Makwana, Superintendent (AR) appeared for the Respondent

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

FINAL ORDER NO. 13065/2024

DATE OF HEARING:28.10.2024
DATE OF DECISION: 03.12.2024

RAMESH NAIR

The issue involved in the present case is that (1) whether the rice exported by the appellant is Basmati rice or other than Basmati rice i.e. non Basmati rice. Accordingly, whether the penalty under Section 114 (iii) and 114 AA of the Custom Act, 1962 are imposable if the rice is found other than the Basmati rice. (2) Whether in absence of the availability of the goods since the same has been exported whether redemption fine of Rs.6,00,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 is correct or otherwise.

2. Shri P D Rachchh, Ld. Counsel appearing on behalf of the appellant submits that the parameter of length and breadth of the rice is clearly met which is the only criteria to decide whether the rice is Basmati or otherwise in terms of foreign trade policy. Therefore, the rice exported by the appellant is

Basmati rice. Hence, entire case of the department fails. He submits that the issue has been considered in the various judgments which are as under:-

- Commissioner of Customs vs. Orion Enterprises- 2017 (356) E.L.T. 547 (Del.)
- Global Agro Impex vs. Commissioner of Customs, Noida- 2013 (290) ELT 717 (Tri-Del)
- M/s. Shree Jagdamba Agrico Export Pvt. Ltd. and others vs. Commissioner of Customs, Kandla 2014-TIOL-867-CESTAT-AHM

2.1 As regard the issue whether the redemption fine imposed by the lower authority is correct and legal in a case where the goods have been exported and the same is not available for redemption, he submits that it is a settled legal position, that when the goods are not available for redemption, redemption fine cannot be imposed. He placed reliance on the following judgments:-

- Commissioner of Customs (Import), Mumbai vs. Finesse Creation Inc.- 2009 (248) E.L.T. 122 (Bom.)
- Commissioner vs. Finesse Creation Inc.- 2010 (255) E.L.T. A120 (S.C.)

3. Shri N P Makwana, Ld. Superintendent (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order. He submits that as per the test of the rice exported by the appellant, more than 82% was found other than Basmati rice and red grains. Therefore, it is not correct that the rice exported by the appellant is Basmati rice. Therefore, penalty and fine were rightly imposed. Ld. AR also submitted a written submission which is taken on record. He placed reliance on the judgment in the case of Parvaz Overseas Pvt Ltd vs. Commissioner of Customs, Kandla 2013 (294) E.L.T. 233 (Tri-Ahmd.)

4. I have carefully considered the submission made by both the sides and perused the records. I find that the adjudicating authority and the first

appellate authority have concluded that the rice exported by the appellant is not Basmati rice, only on the basis of the percentage of the other rice, however, it prima facie appears that the only criteria to decide whether it is Basmati rice or other rice, is length and breadth of the rice which as per test report in the present case, length and breadth of the rice is in accordance with the parameter fixed by the foreign trade policy. I find that the Ld. Counsel has relied upon the various judgments as under:

- Commissioner of Customs vs. Orion Enterprises- 2017 (356) E.L.T. 547 (Del.)

> ***"10.*** *What is discernible from the above affidavit, read together with the notifications enclosed therein, is that the consistent policy of the Central Government was to allow export of PUSA 1121 although it was a non-basmati variety. Some confusion arose from the reference to 'PUSA 1121' as 'Basmati Rice', by inserting the word 'basmati' either as a prefix or as a suffix to PUSA 1121. If indeed PUSA 1121 was basmati rice then clearly its export was never prohibited. However, it does appear that at one stage it was decided to call the said variety of rice 'PUSA Basmati 1121' and specify a slight change in grain length as explained in para 7 of the affidavit filed by DDGFT. In the circumstances, as long as the consignment of PUSA 1121 sought to be exported by the respondent satisfied the said grain length parameters, which it in fact did, the respondent ought to be given the benefit of doubt even if the description of the variety was shown as PUSA Basmati 1121."*

- Global Agro Impex vs. Commissioner of Customs, Noida- 2013 (290) ELT 717 (Tri-Del)

> ***"8.****Considering the fact that the exporter has acted on the basis of notification issued by DGFT and the goods presented conformed to the prescribed standards, we are of the view that these goods cannot be considered as goods prohibited for export and therefore we are of the view that the confiscation of the goods under Section 113(d) of the Customs Act is not maintainable. Therefore, we set aside the impugned order confiscating the goods and imposing the penalty."*

- M/s. Shree Jagdamba Agrico Export Pvt. Ltd. and others vs. Commissioner of Customs, Kandla 2014-TIOL-867-CESTAT-AHM

> ***"11.*** *On perusal of the records, we find that it is undisputed that all the consignments which were carted in for export, had conformed to the specification of average length and the ratio of length to breadth as per notifications claimed by the appellant. We find that the said notifications had only the conditions which are reproduced hereinabove and does not indicate any other condition to be satisfied for coming to a conclusion whether the consignment of rice is basmati or non-basmati rice. It is to be noted that the said notification even does not indicate any admixture to be considered for the purpose of getting benefit of the said notification. On the face of such clear notification the Revenue authorities have held that though the export consignments meet the specification of the length and the ratio of length to breadth has failed the admixture content, as the admixture content is more than limit. We*

do not find any such condition put in the notification, hence the Revenue's argument on point of admixture is incorrect."

- Commissioner of Customs (Import), Mumbai vs. Finesse Creation Inc.- 2009 (248) E.L.T. 122 (Bom.)

__5.__ In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

__6.__ In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed."

- Commissioner vs. Finesse Creation Inc.- 2010 (255) E.L.T. A120 (S.C.)

"Confiscation and redemption fine not imposable when goods not available for seizure

- *The Supreme Court Bench comprising Hon'ble Mr. Justice D.K. Jain and Hon'ble Mr. Justice C.K. Prasad on 12-5-2010 after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay as reported in* 2009 (248) E.L.T. 122 *(Bom.) (Commissioner v. Finesse Creation Inc.).*
- *The High Court vide its impugned order had distinguished the Apex Court decision in case of Weston Components Ltd. [*2000 (115) E.L.T. 278 *(S.C.)]. While holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. The High Court held that since goods were cleared earlier, not available for confiscation nor consequently redemption, therefore, Tribunal was right in holding that fine in lieu of confiscation was not imposable."*

In view of the above, as regard the issue whether the rice exported by the appellant is Basmati rice or other rice needs to be reconsidered in view of the various submissions made by the appellant and the supporting judgments relied upon in this regard. As regard the issue whether the redemption fine of Rs.6,00,000/- is correct or otherwise, I find that admittedly the goods had been exported and was not available either at the time of issuing the show cause notice and at the time of adjudicating thereof. In such condition, the confiscation of goods cannot be ordered and consequential redemption fine cannot be imposed. The imposition of redemption fine is conditional as when the assessee wants to take the redemption of goods, he needs to pay the redemption fine. In the present case, when the goods are not available, there is no question of redemption of said goods. Consequently, no redemption fine requires to be paid. Accordingly, the imposition of redemption fine is absolutely incorrect and illegal. This issue has been considered in various judgments relied upon by the Ld. Counsel.

5. Accordingly, I hold that the redemption fine is not imposable. Accordingly, the redemption is set aside. For other issue as discussed above, the matter is remanded to the adjudicating authority for reconsideration thereof.

(Pronounced in the open court on 03.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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