

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10873 of 2020 – DB

(Arising out of OIA-KDL-CUSTM-000-APP-43-20-21 dated 21/09/2020 passed by the Commissioner of CUSTOMS-KANDLA)

FLAMINGO LOGISTICS

NO 18 KASEZIA BUILDING KASEZ GANDHIDHAM
KUTCH, GUJARAT

.....Appellant

VERSUS

Commissioner of Customs-KANDLA

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

.....Respondent

APPEARANCE:

Shri Vikas Mehta, Consultant for the appellant
Shri Sanjay Kumar, Superintendent (AR) for the department

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 10546/2025

DATE OF HEARING: 30.06.2025

DATE OF DECISION: 09.07.2025

SOMESH ARORA

1.1 The appellant is a service provider engaged in providing warehousing service in Kandla Special Economic Zone at Gandhidham. Acting on the directions of their client i.e. M A Value Smart Trading Limited, Hong Kong, the appellant filed four warehousing bills of entry with SEZ Customs for warehousing hard disks, mini tower computer case with power supply & mother board. The officers examined the goods and found them to bear dust and scratches. As per the opinion rendered by M/s. HP India Sales Pvt. Ltd., the goods were used or second-hand goods. As import of second-hand goods was restricted in terms of Notification No. 35 (RE-2012)/2009-2014 dated 28.02.2023 issued by DGFT read with para 2.31 of Foreign Trade Policy (page 21 of appeal memo), goods were placed under seizure.

1.2 M/s. Value Smart Trading Limited vide letter dated 26.03.2019 informed Customs that goods were meant for servicing global orders and not meant for

home consumption in India. Further, they requested for permission to re-export.

1.3 The Adjudicating Authority ordered for confiscation under Section 111 (d) and (m) of Customs Act, 1962 on the ground that goods, being old & used, were restricted for import into India and were not properly described in the bills of entry as "old & used". On this basis, it has permitted re-export after imposing fine and penalty on the appellant, who is a service, provider only.

1.4 Aggrieved by the order appellants filed an appeal, as the Order-in-Appeal also did not provide relief to them, they are before this Court.

Case of the appellants:

2.1 The appellant submitted that that they are only service provider and, unaware about the old & used nature of goods at the time of filing warehousing bills of entry. There is no evidence to show that the appellant had prior knowledge about the fact that goods were not new and could be treated as restricted. Moreover, as per Chapter 7A, para 7A.5 of Foreign Trade Policy (copy enclosed), the Free Trade & Warehousing Zones Scheme envisages duty, free import of all goods except prohibited goods for warehousing. It is not the case of department that the goods are prohibited. Moreover, Ld. Adjudicating Authority as well as Learned Appellate Authority has nowhere disputed the fact that goods were meant for re-export, as duly informed by M/s. Value Smart Trading Limited and not for home consumption. As per regulation (3)(f) of Foreign Trade (Exemption) From Application of Rules in Certain Cases) Order, 1993. Provisions of Foreign Trade (Regulation) Rules, 1993 would not apply to any goods imported and bonded on arrival in India for re-export to any country outside India, except Nepal and Bhutan. Moreover, it is duly admitted in para 5.2 of adjudication order (page 22 of appeal memo) that in one bill of entry, it was duly declared that goods were meant of re-export. Hence, it was purely technical error in not making similar declaration in other

bills of entry. Hence, there was no cause for confiscation under Section 111 (d) of Customs Act, 1962.

2.2 Similarly, the bills of entry were filed by appellant who is a service provider and who had no prior knowledge about goods being old & used. Failure to make such a declaration cannot be held as fatal in the light of Instruction No. 06/2006 issued by Ministry of Commerce & Industry, Department of Commerce (SEZ Section), Government of India (para 4(iii)) wherein it was inter alia clarified that assessment of goods imported into SEZ will be done at the time of clearance into domestic market. Hence, requirement to get over restriction, if any, could not have arisen at any time prior to clearance for home consumption, which was never the case here. Hence, the error, if any, in not declaring the old & used nature in the bills of entry could have been rectified at the time of re-export without holding the goods liable for confiscation under Section 111 (m). Even otherwise, the goods were permitted re-export without any change in description, i.e. without amending the description to old & used notwithstanding the findings to this effect. Copy of shipping Bills has been placed on record by the appellants in support of their submission.

2.3 In view of the above, it was prayed to quash and set aside confiscation under Section 111(d) and (m) of Customs Act, 1962 and thus, fine and penalty imposed qua goods and upon appellant, with consequential relief.

Department's Submission:-

3. Department submitted that as far as imposition of the Redemption fine and penalty is concerned, in various judgments in which it is held that Redemption fine and penalty can be imposed on the applicants. Details of some decisions are as under:

(A) Hon'ble Tribunal Chennai vide final Order 40621/2024 dated 07.06.2024 in the matter of M/s. Scania Commercial Vehicles India Pvt. Ltd. held that

Redemption Fine and Penalty can be imposed. Relevant para of the order as under:-

"20. As regards the judgments, the appellant has stated that as per the decision of the Hon'ble Supreme Court in Siemens Limited (supra) and Sankar Pandi (supra), in a case of re-export, redemption fine or duty cannot be imposed. We find that the Hon'ble Supreme Court has not laid down any such law in the said case. Its decision to order refund of the redemption fine were based on the peculiar facts of the case. So also in the case of the Hon'ble High Court in Sankar Pandi. The other judgments cited by the appellant are based on decisions of the Tribunal. In this regards I propose to examine the Larger Bench decision in the case of Hemant Bhai R. Patel (supra), cited by Revenue, which is binding on a Bench of lesser strength. The question examined was that when re-export is permitted no redemption fine can be imposed, which is the same issue involved here. The Larger Bench of this Tribunal answered the question as under;

"Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above."

Judicial discipline requires that we follow the judgment of the Larger Bench. The appellant's plea is hence rejected."

(B) That Hon'ble Gujarat High Court in the matter of M/s. Kay Bee Tax Spin Ltd. (2017 (349) E.L.T. 451 (Guj.) held that Section 125 of the Act shall be applicable in a case where confiscation of any goods is authorized by the Customs Act. If it is found that there is breach of any of the provisions of the Customs Act and/or even the Export/Import Policy, and/or there is a breach of any of the terms and conditions on which goods were permitted to be imported without payment of duty and permitted to be deposited in the warehouse, confiscation of such goods can be said to be authorized thereafter, when it is found that the goods are not available for confiscation as the same were illicitly diverted to the open market, and the purpose for which the goods were permitted to be imported without payment of duty is frustrated, in lieu of such goods, redemption fine is imposable (para 5.3 and 5.4).

(C) That Larger Bench of the Hon'ble Tribunal, New Delhi in the matter of Hemant Bhai R. Patel (2003 (153) E.L.T. 226 (Tri. - LB)) held that Adjudicating authority has power to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods - Permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings - Sections 111, 112 and 125 of Customs Act, 1962. [para 8]

(D) That Hon'ble Tribunal, New Delhi in the matter of M/s. Preeti Exmi (2007 (214) E.L.T. 555 (Tri. - Del.)) held that Amount of redemption fine and penalty not to be reduced - Sections 112 and 125 of Customs Act, 1962. [para 7]

(E) That Hon'ble Tribunal, Chennai in the matter of M/s. MV Marketing & Supplies (2004 (178) E.L.T. 1034 (Tri. - Chennai)) allowed the goods on payments of the redemption fine and penalty.

The Department therefore requested for upholding the impugned order.

4. This Court has considered the rival submissions. It finds that the decision of M/s. Kay Bee Tax Spin Ltd. of Hon'ble Gujarat High Court (supra) dealt with case where goods were clandestinely removed to open market from warehouse other decisions too are also on factually different matrix. We find in the instant case, the goods were imported in the SEZ unit which were meant for re-export, the export has been carried out with the same description in the shipping bill which was impugned by the Department to be incorrect while importing the goods. The basis of the Department's case was the computer parts were old & used and not declared as such, though they had certain scratches and marks on them. It is also Department's case, that not all bills of entry indicated that the goods were meant for re-export and therefore, being used and second-hand goods, import of same was restricted as per para 2.17 of the Foreign Trade Policy of the year 2009-2014. This Court finds that the goods were old and used and same was in knowledge of appellants is pre-requisite for imposing the penalty and for the same there no evidence is coming on record. Further, this Court finds that unit being an SEZ unit, which pre-dominantly exports the goods and clears the goods in domestic tariff area only on payment of duty. Therefore, it may not serve any useful purpose to deliberately bring old and used goods. Since, the transaction value of the goods on which they are cleared in DTA at

the time of clearance of product determines the duty. Therefore, by bringing old goods by declaring them new due to some scratches etc. would have only brought down value at the time of clearance in DTA thus resulting in loss to the appellants and exporting same goods too could not have been beneficial to the appellant. Further, as things stand today, from the record it is apparent that the goods which were imported stand re-exported without any change of description and addition of old and used in the export documents like shipping bill. Specimen on record is reproduced below:-

Request ID: 241802500355

SHIPPING BILL FOR EXPORT OF DUTY FREE GOODS

Exporters: FLAMINGO LOGISTICS, UNIT NO. 304, 2ND FLOOR, GANGA COMPLEX, PHASE II, KAN (IN A SPECIAL ECONOMIC ZONE, GANDHIDHAM - KUTCH, GIDR) PIN Code: 370330 GSTIN: 24AARFF630J12N(24) Client: (Foreign) VALUE SMART TRADING LIMITED, ROOM C, 10F, OCEAN VIEW COURT, 33 MODY ROAD, TSIM SHA TSUI, KOWLOON, HONG KONG, Hong Kong (HK)		Invoice No & Date: 20180416-01 DT: 10/04/2019 ATA/ARAA No & Date: ICert No & Date:		RN No & Date: 1013211 17/04/2019 Import-Export Code No: 3714000101 HS No. RBI Code No: AARFF5630J	
Consignee Details: ROYAL CARDO, P.O. BOX: 6200, JEREB AL FREE ZONE, DUBAI, UAE, UNITED ARAB EMIRATES.		Export Trade Control: Free Export under para 2.01 of Foreign Trade Policy 2015-2020 Read with rule 48 of SEZ Rules 2006. SEZ Cargo (Kandla Special Economic Zone (INIKDL6) Supply meant for Export by SEZ Entity under Bond or Letter of Undertaking without Payment of Integrated Tax LOA No. 1 CASE/INTWZ/001/2011-12/1952		State of Origin of goods: [3] India [24] Export under: ☐ Deferred Credit ☐ Joint Ventures ☐ Rupee Credit ☐ Others RBI's Approval/Cir.No. & Date:	
Custom House Agent: SELF L/C No:		Pre-Carriage By: ROAD		Place of Receipt By Pre-Carrier: MUNDRA PORT	
Vessel/Flight No: Sea		Rotation No:		Port of Loading: Mundra	
Port of Discharge: Jebel Ali		Country of Destination: UNITED ARAB EMIRATES(AE)		Nature of Contract: ☐ CIF ☐ CF ☐ CI ☒ FOB	
Exchange Rate U/S 14 of CA: 70.15		Currency of Invoice: USD		Others: GOODS EXPORT ON B/H OF FOREIGN CLIENT	
S.No	Marks & Nos.	No. & Kind of Pkgs. Container Nos.	Statistical Code & Description of Goods, & EXIM Scheme Code.	Quantity	Value-FOB in INR
1	1050 PKGS	1050 PKGS CRSU9258538, 40. SOLT00908476, 17/08/2019	84717020 COMPUTER PARTS HARD DISK 500GB	11854.000000 PCS	13720708.65
2			84717020 HARD DISK 320GB	8875.000000 PCS	7606890.63
3			84717020 HARD DISK 160 GB	1020.000000 PCS	572424
4			84717020 HARD DISK 1 TB	13.000000 PCS	21886.8
DECLARED VALUE ASSESSED					
APPRAISER					
KANDLA SPECIAL ECONOMIC ZONE					
19 AUG 2019					
Net Weight: 10280KGS Gross Weight: 10280.000KGS					
Total FOB Value in Words:- (Rupees Two Crore Nineteen Lakh Twenty One Thousand Nine Hundred and Ten Only)					
Analysis of Export Value		Currency	Amount in specified currency	Amount in INR	Full export value OR Where not ascertainable the value which exporter expects to receive on the sale of goods
FOB value		USD	312500.6	21921910	Currency: USD 312500.6
Freight			0	0	Amount in INR: Not Realisable 21921910
Insurance			0	0	
Commission			0	0	
Discount			0	0	
Other Deductions			0	0	
Packing Charges		USD			
1X40' CONT. LINE SEAL NO. 042319 (OTHER DETAILS AS PER INVOICE) GOODS IMPORTED VIDE BOE NO. 1001014 - 2401/2019 ON A/C OF VALUE					
1X40' CONT. LINE SEAL NO. 042319 (OTHER DETAILS AS PER INVOICE) GOODS IMPORTED VIDE BOE NO. 1001014 - 2401/2019 ON A/C OF VALUE SM (I/We) TRADING LIMITED HONG KONG Declaration: I/We declare that all particulars given herein are true and correct. I/We also attach the declaration(s) under clause No.(s) dated Public Notice No. I/We certify that the above declared goods meant for export have been packed & sealed in my presence as per statutory requirement under SEZ Act 2006 & SEZ Rule 2006.					
This SB Form is Partially Signed & submitted by CLARANCE PHILIP HANSEN on behalf of SEZ Authorized Signatory					

The goods were exported after due process and checking by customs officer, therefore, on one side at the time of import Department is stating that the goods were old and used but at the time of export of the same goods, the description without addendum of the phrase old and used has been accepted.

5. This Court therefore finds that as per factual matrix, coupled with legal position the order as well as proceedings are not sustainable. Impugned order is therefore set aside with consequential relief to the appellants.

(Pronounced in the open court on 09.07.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)