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

REGIONAL BENCH-COURT NO.1

Customs Appeal No. 10784 of 2024

(Arising out of Order in Appeal MUN-CUSTM-000-APP-91-93-24-25 dated 09/08/2024 passed by Commissioner of Customs (Appeals) - Ahmedabad)

S K ENTERPRISES .... **Appellant**
A-228,Meera Bagh,
Paschim Vihar, West Delhi 110087

VERSUS

PRINCIPAL COMMISSIONER OF CUSTOMS
- Mundra Customs .... **Respondent**
Office of the Pr. Commissioner of Customs,
Custom House, Mundra, Kutch,
Mundra Port and Special Economic Zone, Mundra
Kachchh, Gujarat-370421

WITH

Customs Appeal No. 10785 of 2024

(Arising out of Order in Appeal MUN-CUSTM-000-APP-91-93-24-25 dated 09/08/2024 passed by Commissioner of Customs (Appeals) - Ahmedabad)

S K ENTERPRISES .... **Appellant**
A-228, Meera Bagh,
Paschim Vihar, West Delhi 110087

VERSUS

PRINCIPAL COMMISSIONER OF CUSTOMS
- Mundra Customs .... **Respondent**
Office of the Pr. Commissioner of Customs,
Custom House, Mundra, Kutch,
Mundra Port and Special Economic Zone, Mundra
Kachchh, Gujarat-370421

AND

Customs Appeal No. 10786 of 2024

(Arising out of Order in Appeal MUN-CUSTM-000-APP-91-93-24-25 dated 09/08/2024 passed by Commissioner of Customs (Appeals) - Ahmedabad)

S K ENTERPRISES .... **Appellant**
A-228,Meera Bagh,
Paschim Vihar, West Delhi 110087

VERSUS

PRINCIPAL COMMISSIONER OF CUSTOMS
- Mundra Customs .... **Respondent**
Office of the Pr. Commissioner of Customs,
Custom House, Mundra, Kutch,
Mundra Port and Special Economic Zone, Mundra
Kachchh, Gujarat-370421

APPEARANCE:
Shri Prem Ranjan Kumar, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. <u>10553-10555/2025</u>

DATE OF HEARING/ DECISION: 04.07.2025

<u>SOMESH ARORA</u>

1. In this case, it is found that the goods-"Polyester Knitted Fabrics" were imported below the stipulated MIP as was provided by the DGFT vide Notification No.77/2023 dated 16.03.2024.

2. The Advocate for the appellant argued that there are a number of decisions including decision in the case of Crystal Granite & Marble Pvt. Ltd. vs. Commissioner of Central Excise, Pune-II reported in 2017 (7) GSTL 121 (Tri-Mumbai), Siemens Gamesha Renewable Power Pvt. Ltd vs. Commissioner of Customs, Mundra reported in 2019 (365) ELT 631 (Tri-Ahmedabad), in which it has been held that for the purpose of customs valuation, it is the transaction value which is of paramount importance and not the value fixed by the DGFT which is for the purpose of import restrictions under EXIM policy provisions.

3. Learned AR takes us to the order of the lower authorities and points out that the Commissioner (Appeal) has already given relief on the point of valuation indicating that the same has to be determined in the remand proceeding, according to valuation Rules and not on minimum import price. He also points out that the redemption fine is still to be determined. Therefore, at this stage, party cannot be aggrieved over the quantum of RF, which is still to be determined. He also points out that the Personal Penalty has been correctly upheld by the learned Commissioner (Appeal) under Section 112 (a) (i) of the Customs Act, 1962 as the violation of import restrictions was decidable as what was brought in by him were the goods, which were in violation of ITC policy read with DGFT Notification No.77/2023 dated 16.03.2024. He also points out that in this case, the appellant wants to contest quantum of penalty or legal propositions related to penalty imposed, then the same has to be taken as a separate ground. However, on being pointed out

that the issue is of legal nature and can be taken at any time, learned AR left the matter to the discretion of the Bench.

4. We have considered the rival submissions. We find that the stand of the Commissioner (Appeals) as far as valuation is concerned is correct and is supported by the decisions indicated by the appellants. However, we find that in the submission made by learned AR is also one that Redemption fine is still to be determined and also its quantum, as there is no doubt that there is ITC violation. We find that Redemption fine at this stage is indeterminate as order in remand has not been passed. However, we also find that the penalty imposed has been upheld by the Commissioner, though, one of the factors in determining the quantum of penalty, inter alia, should be the profit sought to be earned or Redemption fine sought to be imposed as this alone will indicate the quantifiable figures of the violations involved. Since, Redemption fine to be imposed is also one of the considerations, for imposing fair and just penalty, we modify the direction of the Commissioner (Appeals) in the remand order holding that the penalty imposed under Section 112(a)(i) of the Customs Act is also set aside at present which shall be quantified after re-determining the value. Imposition of redemption fine to be decided by the Adjudicating Authority to whom the matter has been remanded. Order is remanded back only to that extent.

5. Appeal partly allowed.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi