CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70197 of 2023

(Arising out of Order C.No.VII(25)116-SampleTest/Tech/2018 dated 09/05/2023 passed by Additional Commissioner of Customs (Preventive), Central Excise & Service Tax, Lucknow)

M/s Competence Exports Private Ltd., ...Appellant
(59/A/A/6, Udyog Nagar, Dada Nagar, Kanpur-208022)
VERSUS

Commissioner of Customs (Preventive), Lucknow Respondent
(5th Floor Kendriya Bhawan, Sector-H, Lucknow-226001)

APPEARANCE:

Shri Ashish Kumar Shukla, Advocate for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70077/2023

DATE OF HEARING : 28 August, 2023
DATE OF DECISION : 28 August, 2023

SANJIV SRIVASTAVA:

This appeal is directed against communication C.No.VII(25)116-SampleTest/Tech/2018 dated 09/05/2023 issued by Additional Commissioner of Customs (Preventive), Central Excise & Service Tax, Lucknow with the approval of Commissioner. By the impugned letter following had been stated:-

> "In this context, your kind attention is invited towards Notification No.158/1995-Customs dated 14.11.1995 wherein it has been provided:

> **"Goods are re-exported within six months of the date of re- importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow."**
>
> In your instant case, the re-export of the goods re-imported vide BOE No.6845771 dated 27.12.221 should have been re-exported on or before 26.06.2022 but you neither re-exported the said goods nor applied to the jurisdictional Commissioner of Customs, well before 26.06.2022, to seek extension of time for re-exportation by another six months.
>
> As there being no provisions for allowing re-export of goods re-imported vide BOE No.6845771 dated 27.12.2021 beyond a maximum period of one year (6 months + 6 months) and beyond 26.12.2022, your application for extension of time beyond the scope of Notification No.158/1995-Customs dated 14.11.1995, has been rejected by the Competent Authority."

1.2 The Tribunal has allowed the Early Hearing Application in the present matter vide Miscellaneous Order No.70023/2023 dated 23.08.2023.

2.1 The appellant has exported consignment of Gents Leather Boots, Shoes, Sandals and leather cum Synthetic Boot Uppers to Russia against shipping bills.

2.2 Due to some quality/technical issues, these goods were brought back for repairing and re-export of the same goods to the buyers in Russia. The goods had been re-imported availing the benefit of Notification No.158/1995-Cus dated 14.11.1995 vide Bill of Entry No.6845771 dated 27.12.2021 which were given as a charge by Customs on 10.02.2022.

2.3 Appellant contended that during the period of re-importation due to ongoing war between Russia and Ukraine, some restrictions were imposed by the United States of America, Accordingly for uncertainty in the shipping and in trade as whole with Russia, the goods could not be re-exported within six months as provided by the Notification No.158/1995. Further, the GR waiver was requested from the Bank for the above said transaction and the same was obtained only on 25.01.2023.

2.4 Appellant filed shipping bill No.7342238 dated 28.01.2023 for export of said goods and they also filed an application for extension of time of re-export on 03.02.2023 in the office of Assistant Commissioner, Customs Inland Container Depot-Panki.

2.5 Without acceding to the request of the appellant or even forwarding to the Commissioner of Customs (Preventive), Lucknow appellant was directed to deposit all incentives and applicable duties along with interest at the earliest vide letter dated 16.02.2023, for want of permission of time of extension.

2.6 Appellant filed an application dated 20th March, 2023 to the Commissioner seeking extension of time for re-export of goods which has been disposed of by the letter referred in para-1 above.

2.7 Aggrieved by the same appellant had filed this appeal.

3.1 We have heard Shri Ashish Kumar Shukla Advocate for the appellant and Shri Sandeep Pandey learned Authorized Representative for the revenue.

4.1 We have considered the submissions alongwith the submissions made in the appeal and during the course of argument.

4.2 As the request made by the applicant, has been rejected by the impugned letter issued by the Additional Commissioner with the approval of Commissioner, same has been taken as an order against which appeal lies before the Tribunal. Such communications which are administrative in nature have been held to appealable order as per the following decisions:

➢ Gujarat Ambuja Cement Ltd [2006 (197) ELT 39 (T)]

- Bhagwati Gases Ltd [2008 (226) ELT 468 (T)]
- Racold Thermo Ltd [2012 (27) STR 398 (T)]
- Usha International Ltd. [2017 (357) ELT 532 (T)]

From the perusal of the letter, it is observed that the same has been issued in a perfunctory manner without issuing show cause notice to the appellant or affording any opportunity of hearing to him the request made for extension of time limit for re-export has been rejected. On this ground itself this letter needs to be set aside as issued in violation of principles of natural justice.

4.3 The notification in terms of which the goods has been re-imported for the purpose of repair is reproduced below:-

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the Ministry of Finance, Department of Revenue notification No. 98/95, dated 26th May, 1995 the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and for the purpose specified in Column (2) of the Table hereto annexed, when reimported into India from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, subject to the conditions laid down in the corresponding entry in Column (3) of the said Table.

TABLE

S No	*Description of goods*	*Conditions*
(1)	*(2)*	*(3)*

1.	*Goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and re imported into India for repairs or for reconditioning.*	*1. Such reimportation takes place within 3 years from the date of exportation;* *2. Goods are re-exported within six months of the date of reimportation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow;* *3. The Assistant Commissioner of Customs is satisfied as regards identity of the goods;* *4. The importers at the time of importation executes a bond undertaking to* *a. export the goods after repairs or reconditioning within the period as stipulated;* *b. pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty levied at the time of reimport and the duty leviable on such goods at the time of importation but for the exemption contained herein.*
		…………
2.		

4.4 From the perusal of this notification it is evident that the goods re-exported in terms of this notification could have been re-exported within six months from the date of re-importation or such extended period not exceeding further six months as Commissioner of Customs may allow. In this case the goods were given out of charge on 10.02.2022, accordingly the goods without any permission could have been re-exported by 9th August, 2022 and within a further period of six months from this date i.e. 09.02.2023 with the permission of the Commissioner. In the present case appellant has produced the goods for exportation by following the shipping bill dated 28.01.2023 and made application seeking extension of date for re-exportation vide his letter dated 03.02.2023. He has given sufficient justification for seeking such extension as the delay occurred on the account of ongoing war between Russia and Ukraine for which certain trade sanctions were imposed on trading with Russia. If this cannot be considered as a reason for granting the extension there could be no other justification for such extension as per notification whereby Commissioner has been authorized to grant extension by further six months. The order of the Commissioner not allowing such contention is without any justification and could not be sustainable.

4.5 In the case of M/s Leather Salers Final Order No.56356 of 2017 dated 29.08.2017 similar issues has been considered and following has been held:-

> *"5. On careful consideration of submission of both the sides, I find that the sole dispute is that whether the appellant has complied with the condition of notification No. 158/95 or not. The condition of the notification are extracted below:*
>
> *(i) Such re-importation takes place within 3 years from the date of exportation.*
>
> *(ii) Goods are re-exported within six months of the date of reimportation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow.*
>
> *On going through the condition mentioned in the notification, nowhere it is mentioned that the appellant is required to seek extension of time within six months from the date of re-importation. In fact, the fact is not in dispute that re-imported goods are required to be reexported within three years of re-import as per condition (i) of the said notification. When the main condition of notification has not been violated by the appellant, therefore the benefit of notification cannot be denied merely on the ground that appellant did not seek extension*

of time within 6 months of re-import. Moreover, the facts of R R Kobler has no relevance to the facts of this case as in that case, appellant did not claim extension of time where as the in the present case, the appellant filed an application for extension of time although after expiry of six months , this fact has not been disputed. In the circumstances, I hold that appellant has complied with the condition of notification No. 158/95. Therefore, bank guarantee executed at the time of re-importation is not required to be forfeited therefore, impugned order is set aside and appeal is allowed with consequential relief."

4.6 Accordingly, in view of the above discussions, we do not find any merits in the impugned communication/ order and set aside the same.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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