

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I
(E-Hearing)
Customs Appeal No.70107 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-000-APP-826 & 827-20-21 dated 03/11/2020 passed by Commissioner (Appeals) Customs, Central Goods & Services Tax, Noida)

M/s Baba Global Ltd.,
(F-5 & 6, SDF, Noida Special Economic
Zone, Phase-II, Noida-201305)

.....Appellant-I

VERSUS

Commissioner of Customs, Noida
(Concor Complex, Greater Noida-201311)

....Respondent

WITH

Customs Appeal No.70108 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-000-APP-826 & 827-20-21 dated 03/11/2020 passed by Commissioner (Appeals) Customs, Central Goods & Services Tax, Noida)

**Shri Ravinder Kumar, Director of
M/s Baba Global Ltd.,**
(F-5 & 6, SDF, Noida Special Economic
Zone, Phase-II, Noida-201305)

.....Appellant-II

VERSUS

Commissioner of Customs, Noida
(Concor Complex, Greater Noida-201311)

....Respondent

APPEARANCE:

Shri T.R. Rustogi, Advocate for the Appellants
Shri Manish Raj, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
 HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOs.70155-70156/2025

DATE OF HEARING : 06 March, 2025
DATE OF PRONOUNCEMENT : 02 April, 2025

SANJIV SRIVASTAVA:

These two appeals are directed against Order-in-Appeal
No.NOI-EXCUS-000-APP-826 & 827-20-21 dated 03/11/2020

passed by Commissioner (Appeals) Customs, Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"Order

- (i) *I confiscate 37.34 kg of Saffron valued at Rs 38,92,023/- under Section 111 (j) of Customs Act 1962. Since the goods are not available, so I impose redemption fine of Rs. 9,73,005/-(Rupees Nine Lacs Seventy Three Thousand and Five only) under Section 125 of the Customs Act 1962.*
- (ii) *I confirm the demand of Customs duties of Rs.14,06,421/- (Rupees Fourteen Lacs Six Thousand Four hundred and Twenty One Only) under Section 28 of the Customs Act, 1962, read with Section 12(1), 46(1), 47(1), 68, 71 of the Customs Act, 1962; Section 30 of the SEZ Act, 2005; Rule 25, 34, 47 and 48 of the SEZ Rules, 2006, and conditions of the Bond-cum-Legal Undertaking dated 17.06.2015. I order to recover the said demand of Rs. 14,06,421/- from M/s Baba Global Limited.*
- (iii) *I confirm the demand of interest on the said amount of duty of Rs. 14,06,421/- under Section 28AA of the Customs Act, 1962, and order to recover the same from M/s E ba Global Limited.*
- (iv) *I order to enforce the provisions of Bond-cum-Legal Undertaking dated 7.06.2015, executed by M/s Baba Global Limited for recovery of the aforesaid Redemption Fine, duty and interest thereon.*
- (v) *I impose penalty of Rs. 14,06,421/-(Rupees Fourteen Lacs Six Thousand Four hundred and Twenty One Only) on M/s Baba Global Limited under Section 114 A of the Customs Act, 1962*
- (vi) *I impose penalty of Rs. 14,06,421/-(Rupees Fourteen Lacs Six Thousand Four hundred and Twenty One Only) on Shri Ravinder Kumar, Director*

of M/s Baba Global Limited under Section 112 (b) (ii) of the Customs Act, 1962."

2.1 Appellant No.I is a unit located in NSEZ, Noida for manufacture and export of "Chewing Tobacco, Kiwam, Scented Supari & Cardamom, Mouth Freshener, Perfumery Compounds including Rose Water, Essential Oils, Soap Components, Natural Spring & Mineral Water". Appellant-II is a director of Appellant-I.

2.2 Export consignment of appellant-I stuffed in a vehicle No. UP-16T/0106, was checked by the officers in transit. It was found to be loaded with 108 cases of Chewing Tobacco. On examination of case no. 1 to 58 were found mis-declared when compared with that declared in the Packing List of the Shipping Bill No. 0000359 dated 09.01.2017. The said export consignment was kept on hold till further investigation and was handed over to CWC for safe custody of the consignment.

2.3 Thereafter a team of Officers of Customs, NSEZ, visited the factory premises of appellant-I on 10.01.2017 and took physical stock of finished goods as well as raw material. The stock of finished goods as well as raw material tallied with the figures of available stock register. No discrepancy was found except in the case of raw material 'saffron'.

2.4 For saffron it was found that as per the import register in the Financial Year 2016-17 total 80 kg saffron was imported but no record of physical stock was found in stock register. It was found that stock available in factory was 40 kg only. It was informed that certain stock of saffron is available in the laboratory, key of which was available with appellant-II. As appellant-II was not present in the factory at that time therefore, the said laboratory was sealed by affixing with paper seal under a proper panchnama.

2.5 Vide letter dated 23.01.2017 requested for opening the seal. Laboratory was opened and the stock of the goods lying therein was verified under panchnama proceedings. During stock taking, saffron put up in two tin containers and in two plastic

packets in powder form was found. The quantity of saffron was found to be 14.980kg. Thus, total stock of saffron was available with the premises of appellant-I was $14.980+40.00=54.980$ kg.

2.6 Statement of Shri D.P. Dayama, Factory Manager of appellant-I was recorded on 25.01.2017 wherein he informed that 20 kgs of saffron is available in the fridge of General Manager and the same was by mistake not taken into account on the day of stock verification as the G.M Shri R.K. Jain was not in the factory on 10.01.2017 and he was not aware about the said stock of saffron.

2.7 After completion investigation and examination of records for the last 5 years, stock of raw material saffron was found short by 37.34 kgs, having value of Rs.38,92,023/- on which Customs duty comes to Rs.14,06,421/-. The duty is liable to be recovered under Section 30 of the SEZ Act, 2005, read with Rule 25,34,47 (4) and 48 (2) off SEZ Rules, 2006, read with Section 28 of the Customs Act, 1962.

2.8 Show cause notice dated 04.01.2019 was issued to the appellant-I, asking to them as to why-

"(a) 37.34 kg of Saffron valued at Rs 38.92.023/- involving duty of Rs.14,06,421/- found short at the time of stock taking on 10.01 2017/23.01.2017, which was not duly accounted for and appeared to have been clandestinely removed from NSEZ to DTA from their Unit in terms of various provisions of SEZ Act 2005, SEZ Rules and Customs Act 1968 as explained hereinabove, should not be confiscated under Section 111 (j) of Customs Act 1962, and since the goods were not available for seizure and thereby for confiscation, why Redemption Fine should not be imposed on the subject goods;

(b) the Custom duty amounting to Rs.14,06,421/- involved on the goods found short should not be demanded from them under Section 28 of the Customs Act 1962 read with Section 12(1). 46(1), 47(1), 68, 71 of Customs Act, 1962,

Section 30 of SEZ Act 2005: Rule 25, 34, 47 and 48 of SEZ Rules 2006 and conditions of the Bond-cum-Legal Undertaking executed by them under Rule 22 of SEZ Rules.

(c) interest on the said amount of duty should not be recovered under Section 28AA of the Customs Act, 1962;

(d) the provisions of Bond-cum-Legal Undertaking executed by them under Rule 22 of SEZ Rules, 2006 should not be enforced for recovery of the aforesaid duty and interest thereon,

(e) Penalty should not be imposed under Section 112(b)(i) & (ii) and Section 114A of Customs Act, 1962 for the violations explained in this Notice.”

2.9 Appellant-II was also called upon to show cause as to why personal penalty should not be imposed upon him under Section 112(a) & (b) and Section 114A of the Customs Act, 1962 for various omissions, commissions and violations.

2.10 The said show cause notice was adjudicated as per the Order-in-Original referred in para 1 above.

2.11 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.12 Aggrieved appellants have filed these two appeals.

3.1 We have heard Shri T.R. Rustogi learned Counsel appearing for the appellants and Shri Manish Raj learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- The stocks and shortages have been determined on the basis of assumption and presumptions which do not have any basis in the law.
- There are serious flaw in department's calculations. On examination of shortages of stock and their value even if

the department's calculations, when corrected for the apparent flaws, total shortages would come to mere 1.46 kg.

- The Customs Officers lacked jurisdiction to do stock taking. No prior intimation was given to the Development Commissioner and mandated by the Department of Notification dated 05.08.2016.
- No specific rule of SEZ Rules, 2006 has been identified in show cause notice or while confirming the demand of duty.
- Rule 25 of the SEZ Rules was not applicable in respect of goods found short of stock taking; Rule 34 only seems to apply, but there is no provision of interest or penalty in the rule.
- Redemption fine imposed, cannot be justified.
- It is settled law that the goods which are not available could not have been confiscated. Reliance is placed on the decision of this Tribunal in the case of Commissioner of Customs, Mumbai Vs JEWEL Tech India Pvt. Ltd. 2016 (9) TMI 522-CESTAT-Mumbai.
- Penalty imposed on appellant-II is not justified.

3.3 Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For upholding Order-in-Original, impugned order records as follows:-

"5.1 After going through the entire issue, I observe that as per directions of the specified officer, the export consignment of Chewing Tobacco of the importer was subjected to surprise check, in which some discrepancies relating to Brand Name of the product were noticed on account of which a team of officers of Customs, NSEZ, visited the factory premises of the importer on 10.01.2017. During visit physical stock of raw material and

finished goods was recoded which was found tallied with the available stock register except in the case of raw material "Saffron". No record of physical stock register lying in the factory was being maintained by the importer. The physical stock of "Saffron" lying in the factory was found 40 Kgs only. Further, on the request of the importer vide letter dated 23.01.2017, stock verification of the goods lying in the laboratory was conducted and quantity of saffron weighing 14.980 Kgs was found, thus totaling the physical stock of "Saffron" as 54.980 Kgs including the stock found on 10.01.2017. Shri. D.P.Dayama, Factory Manager of the importer, during his statement on 25.01.2017 further informed that the quantity of 20 Kgs of "Saffron" is lying in the Fridge of GM Room. However, it is on record that during the stock taking done on 10.01.2017 and 23.01.2017, entire unit premises in the presence of independent witnesses as well as representative of the importer i.e Sh. D.P. Dayama was searched but no such stock of 20 Kgs "Saffron" was found lying in the fridge as was being incorrectly claimed by Sh. Dayama. As proper stock register in respect of saffron was not being maintained, so to determine the correct book balance of Saffron, purchase and consumption data for the last five years was analysed, and the raw material "Saffron" was found short of 37.34 Kg valuing Rs.38,92,023/- on which Customs duty came to Rs. 14,06,421/- liable to be recovered in terms of Section 30 of SEZ Act, 2005, read with Rule 25, 34,47(4) and 48(2) of SEZ Rules, 2006 and read with Section 28 of the Customs Act, 1962, along with applicable rate of interest under section 28AA of Customs Act, 1962. Since the goods i.e. saffron was found short and were unlawfully removed from SEZ hence were liable for confiscation under Customs Act, 1962, hence I uphold the confiscation & Redemption Fine.

5.2 As regards the imposition of penalty upon Sh. Shri Ravinder Kumar, Director under Section 112 of the

Customs Act, 1962, I find that in response to summons he submitted vide his letter dated 26.12.2018 that he was on tour to Switzerland for the period 20.12.2018 to 2nd/3rd week of February-2019. On the other hand, he also claimed in his said letter that key of Laboratory remains with him and whenever there is requirement to prepare a new batch, he prepares the new mixture in the Lab. The above said facts indicate that he is involved in day to day work of the factory as well as absence for long period of sixty days. Both of the above situation is not in harmony rather contradictory. I find that use and issue of saffron was under complete control of Sh. Ravinder Kumar and therefore he was responsible for maintaining proper records and proper use of saffron, as prescribed in the SEZ Act, 2005, and the SEZ Rules, 2006. Since, he has willfully indulged in diversion of saffron to DTA without payment of duty and suppressed the facts of diversion from authorities, so I hold him liable for penalty under Section 112 (b)(ii) the Customs Act, 1962.

5.3 As regards the contention of the appellant that the NSEZ officers are not legally authorized to conduct investigation and the Additional Commissioner, Noida Customs Commissionerate, is also not proper authority for issuing S.C.N., I find that the proper reply has already been given by the adjudicating authority in the impugned order.”

4.3 In the present case, I observe that stock verification and shortages of stocks has been determined in a unique method by computing the figures from the figures in the balance sheet. Stock was not verified on the basis of stock register/ records that were being maintained or the same were required to be maintained.

4.4 During the course of investigation, appellants were asked to furnished details of saffron imported during the last five years,

which was submitted by them as per following chart reproduced in para-9 of the show cause notice-

SAFFRON IMPORTED						SAFROON PROCURED FROM LOCAL MARKET		TOTAL SAFFRON PURCHASED		Consumption	
Fin. Year	B/E No.	Date	Qty. Imported (kg)	Value (Rs. Lakhs)	Duty foregone (Rs. in lakh)	Qty. Procured (in kg)	Value (Rs. In lakh)	QTY. (Kg.)	Value (Rs. In lakh)	Qty. Consumed	Balance Qty. in stock
2012-13	0	0	0	0	0	0	0	0	0	35.340	14.00
2013-14	6599	31.08.2013	50	53.02	19.92	18.40	16.59	68.40	69.71	45.500	36.90
2014-15	7801	29.09.2014	25	21.33	7.89	8.45	9.73	58.45	54.49	62.350	33.00
	8818	05.11.2014	25	23.43	8.73	0	0	0	0		
2015-16	6076	16.07.2015	25	34.16	12.60	1.50	1.89	76.50	91.33	49.220	60.28
	9795	12.11.2015	50	55.28	20.23	0	0	0	0		
2016-17 (as on 10.1.2017)	8214	26.09.2016	30	30.12	11.33	0	0	80.00	82.29	65.480	74.80
	9997	24.11.2016	50	51.60	18.83	0	0				

4.5 On the basis of above, it was claim of the appellant that they are in position to explain the entire stock balance physically available with them (inclusive of 20 kgs found in the fridge of GM). However, this was not accepted and the revenue proceeded to compute the closing stock in the manner as detailed below as per the show cause notice:-

"10. In response to this office letter dated 15.11.2018, party vide letter dated 19.11.2018 (RUD-11) have submitted attested copies of consolidated audited balance sheet and Profit & Loss statement along with relevant extracts of Schedule of the Balance sheet for the year 2012-13,2013-14,2014-15,2015-16 and 2016-17 as a documentary evidence for consumption of Saffron' for the relevant period. Further party submitted that they have only one manufacturing unit which is situated at F-586,SDF NSEZ, Noida II is observed that the Balance sheets are duly audited, and accordingly, the quantity of Saffron consumed has been adopted from the said information. The following chart has been prepared on the basis of the said consolidated Balance sheets and chart earlier submitted by the party on 18.09.2018.

Balance	Consumption	of	Value	of	Saffron
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sheet for Financial Year	saffron as declared by the party vide letter dated 18.09.2018 (in Kg.)	consumed for manufacture of Chewing Tobacco, as per Balance Sheet (Rs.)
2012-2013	35.340	2102352.86
2013-2014	45.500	4309098.67
2014-2015	62.350	5848585.36
2015-2016	49.220	5496968.79
2016-2017	65.480	7006683.22
TOTAL	257.890	2,47,63,689/-

11. It is further seen that as per purchase details of Saffron contained in the party's letter dated 18.09.2018 show that the raw material namely 'Saffron' was sourced from two sources namely by way of import and from local market. As per these details duly supported by purchase Invoices/BOEs, it is observed that the unit price of sourcing of saffron was as tabulated below:-

Financial Year	Qty. Importe d (kg)	Value of imported saffron (Kg)	Qty. Procu red (in kg)	Value (Kg.)	Total sourced (Qty-Kg. Value)	Saffron &	Unit price of saffron (Rs. Per Kg)
2012-13	0	0	0	0	0	0	NA
2013-14	50	53.02	18.40	16.59	68.40	69.61	1,01,769/-
2014-15	50	44.76	8.45	9.73	58.45	54.49	93,225/-
2015-16	75	89.44	1.50	1.89	76.50	91.33	1,19,386/-
2016-17	80	81.72	0	0	80	81.72	1,02,150/-

11.1. Since no details of quantity of saffron consumed are shown in the Balance sheet and only value (in Rs.) reflected, therefore on the basis of this price data, the total quantity of 'saffron' is worked out by reverse calculation ie. by dividing the year-wise value of consumption shown in the Balance sheet by the average unit price of saffron obtained from the above table as given below-

Fin. Year	Value consumption of shown in balance sheet (Rs.)	Unit price of saffron as obtained from the purchase documents (Rs./Kg)	Quantity of saffron consumed (Kg.) (Col. 2/Col. 3)
(1)	(2)	(3)	(4)
2012-13	2102353	101769*	20.66
2013-14	4309099	1,01,769/-	42.34
2014-15	5848585	93,225/-	62.74

2015-16	5496969	1,19,386/-	46.04
2016-17	7006683	1,02,150/-	68.59
TOTAL	2,47,63,689/-	-----	240.37

(Note "The Unit price for 2013-14 has been adopted in r/o the FY 2012-13 as there was no sourcing of saffron during the F.Y. 2012-13)

11.2. Thus, the total consumption of saffron in the above manner comes to 240.37 Kg. Accordingly, the shortage of 'saffron' is worked out as under-

Opening balance of Saffron (Kg.)	Quantity sourced during the five years (2012-13 to 2016-17) (Kg.) (details given in para 9 of page5)	Quantity consumed during the five years (2012-13 to 2016-17) (Kg.)	Book balance (Kg.)	Actual quantity found during checking (Kg.)	Shortage of Saffron detected (Kg.)
49.34	283.35	240.37	92.32	54.98	37.34

4.6 We observe that the entire foundation is based on the assumption and presumptions of examination figures shown in balance sheet, not in terms of freight and in terms of value and finally the said calculated quantity of exemption has been deducted from the total quantity source and procured to arrive at the total value. Further, while computing these values, no reliance has been given to the 20 kg of saffron available in the GM's fridge. As per appellant, it was available in the GM's fridge. No reason has been given for not taking into account the said quantity of saffron which was available in the factory premises, except that it was not disclosed at the time of stock taking. During the stock taking done on 10.01.2017 it was responsibility of the officers to find out all the stocks of finished goods and raw material and do the stock taking.

4.7 It is not understood as to why such approach for computation of shortages that on the basis of receipt and consumption in last five years been adopted, stock taking needs to be done on the basis of the stock register and the physical quantity available. Any other method adopted would be based on

various presumption and assumptions only which is quite visible in the present case.

4.8 We also find the manner in which appellants have tried to tally the stock is also not having any basis in law. It is also on the basis of assumption and presumptions that they have made infact it is submission of the appellant that the figures of closing stock which was made available not on the basis of any record but on the basis of figures provided by the appellant-II to match the final stock (inclusive of 20 kgs).

4.9 We now face a problem where both the sides are doing an exercise in mathematics rather than determining shortages of the physical stocks vis-à-vis the stock register. For determining the shortages and we find that as per the stock register the entire quantity of saffron was shown as issued and the balance was nil. Rather than seeking explanation about the physical stock found in the factory and laboratory, Departmental Officers have adopted this unique approach to determine the shortages on the basis of these assumptions and presumptions.

4.10 Such stock determination on the basis of presumptions and assumptions do not have legs to stand upon and needs to be set aside. In case of Dulichand Silk Mills (P) Ltd [2001 (133) E.L.T. 468 (Tri. - Chennai)]

4. *On consideration of the submissions, we find that there is lot of force in the submissions of the learned Consultant. As can be seen from the records, the case proceeds on the basis of presumption and assumption. The figure was given by the manager of the appellants in the factory. The Commissioner had clearly held that this cannot be the basis for clandestine removals, yet he concluded that presumption can be drawn on the basis of the statement of the manager. This finding is not in consonance with the judgment of the Apex Court judgment in the case of Oudh Sugar Mills (supra) wherein it has been clearly laid down that burden of clandestine removal is required to be*

discharged by the department and mere assumption or presumption cannot be the basis for raising demand. Although in the present case Manager has given some figure the department had chosen to measure some quantity and found the same to be in order and dropped the proceedings. When it was convenient for the department to do physical verification for some portion of the goods, they should have done the same exercise for the other portion also. Merely because eye estimation was given it does not absolve of the department's responsibility to carry out physical verification of the goods and confirm demand duty on that basis. In view of the clear cut law laid down by the cited judgments, the appellants prayer is required to be accepted by setting aside the impugned order and allowing the appeal.

4.11 We find that the admitted position is that after the receipt of the saffron in the factory premises the same is handed over to the Appellant 2, who uses the same in the laboratory where no one else is allowed to enter. He does not maintain any record of consumption of the said saffron in the laboratory. Even while submitting the figures vide letter dated 19.11.2018 the figures of closing balance year wise were given by him to adjust with the closing stock available in the factory, without reference to any document maintained by him or in the unit. Thus, we find that there are certain irregularities are being committed by the Appellants in maintenance of stock register of saffron which should be based on the physical stocks available, like any other raw material. For such a contravention a token penalty needs to be imposed upon the appellant-II under Section 117 of the Customs Act. However, impugned order imposes penalty under Section 114A on the appellant-I and under Section 112 (b) (ii) of the Customs Act on Appellant-II.

4.12 As we do not find any reason to uphold the shortages, demand on the basis of above presumption, we are not in position to uphold the redemption fine imposed in respect of goods not found contrary to the decision of in case of Jewel Tech

India Pvt Ltd. [2016-TIOL-2591-CESTAT-MUM] observing as follows:

5. We have considered the submissions made by the learned Special Counsel. We find that the issue has been examined by the Larger Bench of the Tribunal in the case of Bhagyanagar Metals Ltd. Vs. CCE, Hyderabad-II - 2016 (333) ELT 395 (Tri-LB) = 2016-TIOL-454-CESTAT-HYD-LB has observed as follows:

46. Learned Senior Counsel for the appellants contested confiscation of impugned goods and imposition of redemption fine on the same. He submitted that there was no seizure at all or ever, either of the phones or the CD-ROMS imported by the appellants. Appellants had not executed any bond for provisional release of any goods in terms of Section 110A of the Customs Act, 1962. He further submitted that the bond mentioned by the Original Authority in his order dated 18/8/2006 is for the clearance of goods on payment of provisional duty. In the present case in the absence of any seizure thereafter provision release of goods under bond, confiscation or imposition of redemption fine are not sustainable. We find that reliance placed by Revenue on the decision of Hon'ble Supreme Court in Weston Components Ltd. vs. CC, New Delhi (supra) is misconceived. In the said case, there was a seizure and provisional release against a bond, undertaking to produce the goods when called for. In such situation, the Hon'ble Supreme Court held that redemption fine can be imposed if the goods are already cleared. Since, such release of goods is on execution of bond such fine was justified. We find that the Hon'ble Punjab & Haryana High Court in CC, Amritsar vs. Raja Impex (P) Ltd. reported in 2008 (229) E.L.T. 185 (P&H) = 2008-TIOL-280-HC-P&H-CUS held :-

"12. It may also be noticed here that in the case of M/s. Weston Components Ltd. v. Commissioner of Customs, New Delhi (supra), the goods were released to the assessee on

an application made by it and on the execution of a bond by the assessee and in those circumstances, the Hon'ble Apex Court held that the mere fact that the goods were released on the bond being executed would not take away the power of custom authority to levy redemption fine. A reading of the judgment/order of the Hon'ble Apex Court in M/s. Weston Components Ltd. v. Commissioner of Customs, New Delhi (supra), would show that the Apex Court has taken the view that redemption fine can be imposed even in the absence of the goods as the goods were released to the appellant on an application made by it and on the appellant executing a bond. Since the goods were released on a bond the position is as if the goods were available. The ratio of the above decision cannot be understood that in all cases the goods were permitted to be cleared initially and later proceedings were taken for under-valuation or other irregularity, even then redemption fine could be imposed. We are, therefore, not inclined to accept the contention raised by the appellant on this issue and set aside the redemption fine.

13. The reliance of learned counsel for the revenue upon the provisions of Section 125 of the Act is also misconceived. Section 125 of the Act is applicable only in those cases which have been cleared by the concerned authorities subject to furnishing undertaking/bond etc. However, in the present case, admittedly, the goods were cleared by the respondent-authorities without execution of any bond/undertaking by the assessee. Thus, in view of the fact and circumstances of the case, we find no error in the impugned orders. No substantial question of law arises for our determination in the present appeal and the same is hereby dismissed".

47. Further, learned Counsel pleaded that the fine is payable, if at all, only on redemption of goods. Here there is neither a seizure nor provisional release under bond and,

hence, the question of payment of redemption fine either to release the goods or in terms of the bond does not arise. We find that there can be no redemption fine in the absence of any seizure or provisional release of such seized goods under proper bond. In the present case in the absence of such events, redemption fine imposed is not sustainable.

5.1 In the case of SB&T International Ltd. - 2016 (335) ELT 83 (T) = 2016-TIOL-740-CESTAT-MUM an identical issue of shortages found in the premises of a unit located in SEEPZ was examined. Para 7 of the said order reads as follows:

"7. Revenue argued that the platinum imported was on execution of bond under Notification No. 137/2000 which require them inter-alia to dispose of the said goods or service in terms of the notification and bond. The said bond also bound them to the condition that in case of failure to utilise the said goods for the said purpose within a period of five years to pay an amount equal to the duty leviable on the said unutilized goods along with interest @25% on the said duty from the duty of importation till payment of such duty. Revenue has relied on the decision of the Hon'ble Supreme Court in the case of Weston Components Ltd. Vs. CC, New Delhi - 2000 (115) ELT 278 (SC) (supra) = 2002-TIOL-176-SC-CUS. In the said decision, following has been observed:

'It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on

the bond being executed, would not take away the power of the customs authorities to levy redemption fine.

2. The appeal is dismissed.'

It is apparent from the decision of Hon'ble Supreme Court that if the goods are released in custody of a person under a bond then the same can be confiscated even if the same are not physically available. The respondent relied upon the decision of the Tribunal in the case of SS Watch Industries Vs. CC (I) New Delhi - 2011 (274) ELT 369 (Tri - Del) = 2008-TIOL-2826-CESTAT-DEL to assert that when the goods are not physically available no redemption fine can be imposed. In the said decision, the Tribunal has observed as under:-

3.3 However, as regards the redemption fine imposed under Section 125 of the Act in respect of the goods held to be liable for confiscation but which are not available for confiscation, provisions of Section 125 are attracted only in the cases when either the goods are physically available for confiscation or the goods had been released provisionally against the Bond and as per the terms of the conditions of the Bond, the person from whose possession/control the goods had been seized, is bound to produce the goods whenever called upon to do so. We are supported in this view from the judgment of Hon'ble Punjab & Haryana High Court in case of Commissioner of Customs, Amritsar vs M/s. Raja Impex (P) Ltd. reported in 2008 (229) E.L.T. 185 (P&H)] = 2008-TIOL-280-HC-P&H-CUS wherein the Hon'ble High Court held that when the goods are not available for confiscation for the reason that the same had been released unconditionally, the redemption fine under Section 125 could not be imposed, that Hon'ble Supreme Court's judgment in case of Weston Electronic Components vs Commissioner of Customs, New Delhi reported in 2000 (115) ELT.278 (SC) = 2002-TIOL-176-SC-CUS is applicable only in those cases where the goods had been released

against a bond executed by the person from whose possession/control the goods had been seized and that when the goods have been released against a bond, the position is as if the goods were available. Same view has been taken by the Tribunal in the case of G.M.Exports vs Commissioner of Customs, Bangalore reported in 2008 (226) ELT.571 (Tri.-Bang.) = 2008-TIOL-832-CESTAT-BANG. In this case, the goods held to be liable for confiscation in paras 116(ii), (iii) & (iv) of the impugned order are neither available for confiscation nor the same had been released provisionally against bond. Therefore, no redemption fine could be imposed under Section 125 of the Customs Act.

It is noticed that in the said case, there was no bond for the use of goods in a particular manner. I find that in similar circumstances the Tribunal has observed as follows

i) KAY BEE TAX SPIN LTD. 2014 (305) E.L.T. 132

The Revenue is in appeal only for reason that the Adjudicating Authority has not ordered for confiscation of the raw materials despite there being a bond executed by the assessee. We find that the main plant of the Revenue's appeal is that the commissioner has erred in refraining from formally confiscating and imposing redemption fine on of goods. In our view, the revenue appeal is on diversion of imports and inasmuch as when the goods are not there for confiscation, the question of confiscation cannot arise. Reliance placed by the revenue on the judgment of the Supreme Court in the case of Western Components [2000 (115) E.L.T. 278 (S.C.)] is also misplaced in the facts of the case in hand. Adjudicating Authority has himself held that the respondent's assessee is liable to pay Central Excise duty on the goods manufactured out of the raw materials imported on which the revenue has foregone the Customs duty.

ii) GUNJAN EXPORTS 2013 (295) E.L.T. 733

5. I have considered the submissions and I find myself unable to appreciate the submissions. The Hon'ble Supreme Court had clearly held in the case of Weston Components Limited that when the goods are released provisionally on execution of bond, confiscation can be affected even if the goods are not available. The natural conclusion is that the goods should have been released on bond which would mean that the goods have been taken possession of by way of seizure and subsequently released on execution of bond. Admittedly that is not the situation in this case also. In this case, respondents themselves have diverted the goods and after diversion, proceedings have been initiated. There is no seizure of the diverted goods and release of the same provisionally on execution of bond. Therefore, the issue is covered by the decision of the Hon'ble Supreme Court and in the absence of release on the basis of execution of a bond, goods could not have been confiscated. The decision of the Larger Bench of the Tribunal relied upon by the learned Commissioner is also applicable since in this case also there is no bond with a security is available. The B-17 Bond is a general purpose bond undertaking to fulfil the conditions of notification and other requirements and does not help the Revenue to confiscate and other requirements and does not help the Revenue to confiscate the goods not available and impose the redemption fine in lieu of confiscation. Further, the confiscation always presumes availability of goods and presumption normally is that goods have been seized and thereafter the proceedings would culminate into confiscation or release. Confiscation would mean that seized goods become the property of the Government and the party to whom it is ordered to be released on payment of fine, will have to pay fine and redeem the goods. When the goods have been diverted and not released on execution of bond with conditions, the question of confiscation of the same does not arise since

goods have already become someone else's property. Under these circumstances, I find no merits in the appeal filed by the Revenue and accordingly, reject the same.

In view of above the decision of Hon'ble Supreme Court in the case of Weston Components Ltd., Vs. CC, New Delhi - 2000 (115) E.L.T 278 (S.C.) (supra) is not applicable to the instant case."

4.13 We also do not find any merits in confirmation of the demand against the shortages. Accordingly, we set aside the order to this extent. We also do not find much merit in the penalties imposed under Section 114A and 112 (b) (ii) of the Customs Act equivalent to amount of duty demanded. The penalty imposed under Section 112 (b) (ii) on appellant-II is upheld to the extent of Rs. 50,000/- under Section 117 of the Customs Act for various contraventions and not maintaining the proper records/stock register of saffron.

5.1 In the result-

- Appeal filed by appellant-I is allowed.
- Appeal filed by appellant-II is partly allowed to the extent of reducing penalty to Rs.50,000/-.

(Order pronounced in open court on-02 April, 2025)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)