IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

Sl. No.	Appeal Nos.	Appellant	Respondent	Impugned Order
1.	C/59922/2013-CU[DB]	M/s S.K. Enterprises	Commissioner of Customs, Central Excise & Service Tax Commissionerate, Ghaziabad	O-I-A No. 97-CUS/GZB/2013 dated 28.06.2013 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad
2.	C/51586/2014-CU[DB]	Commissioner of Customs, Central Excise & Service Tax Commissionerate, Ghaziabad	M/s Super Tyre	O-I-A No. GZB-EXCUS-000-APP-200-13-14 dated 31.12.2013 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad
3.	C/51588/2014-CU[DB]	Commissioner of Customs, Central Excise & Service Tax Commissionerate, Ghaziabad	M/s Surinder Tyres	O-I-A No. GZB-EXCUS-000-APP-191-13-14 dated 16.12.2013 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad

Appearance:

Written Submissions in Appeal Nos. C/59922/2013 & C/51586/2014 for Assessee
Shri Pawan Kumar Singh (Supdt.) AR for Revenue

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 22/05/2018
Date of Pronouncement : 21/06/2018

FINAL ORDER NOs. **71175-71177 / 2018**

Per: Anil G. Shakkarwar

Above stated three appeals are taken together for final disposal since the issue involved therein is with respect to import of "Old and Used Tyres".

Appeal No. C/59922/2013-CU[DB]

2. Brief facts of the case are that M/s S.K. Enterprises, imported ‘Old and Used Tyres’ of different sizes and filed Bill of Entry No.9258109 dated 08.02.2013. It appeared to Revenue on examination of the goods by independent Chartered Engineer that the tyres were in re-usable condition and also that declared CIF value of Rs.36,98,449.62/- needed upward revision. Therefore, through Order-in-Original dated 08.03.2013 Original Authority enhanced the CIF value of said goods to Rs.46,16,405/- under Rule 9 of Customs Valuation (Determination of value of imported goods), Rules, 2007 issued under Section 14 of Customs Act, 1962. Further it was held that the old and used tyres could be imported only against specific import license and that the importer did not submit any such license and, therefore, the imported goods were confiscated under Sections 111(d) and 111(m) of Customs Act, 1962 and were allowed to be redeemed on payment of redemption fine of Rs.9 lakhs. Further under Section 112(a) of the Customs Act, 1962 penalty of Rs.7 lakhs was imposed on the importer-appellant. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) did not interfere with the said Order-in-Original through impugned Order-in-Appeal dated 28.06.2013. Aggrieved by the said Order-in-Appeal appellant is before this Tribunal.

3. Appellant submitted written submissions. Through written submissions dated 27.03.2017 appellant submitted that redemption fine and penalty on imported old and used tyres has been decided by this Tribunal vide Final Order No. A/50121–SM dated 29.01.2016 in the case of M/s D.S Tyres, Chandigarh. Further through the said final order in similar circumstances redemption fine of 15% on the declared value was imposed. He further submitted that Hon'ble Allahabad High Court in Customs Appeal No.278 of 2015 in the case of Commissioner of Customs, Noida vs. M/s Jibran Overseas through its order dated 20.12.2016 upheld confiscation under similar circumstances and redemption fine and penalty were reduced to 15% and 10% respectively of re-determined value.

4. Heard the learned AR who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of record, we find that under similar circumstances this Tribunal had imposed redemption fine of 15% and penalty 10% of the re-determined value and said order was not interfered with by the Hon'ble High Court of Allahabad in Customs Appeal No.278 of 2015. Following the precedent ruling in the present case also we modify the impugned order by reducing the redemption fine from Rs.9 lakhs to 15% of re-determined value i.e., Rs.46,16,405/- and reduce penalty from Rs.7 lakhs to Rs.4,61,641/-. The impugned order stands

modify to the above effect. In above terms the appeal is allowed without interference in re-determined assessable value and rate of duty.

Appeal Nos. C/51586 & 51588/2014-CU[DB]

6. Above stated two appeals are filed by Revenue aggrieved by impugned Orders-in-Appeal.

7. Brief facts in both the appeals are that the respondents imported 'Old and Used Tyres' of various sizes and filed Bills of Entry. It appeared to Revenue that said goods required specific importer license. However, such license was not produced by the respondent. The goods were subjected to 100 examinations and on the basis of Chartered Engineer report assessable values were enhanced. Further the goods were confiscated under Section 111(d) and 111(m) of Customs Act, 1962. Redemption fine and penalties were imposed. Learned Commissioner (Appeals) on appeal being filed by Revenue did not interfere with the orders passed by Original Authorities. Aggrieved by the said rejection of their appeals before Commissioner (Appeals) present appeals have been filed before this Tribunal.

8. The grounds of appeal in both the appeals are the importation of impugned goods was restricted since the same were falling under the category of hazardous waste.

9. Respondent Super Tyre submitted written submissions dated 28.12.2016. Through the said written submissions they submitted that the issue of old and used tyres has been decided as per judgment 2015 (329) ELT 489 and it has been held that Ministry of Environment permission is not required for importation of the same.

10. Heard the learned AR who has submitted above stated grounds of appeal of Revenue.

11. Having considered the submissions from both the sides and on perusal of ruling by Hon'ble Allahabad High Court in the case of M/s Jibran Overseas in Customs Appeal No.278 of 2015, it was clear that the Hon'ble High Court through its order dated 20.12.2016 very clearly held that the Tribunal's finding that the imported old and used tyres which are capable of being used was not hit by the mischief of hazardous waste and would not be defined as hazardous waste and, therefore, their importer did not require the permission of MOEF. Relying on the said ruling we hold that the ground raised by Revenue is not sustainable. Therefore, we dismiss both the appeals filed by Revenue.

(Pronounced in Court on 21/06/2018)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
Anil G. Shakkarwar)
Member (Technical)

Ankit