

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20930 of 2016

(Arising out of Order-in-Original No.COC-CUSTM-000-COM-01-16-17
dated 05.04.2016 passed by the Commissioner of Customs, Cochin.)

Specta Decor Pvt. Limited

KINFRA Small Industries Park (K-AIP)
X/588, C2, Nella P.O., Muvattupuzha,
Ernakulam – 686 721.

Appellant(s)

VERSUS

The Commissioner of Customs

Custom House,
Wellington Island,
Cochin – 682 009.

Respondent(s)

APPEARANCE:

Shri Raghunatha Karnavar, Advocate for the Appellant

Shri K. Vishwanatha, Authorised Representative for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20297 /2024

DATE OF HEARING: 10.04.2024

DATE OF DECISION: 10.04.2024

PER : R. BHAGYA DEVI

The appellant filed a Bill of Entry dated 11.03.2016 for clearance of 530 MT of hot dipped galvanized steel coils of varying sizes with values ranging between USD515-540/MT. The DGFT introduced minimum import price for iron and steel goods classifiable under chapter 72 of ITC (HS) and as per serial No.121 of the annexure to the said notification, the minimum import price for goods classifiable under CTH 72104900 is USD 643/MT. The Bill of Lading No.955520430 with regard to the above bill of entry indicated that the goods under import were

shipped on board the vessel on 08.02.2016. The said imports were also not covered by a letter of credit entered into before the date of issue of notification, the consignment will not fall under the category of the goods exempted from the scope of the said notification. Accordingly, the Commissioner held that the goods were liable for confiscation under Section 111(d) of the customs Act 1962 read with Section 3(3) of the FTDR Act 1992. The goods were allowed to be redeemed on payment of fine of Rs.15,00,000/-.

2. The Learned counsel submits that the appellants had placed orders with the supplier in December 2015 against the proforma Invoice dated 22.12.2015 by making advance payment of USD 34731.11 on 29.12.2015 and USD 18468.89 on 15.01.2016 total USD 53200 was made to the supplier. The final commercial invoice/packing list is dated 26.01.2016 while the certificate of origin is dated 27.01.2016 and the transit insurance policy is dated 01.02.2016. The containers in which the consignments arrive were taken for stuffing by the supplier on 27.01.2016 and were brought to the loading port terminal on 05.02.2016. However, due to non-availability of vessel on said day the containers could be loaded only on 08.02.2016. He submits that from the sequence of the events, it can be seen that the appellant had completed all the formalities on their part prior to the issuance of the notification by the DGFT and only on account of non-availability of vessel which is beyond their control led to the delay of the consignment. It is further submitted that the Commissioner acknowledged these mitigating circumstances which were beyond the control of the appellant and refrained from imposing any penalty on the appellant. Since the contract for the purchase and payment were effected much before the issuance of notification and since the notification exempts import consignment under letter of credit a lenient view needs to be taken. It is also submitted that they are an 100% EOU unit which is eligible to import raw materials duty free and also imports under advance authorization are exempted from the

purview of notification 38/2015-2020 dated 05.02.2016. Hence, considering these factors the redemption fine requires to be set aside. The Counsel also submits that the notification is not issued under Section 3(2) of the FTDR Act as claimed by the Commissioner in the impugned order and therefore, it is not applicable in the present case.

3. The AR reiterating the findings of the learned Commissioner submits that since the goods are liable for confiscation the redemption fine imposed on them is justified. He also relies on Trade Notice No.17/2016 dated 10.02.2016 issued by the Director General of Foreign Trade (DGFT), Ministry of Commerce and Industry with regard to questions raised on the Notification 38/2016 clarified as below:

Question3: Whether it is possible to import items covered under Notification No.38 (2015-2020) having a unit CIF import price below the MIP by paying custom duty on the MIP unit value specified in the Notification?

Answer: No. It is not possible to import items covered under Notification No.38 (2015-2020) whose unit CIF import price is below the stipulated MIP by paying custom duty on the MIP specified in the Notification. The imported items must have a unit CIF value equal to or above the MIP.

3.1 He also relied on the decision of the Tribunal in the case of **Siemens Gamesha Renewable Power Pvt. Ltd. Vs. Commissioner of Customs (Mundra), 2019 (365) E.L.T 631 (Tri-Ahmd.)**

"As regard the redemption fine and penalty imposed by the lower authorities, we are of the view that there is indeed violation of Foreign Trade Policy that despite the minimum import price fixed by the DGFT, the appellant have imported the goods which is carrying the value below minimum import price, therefore, they have violated the condition, however, this violation does not

result into any Revenue loss to the Government or any undue gain to the appellants. Therefore, looking to the gravity of offence and considering the setting aside the enhancement of value, we are of the view that lower authority have imposed the redemption fine and penalty disproportionately. Accordingly we reduce the redemption fine and penalty”

3.2 The AR based on the above decision submits that the redemption fine imposed by the Commissioner needs to be upheld and appeal filed by the to be dismissed.

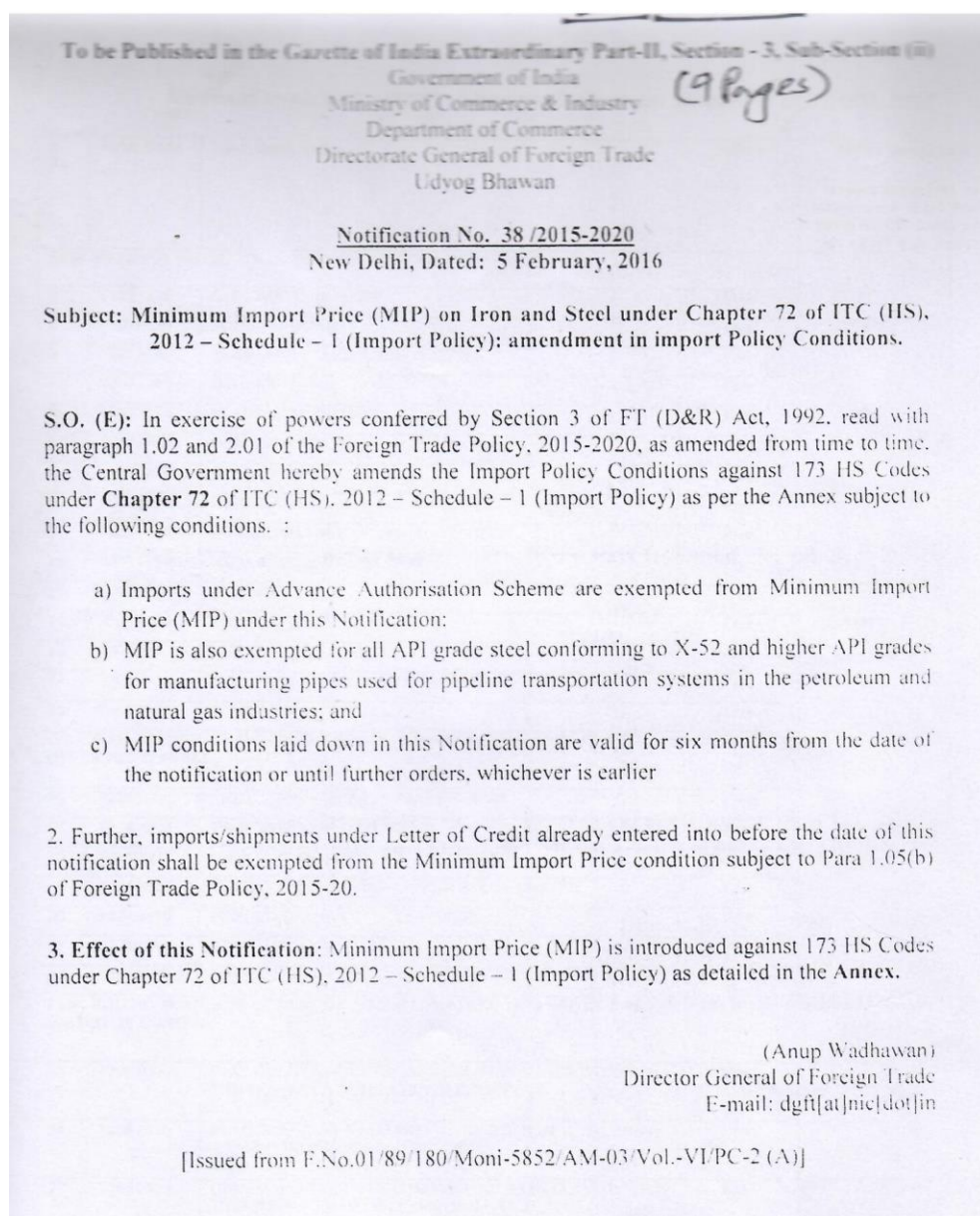
4. Heard both sides. The appellant admits to the fact that Section 3 of the FTDR Act, under which the notification 38/2015-20 is issued provides the Central Government powers Under Section 3 of the FTDR Act, to issue orders to regulate imports as well as exports. Section 3 is reproduced below:

Power of Central Government to make Orders and Announce Export and Import Policy

The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly,



4.1 As per the Section 3 reproduced above, the DGFT is empowered to impose restrictions for import and accordingly the minimum import price imposed by the DGFT vide the above notification is also justified. The notification 38/2015-20 is issued under Section 3 of the FTDR Act, and therefore, the appellant cannot read into it that it has not been issued under sub- clause (2) of Section 3. Moreover, the Trade Notice referred by the Revenue which was issued by DGFT categorically states that the imported items must have a unit CIF value equal to or above the MIP. As per para 2 of the notification letter of credit is also essential to claim the exemption. The appellant admits that on the date of import the notification was applicable and the letter

of credit was also not available to claim the exemption and his only plea is that considering the unusual circumstances under which the import happened the goods are not liable for confiscation. The Customs is legally bound by the notifications issued by the DGFT and therefore, the notification which is applicable on the date of import cannot be ignored as has been held by the Hon'ble High Court of Madras in the case of **Salmag Enterprises Versus Addl. Commr. of Cus. (Adj), Tuticorin 2021 (378) E.L.T. 127 (Mad.)** dated on 8-3-2021 where the Hon'ble High Court observed as follows:

"10. The question that arises for my consideration is how this verification exercise ought to have been carried out in the case on hand. The petitioner's contention is that the goods are freely importable. The stand of the customs authority is that they are restricted items. The issue turns on an interpretation of the policy notification issued by the Director General of Foreign Trade. The customs authority on its own ought not to have interpreted as to whether the goods in question can be called as restricted items. The respondent ought to have sought a clarification directly from the concerned authority in DGFT. In the alternative, the respondent could have mandated the petitioner to move the competent authority under Foreign Trade (Development and Regulation) Act, 1992 and obtain a clarification. Instead of doing so, the respondent applied his own understanding of the policy notification. What the respondent has done is not in accordance with Section 17 of the Customs Act."

4.2 The Tribunal in identical set of facts in the case of **Gamesha Renewable Power Pvt. Ltd. Vs. Commissioner of Customs** (supra) as submitted by the Revenue, held that the Commissioner was justified in imposing redemption fine.

5. In view of the above, we do not find any merit in the Appeal. However, taking into consideration the unforeseen

circumstances as explained above by the appellant, we are of the view that it is fair to reduce the redemption fine to Rs.8,00,000/- (Rupees Eight Lakhs Only). Appeals are partially allowed.

(Operative portion of the order was pronounced
in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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