CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2

Customs Appeal No. 21363 of 2015

[Arising out of the Order-in-Appeal No. COC-CUSTM-000-APP-420-14-15-DT-06.01.2015 dated 19.02.2015 passed by the Commissioner of Customs (Appeals), Cochin-9.]

Commissioner of Customs,
Cochin
Custom House,
Kerala - 682009 **.......Appellant**

VERSUS

Bafina Enterprises
7/179, Darusalam Road
Kochi, Kerala - **682009** **.... ..... Respondent**

Appearance:

Mr. K.A.Jathin, Authorized Representative for Appellant
Mr. Balagopal, Advocate for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon’ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20823 of 2024

Date of Hearing: 06.03.2024
Date of Decision: 05.09.2024

Per: P.A. Augustian

The issue in the present appeal is whether the duty demanded from the Respondent can be sustained, if the identity of the goods re-exported after re-import could not be identified based on evidence of re-processing of the goods as per Central Excise Rules or re-processed under Customs control under Section 65 of the Customs Act, 1962 as mandated under Notification No. 158/1995-Cus dated 14.11.1995.

2. The brief facts are the Respondent herein had exported 'Ground Chilli' and 'Crushed chilli' vide Shipping Bills dated 03.09.2011 and 05.12.2011. The Foreign buyer rejected the goods, and it was re-imported and released on executing bond under Notification No. 158/1995-Cus dated 14.11.95 for re-export after re-processing. On successful re-export, Respondent produced Shipping Bills dated 21.07.2012, 25.07.2012, 23.07.2012 and claimed that they had re-exported the goods and fulfilled the re-export obligation. Respondent further submitted that they have not registered with Central Excise and due to that reason, they could not produce evidence of re-export certified by the officer of Central Excise. However, considering the same omission as violation of provisions of Notification, customs duty of Rs.17,00,140/- was confirmed by the Adjudication authority. Aggrieved by said order, an appeal was filed and Commissioner (Appeals) after considering the issue in detail held that documents produced by the Respondent, declaration in the shipping bills, examination report of the proper officer, non-availing of draw back on re-exported goods…etc., are provided as corroborative evidence to substantiate the re-export of re-imported goods, unambiguously and based on that, the appeal was allowed. Aggrieved by the said order, present appeal is filed by department-appellant.

3. When the appeal came up for hearing, the Learned Authorised Representative (AR) submitted that the Respondent has failed to comply with the conditions of the Bond executed at the time of re-import, there is no admissible evidence to presume that the goods re-imported were re-processed under the control of Central Excise officers or Customs to confirm it's identity. Due to their failure to

comply with the above provision, they are liable to pay customs duty as confirmed by Adjudication authority. Learned AR also reiterated the relevant conditions of Notification No. 158/1995-Cus dated 14.11.1995.

4. The Learned Counsel appearing for Respondent submits that the Respondent had re-exported the goods vide shipping bills referred above. At the time of re-import, proper officer of the Customs has identified the goods as that of the ones originally exported. After satisfying with the identity of the goods, same was permitted to clear without payment of duty on execution of Bond and Bank Guarantee as the per terms of Notification No.158/1995-Cus, when they could not fulfill the re-export within the initial period of 6(six) months due to some unexpected issues, they sought extension of Bond and re-export period, and the same was extended by the Appellant till 24.05.2013. It is further submitted that the Respondent had specifically declared in the re-exported shipping bill that the goods re-exported were re-imported vide the concerned Bills of Entry and no objection, whatsoever was raised by the AC/DC at the time of re-export of the goods with respect to the identity of the same, to satisfy that the Respondent had re-processed the re-imported goods and re-exported the same, a certificate issued by statutory Auditor to that effect was also produced before the original authority. However original authority has not considered the same.

5. The Learned Counsel further submits that the goods were re-exported under Duty Drawback shipping bills for which specific examination norms were notified by CBIC. Therefore, it has to be legally presumed that while re-exporting the goods, shipping bills were subject to examination as per the norms by the proper officer of Customs,

Learned Counsel in support relied on the decision of the **Hon'ble High Court of Calcutta in the matter of M/s IEM Impex Pvt Ltd Vs. CC (Port, Kolkata (2008 (224) E.L.T 71,** where it is held that:-

"5. *After hearing both sides and perusal of case records, we are of the view that since at the time of importation, considering the peculiar circumstances of this case, the Departmental Authorities were satisfied that the imported goods despite no marks and numbers inscribed on it were identical to the goods earlier exported, had the Appellants declared the fact of re-export against the earlier import at the time of filing the shipping bill for the subsequent export, it is reasonable to presume that the Departmental Authorities would have come to the same conclusion regarding identity of the goods as they had come to at the time of initial import. Moreover, since the 2250 pieces have been exported under the DEPB scheme, it can be safely presumed, that at least description of the goods in question have been properly examined and on that basis it is possible to conclude that the Appellants have satisfied the condition under Notification No. 158/95. In any case, as argued by the ld. Sr. Advocate, the Appellants are independently entitled to exemption from duty under Notification No. 94/96 as held by the cited decisions of the Tribunal since they had not availed of any duty drawback, DEPB benefit etc. in view of entry at Sl. No. 3 of the said Notification. Therefore, even if, identity of the goods is held to be not established on account of the Appellants not intimating the Department regarding re-export, no duty would be chargeable in view of Notification No. 94/96. As such, on both counts, the case of the Appellants requires, to be* *viewed leniently and the duty demand confirmed under the impugned order requires to be set aside. We order accordingly and allow the appeal."*

6. The Learned Counsel also relied on the decision of the Tribunal in the matter of **M/s Shasun Chemicals & Drugs Vs. CCE, Pondicherry - 2006 (200) E.L.T 419 (Tri.-Chennai).** The Learned Counsel further submitted that even, if it is assumed that the Respondent had failed to comply with the provisions, as per the exemption Notification No. 94/1996 dated 16.02.1996, Respondent is eligible to re-import the goods, which are originally exported from India. Thus, Respondent is eligible for exemption from import duties. The Learned Counsel also relied on the decision of the Tribunal in the matter of **M/s Natural Remedies Vs. CC, Bangalore - 2007 (209) E.L.T 383 (Tri.Bang), M/s Universal Exports Vs CC, Chennai - 2010 (249) E.L.T 363 (Tri. Chennai), M/s IE Impex Pvt Ltd Vs. CCE, Kolkata - 2008 (224) E.L.T 71 (Tri.Cal), M/s Shashoo Chemicals & Drugs Vs. CCE, Pondicherry - 2006 (200) E.L.T 419 (Tri. Chennai).**

7. Heard both sides perused the records.

8. We find that the Appellate authority considered the evidence on record and has given a categorical finding that documents produced by the Respondent, declaration in the shipping bills, examination report of the proper officer, non-availing of drawback on re-export of the goods…etc., provide corroborative evidence to conclude that the re-exported goods are the same as re-imported goods. Further, the department-appellant has not produced any evidence to rebut the finding of the Appellate authority. Further, following the judgment of

the Hon'ble High Court of Kolkata in the matter of **M/s IE Impex (Supra),** held that, "the Departmental Authorities were satisfied that the imported goods despite no marks and numbers inscribed on it were identical to the goods earlier exported, had the respondents declared the fact of re-export against the earlier import at the time of filing the shipping bill for the subsequent re-export, it is reasonable to presume that the Departmental Authorities would have come to the same conclusion regarding identity of the goods as they had come to at the time of initial import"*.* Moreover, Respondent is independently entitled for exemption from import duties on re-import under Notification No. 94/1996-Cus dated 16.02.1996 subject to the conditions therein.

9. In the facts and circumstances and following the ratio of decisions of the Tribunal in similar circumstances, we find that no duty can be demanded from the Respondent, since they have made proper declarations regarding the export, re-import and further re-export of the goods, hence we find that the appeal is not sustainable.

10. Accordingly, the appeal filed by the department-appellant is dismissed.

(Order pronounced in open court on 05.09.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar