CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20480 of 2023

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-23/2022-23 dated 13.03.2023 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Afra Traders
(Proprietor Sri C Abdul Latheef)
Galaxy Hostel Building,
Muzhathadam, Thana,
Kannur – 670 012.

Appellant(s)

VERSUS

The Commissioner of Customs,
Custom House, Wellingdon Island,
Cochin – 682 009.

Respondent(s)

APPEARANCE:

Mr. M.P. Nazir, Advocate for the Appellant

Mr. Rajesh Shastry, Superintendent (AR) for the Respondent

CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20350 / 2025

DATE OF HEARING: 14.03.2025
DATE OF DECISION: 14.03.2025

PER : R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Afra Traders against Order-in-Appeal No. COC-CUSTM-000-APP-23/2022-23 dated 13.03.2023 passed by the Commissioner of Customs (Appeals), Cochin only for setting aside the redemption fine.

2. Briefly the facts are that the appellant M/s. Afra Traders imported 24 MTs of ‘Wet dates’ claiming duty exemption under Sl.No.29 to the Notification No. 050/2017-Customs. However, when

the goods were tested, they did not satisfy the conditions governed by the Food Safety and Standard Authority of India (FSSAI) formerly the NOC was denied by the FSSAI. The appellant requested for re-export of the goods and the same was allowed by the original authority by imposing redemption fine of Rs.2,00,000/- under Section 125 of the Customs Act, 1962 and imposed penalty of Rs.50,000/- under Section 112(a) *ibid*. On an appeal before the Commissioner (Appeals), who reduced the redemption fine to Rs.1,00,000/- and penalty to Rs.25,000/-. Aggrieved by this order, appellant is in appeal before me only on the ground that since the goods only after testing were found to be not as per the standards of the FSSAI, the same could not be cleared for home consumption; accordingly, they have requested for re-export. He also placed a copy of the decision of this Tribunal rendered in the case of **Nitta Gelatin India Limited Vs. Commissioner of Customs vide Final Order No. 21234/2024 dated 05.11.2024** where in a similar facts and circumstances, redemption fine and penalty was set aside. Accordingly, he requested for setting aside the impugned order imposing redemption fine.

3. The learned Authorised Representative (AR) representing the Revenue submits that since the goods were bought in violation of the FSSAI standards; therefore, imposition of redemption fine is to be sustained.

4. Heard both sides. We find that, the issue is no longer *res integra* in as much as in large number of decisions, it has been held that when goods are tested and found to be not as per the standards of the importing permission and since the goods are allowed to be re-exported, the question of redemption fine and penalty does not arise. This Tribunal in the case of **Nitta Gelatin India Limited** (supra), in a similar circumstances, has set aside the redemption fine and penalty. The relevant paragraph is reproduced herein below:

> "7. However, in the present case, the products imported are perishable and have to meet the standards specified by the Animal Quarantine Authority. The order of the original authority clearly held that the Animal Quarantine authority vide letter dated 05.01.2023 on testing the consignment was found to be positive for OIE pathogen, hence, could not be released. It is a fact that at the time of import, the appellant had produced Veterinary Health Certificate from the country of import, which stated that the product is free from all relevant OIE listed pathogens for fin fishes. It is only after testing, it was found that the product is not fit for consumption and hence, the Animal Quarantine Authority rejected the consignment. As rightly claimed by the appellant, since the import was based on the correct specifications, they could not be found fault with and the question of fine and penalty did not arise. The Board Circular No.100/2003-Cus dated 28.11.2003 (reproduced below) clearly states that depending upon the facts and circumstances of the case, the Commissioner has the discretion to impose redemption fine and penalty, thus, implying that it is not necessary that in all cases redemption fine and penalties needs to be imposed. Especially in those cases, where the appellant is forced to reexport when the goods imported are found to be not as per their specifications."

5. In view of the above, the impugned order is set aside only to the extent of redemption fine.

Appeal is disposed of.

(Order dictated and pronounced in Open Court.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

GB/RV