CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE
Regional Bench COURT-2
Customs Appeal No. 20219 of 2018

[Arising out of the Order-in-Original No. COC-CUSTOMS-000-COM-31/17-18 dated 01.01.2018 passed by the Commissioner of Customs, Cochin.]

M/s. Tenny Jose and Associates, Ltd.
Building No. VI/412A, Chembukkava,
Thrissur, Kerala – 680020 **.....Appellant**

VERSUS

Commissioner of Customs
Customs House
Cochin, Kerala – 682009 **.... Respondent**

Appearance:
Mr. Nagaraj. N, Advocate Appeared for Appellant
Mr. Rajesh Shastry, Authorized Representative for Respondent

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

<u>Final Order No. 21707 Of 2024</u>

Date of Hearing: 30.09.2024
Date of Decision: 30.09.2024

Per: Pullela Nageswara Rao

M/s. Tenny Jose Limited, the appellant is an importer of Art board, Art paper, Hollow sections, Copier papers, etc.

2. The brief facts are Customs, Cochin issued a Show Cause Notice (SCN) to the appellant alleging availment of ineligible SAD exemption under Notification No. 21/2012-Cus dated 17.03.2012 on the imports of 'Art Paper' and 'Art Board' and therefore violated the provisions of Customs Act, 1962. On adjudication the Adjudicating Authority confirmed the differential duty demand of Rs. 66,15,501/- along with interest and imposed redemption fine and penalties. Aggrieved

by the impugned order the appeal was filed before this Tribunal.

3. Learned Counsel for the appellant during the hearing submits that a petition was filed by M/s. Korea Trade Insurance Corporation, the Operational Creditor (OC) against M/s. Tenny Jose Limited, the Corporate Debtor (CD) under the Corporate Insolvency Resolution Process (CIRP) under Section 9 of Insolvency and Bankruptcy Code (IBC), 2016 with effect from 21.12.2021 and a Resolution Professional (RP) was appointed on 23.04.2022. Since, the Resolution Professional (RP) has not provided any prospective Resolution plan despite the CIRP having been extended twice, the Stakeholders Consultation Committee (SCC) with 98.33% of the vote decided to file the application for liquidation of the Corporate Debtor. Thereafter on 16.12.2022 liquidation application was allowed by NCLT, Kochi and NCLT has appointed Resolution Professional as Liquidator. The learned counsel submitted the copy of the Hon'ble NCLT order dated 31.10.2023 wherein it is ordered, "The Corporate Debtor stands Dissolved from the date of this order."

4. The learned Authorized Representative (AR) for the Revenue submits that in view of the appointment of Resolution Professional as a liquidator by the Hon'ble NCLT, as per the provisions of Rule 22 of CESTAT (Procedure) Rules, 1982, the appeal filed by the appellant abates in the absence of any application made by the liquidator for continuance of the proceedings before CESTAT.

5. Heard both sides and perused the records.

6. In this regard for the purpose of dissolution of a Corporate Debtor, Section 54 of the Insolvency and Bankruptcy Code (IBC), 2016 reads as under:-

> *"54. (1) Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor.*
>
> *(2) The Adjudicating Authority shall on application filed by the liquidator under subsection (1) order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.*
>
> *(3) A copy of an order under sub-section (2) shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered."*

7. The National Company Law Tribunal (NCLT) Kochi Bench has taken the following decision dated 31.10.2023 on the application filed by the Resolution Professional (RP).

> *"17. As a consequence, in view of above, it is hereby declared that not only it is just and equitable but because of the fact that no asset is available for the purpose of 'Liquidation' as reported by Learned Liquidator, this is a fit case of a Corporate Debtor to be dissolved as prescribed under Section 54 of The Insolvency and Bankruptcy Code, 2016. Ordered accordingly.* ***The Corporate Debtor stands 'Dissolved' from the date of this Order."***
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> *18. In order to arrive at a decision in the matter, it is profitable to* quote the Resolution 2 of the fifth SCC meeting as under: -

Resolution 2: Procedure to continue with avoidance cases pending before the NCLAT and any future litigation and distribution thereof.

"Resolved to constitute a committee named PUFE committee consisting of representatives from State Bank of India Mr. Ulaganathan-AGM and authorised officer and from South Indian Bank Mr. Ajay Kumar-Chief Manager and Mr. Jossy Varghese-Senior Manager, who shall be responsible to pursue the PUFE litigation and finally to distribute the proceeds as per Section 53 of the IBC Code."

19. In view of the detailed discussion above, we direct the designated managers of the South Indian Bank and State Bank of India to pursue the PUFE transactions and distribute the receipts as per Section 53 of the IBC, 2016.

8. We find that as per the order of the Hon'ble NCLT the Corporate Debtor stands dissolved from 31.10.2023. Further it was ordered that the designated Managers of South India Bank and State Bank of India to pursue the Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions.

9. In this regard the relevant provision under the CESTAT (Procedure) Rules, 1982 prescribed at Rule 22, reads as under:

"RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. —

Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent ***or in the case of a company, is being wound up****, the appeal or application* ***shall abate****, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor,*

> *administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be: Provided that every such application shall be made within a period of sixty days of the occurrence of the event: Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit."*
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> *(emphasis supplied)*

10. We find that in this case Hon'ble NCLT has ordered for Dissolution of the company and has appointed the Resolution Professional as Liquidator. As per Rule 22 of CESTAT (Procedure) Rules, 1982, in case where a company is being wound up the proceedings before CESTAT abate in the absence of any application filed by the Liquidator for continuance of the proceedings. We find that no application was filed by the Liquidator for continuance of the proceedings. Therefore, we find that the appeal filed before this Tribunal abates.

11. In view of our discussion above, the appeal filed by the appellant is disposed of accordingly.

(Order dictated and Pronounced in Open court)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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