CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.20641 of 2022

(Arising out of Order-in-Appeal No.1640/2022 dated 12.08.2022 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Advanced Forming Technology Centre,
#8B, Siddhi Vinayaka,
2nd Phase, Outer Ring Road,
2nd Block,Nagarabhavi,
Bengaluru - 560 072.

Appellant(s)

VERSUS

Commissioner of Customs, Bangalore Customs,
C.R. Building, Queens Road,
P.B. No.5400,
Bangalore-560 001.

Respondent(s)

WITH

Customs Appeal No.20642 of 2022

(Arising out of Order-in-Appeal No. 1639/2022 dated 12.08.2022 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Step Electronics Pvt. Ltd.,
No.8B, Siddhi Vinayaka,
2nd Phase, Outer Ring Road,
2nd Block, Nagarabhavi,
Bengaluru - 560 072.

Appellant(s)

VERSUS

Commissioner of Customs, Bangalore Customs,
C.R. Building, Queens Road,
P.B. No.5400,
Bangalore-560 001.

Respondent(s)

APPEARANCE:

Mr. M.S. Nagaraja, Advocate for the Appellant.

Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent.

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

Final Order No. 20649 - 20650 / 2026

DATE OF HEARING: 07.04.2026
DATE OF DECISION: 07.04.2026

PER : R. BHAGYA DEVI

These two appeals have been filed by the appellants M/s. Advance Forming Technology Centre and M/s. Step Electronics Pvt. Ltd. against Order-in-Appeal No. 1639/2022 & 1640/2022 dated 12.08.2022 passed by the Commissioner of Customs (Appeals), Bangalore. Since the issues are common in both the appeals, the same are disposed of by common order.

2. In both the appeals, the facts are that the appellants M/s. Advance Forming Technology Centre, Bangalore and M/s. Step Electronics Pvt. Ltd. had imported various electronic items vide various Bills of Entry No.144756 and 144658 dated 27.04.2006, Bills of Entry No.116936, 116934 dated 20.03.2006; No.116927 dated 07.07.2005; and No.145888 dated 28.04.2006 which were warehoused under respective warehouse bonds. The permissible warehousing for the bonds expired on 07.05.2007 and the appellants had failed to clear the warehoused goods before the stipulated date. Hence, a show-cause notice was issued to the appellants demanding customs duty under Section 72(1) read with Section 124 of the Customs Act, 1962 along with applicable interest invoking provisions for confiscation and imposition of penalty. The original authority confirmed the duty amount and imposed penalty along with the redemption fine under Section 125 of the Customs Act, 1962, which was upheld by the Commissioner (Appeals) in the impugned order.

3. The Learned Counsel appearing on behalf of both the appellants submits that the imported goods were warehoused for further use; however, due change in technology, they could not use the said goods; hence, they failed to clear it for home consumption. On the receipt of the show-cause notice dated 25.06.2021, the appellants submitted a letter dated 21.01.2022 stating that they had unconditionally relinquished the title to the subject goods deposited in the customs warehouse in terms of Section 23 read with Section 68 of the Customs Act, 1962. It is his submission that they had informed the department for considering their request to dispose of the goods vested in the government and drop further proceedings. It is his submission that the Commissioner (Appeals) has not recorded any findings

on the request made by the appellant. He further submits that on similar facts, the Commissioner (Appeals) had allowed the appeal filed by M/s. Tulsyan NEC Ltd., Bangalore; hence, the impugned order disallowing the same benefit to the present appellants cannot be sustained. He also submits that Section 23 read with Section 68 of the Customs Act, 1962 allows the importer to relinquish the title to the goods at any time before an order for clearance of goods for home consumption is made. In the present case, having relinquished the title of the goods, there is no offence committed by the appellants nor there can be any duty liable to be paid since the goods were not cleared for home consumption. Referring to the decision of the Hon'ble High Court of Karnataka in the case of **CC, Bangalore vs. Symphony Services Corporation India Pvt. Ltd.: 2012 (275) ELT 369 (Kar.)** and the decision of the Hon'ble High Court of Rajasthan in the case of **JK Cement Works vs. CCE & C Jaipur: 2008 (223) ELT 138 (Raj)** submits that the impugned order needs to be set aside.

4. The Authorised Representative (AR) for the Revenue has reiterated findings of the Commissioner (Appeals) in the impugned order.

5. Heard both sides. Let's examine Section 68, which reads this follows.

> "Section 68 Clearance of warehoused goods for home consumption. - [Any warehoused goods may be cleared from the warehouse] for home consumption, if—
>
> (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
>
> (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and]
>
> (c) an order for clearance of such goods for home consumption has been made by the proper officer:
>
> [Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that) the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of [***] penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon:]

[Provided also that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]

5.1 As seen from the above provisions, if the owner of warehoused goods relinquishes his title over the goods, then the question of payment of customs duty does not arise except in those cases where an offence case has been raised against the owner. In the present case, since the appellant has relinquished their title to the goods, the question of paying duty does not arise since we do not find any offence being committed by the appellants under the Customs Act, 1962. The Circular No.42/2003 dated 20th May 2003 also clarifies that the owner of any warehoused goods can at any time before order for clearance of goods for home consumption, can relinquish the title and thereafter, there is no liability on him to pay the duty on the warehoused goods. The Circular No.42/2003 dated 20th May 2003 is extracted below:

<u>Circular: 42/2003-Cus. dated 20-May-2003</u>

Warehoused goods - Liability to interest-Clarifications Circular No. 42/2003-Cus., dated 20-5-2003

F. No. 332/3/2003-TRU

Government of India.
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Clarification regarding the scope of amendment made to Section 88 of the Customs Act, 1962 made in the Finance Bill, 2003-reg.

It may be recalled that Section 68 of the Customs Act, was amended in Budget 2003, to incorporate the following proviso,-

"Provided that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, Interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon." (emphasis supplied).

2. While it is clear that upon relinquishment of the title of the goods, the importer gains a freedom from liability to pay duty thereon, there appears to be some confusion in the field, whether such freedom also extends to the 'Interest accrued on the said duty till the date of such relinquishment. The confusion appears to have generated from the word "Interest' appearing in the text of the proviso.

3. In this regard it is clarified that the word 'interest' appearing in the said proviso, does not relate to interest accrued on the said duty till the date of such relinquishment but relates to interest on other dues such as warehouse charges, rent etc.

4. The trade and field formations may be informed suitably.

5. This issues with the approval of the Member (Customs) (CBEC).

5.2 The fact that the appellants had relinquished the title of the goods after the issue of the notice does not make him ineligible for the benefit of the provisions of Section 68 of the Customs Act, 1962. The Hon'ble High Court of Karnataka in the case of **JK Cement Works vs. CCE & C, Jaipur** (supra) in a similar set of facts has held as follows:

"28. We have already noticed that the proviso to Section 68 was inserted w.e.f. 14-5-2003 and was not part of statute book earlier thereto. While there can be no doubt about it that proviso is prospective in operation and cannot relate to earlier transactions of clearance of imported goods for home consumption prior to the date of insertion of proviso but it does operate on the facts which have already come into questions before the insertion of the proviso. The proviso on its plain terms makes it clear that where the goods are stored in warehouse and no order for its removal for home consumption has been made by the proper officer and before any such order of removal is made, the owner of the goods has option to relinquish the title to the goods in favour of the revenue upon payment of rent, interest and other charges and penalty that may be payable in respect of goods and on such relinquishment having been made, he is not liable to pay duty thereon.

29. Apparently, while Section 72(l)(b) enables the proper officer to charge duty on warehoused goods which have remained beyond the permissible period for which they were permitted to remain in warehouse, Section 68 gives an option to the owner of such goods to relinquish his title to such goods before order for clearance of such goods for home consumption has been made by the proper officer.

42. ------------ the goods having remained in the warehouse the option of relinquishment being with the owner of the imported goods, acceptance of which was not subject to discretion of proper officer, but only subject to fulfilment of condition, which in the present case having been fulfilled, the importer must be deemed to have absolved himself from the liability to pay duty and the goods must be deemed to be vested in the Revenue free from all encumbrances on such relinquishment."

6. In view of the above, we do not find any merit in the impugned orders; hence, the same are set aside.

Appeals are allowed.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv