

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Application(s) Involved:

C/MISC/20546/2018 in C/21052/2014-DB

Appeal(s) Involved:

C/21052/2014-DB

[Arising out of Order-in-Original No. COC-CUSTOM-000-COM-066-12-13 dated 20/01/2014 passed by Commissioner of CUSTOMS , COCHIN]

Focus Energy Ltd

2nd Floor, Gopala Tower, 25,
RAJENDRA PLACE,
NEW DELHI
110088

Appellant(s)

Versus

C.C-Cochin-cus

CUSTOM HOUSE
COCHIN
KERALA
682009

Respondent(s)

Appearance:

Mr. G.Shivadass. Advocate
WORLD TRADE CENTRE NO.404-406, 4TH
FLOOR, SOUTH WING BRIGADE GATEWAY
CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE
KARNATAKA
560 055

For the Appellant

Dr. J.Harish, AR

For the Respondent

Date of Hearing: 03/07/2018

Date of Decision:10/07/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20938/2018

Per : P.ANJANI KUMAR

M/s. Focus Energy Ltd. has filed this appeal before this

Bench against the Order-in-Original No. COC-CUSTOM-000-COM-066-12-13 dated 20.01.2014 passed by the learned Commissioner of Customs, Cochin wherein a demand of Rs.1,32,13,016/- on the tug 'M.V. Shunter' and duty of Rs.11,48,43,512/- on rig 'Mercury Focus' along with the interest and penalty; this Bench vide Miscellaneous Order No. 21136-21139/2014 dated 07.05.2014 has ordered that bank guarantee of Rs.3.5 crore executed by the applicants may be kept alive during the pendency of the appeal. The applicants have also deposited Rs.43,23,515/-.

2. The appellants vide letter dated 23.05.2018 requested the Commissioner of Customs, Cochin to release the tug on payment of redemption fine of Rs.8,00,000/- as imposed in the impugned order so that they can return the tug to the owner. The Superintendent of Customs, Cochin vide letter dated 11.06.2018 has rejected the request of the applicants and communicated that the tug can only be released for the export on payment of redemption fine, duty, interest and penalty as ordered in the OIO. The appellants have moved a miscellaneous application requesting this Bench to pass an interim order allowing the applicants to remove the goods on payment of redemption fine.

3. The learned Counsel for the appellants has pleaded that as there is some urgency, at least, the release of the tug may be considered by the Bench on payment of redemption fine. The learned Departmental Representative has submitted that in terms of Section 125 of the Customs Act, 1962 wherein it was held that any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods. Therefore, the appellant requested for release on redemption fine may not be acceded to. Then, the learned Counsel for the appellants submitted that the Department may appropriate the duty of Rs.1,32,13,016/- from the bank guarantee submitted by the appellants. He undertook that they will replenish the bank guarantee to that extent. The Departmental Representative has conveyed acceptance to the proposal.

4. Heard both the sides and perused the records of the case.

5. The appellants submitted that 'M.V.Shunter' are not the owner of the tug; it was imported on re-export basis; no foreign exchange was remitted against the other goods and that the applicants now obliged to immediately handover the said tug to

the respectful owners. We find that the request of the appellants can be accepted.

6. In view of the above, we direct the respondents to release the tug on payment of redemption fine of Rs.8,00,000/-; duty liability of Rs.1,32,13,016/- may be appropriated from the bank guarantee submitted to the appellants; the appellants shall, however, replenish the bank guarantee to that extent in adherence to this Bench Order dated 07.05.2014.

7. In view of the above, the miscellaneous application is allowed to that extent.

(Operative portion of the Order was pronounced
in Open Court on **10/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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