

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

Appeal(s) Involved:

C/384/2008-DB

[Arising out of Order-in-Appeal No. 23/2008 dated
07/02/2008 passed by Commissioner of Customs (Appeals)]

**KAVVERI TELECOM PRODUCTS
LIMITED**

PLOT NOS.31 TO 36, 1ST MAIN, 2ND STAGE,
ARAKERE MICO LAYOUT, BANNERGHATTA
ROAD, BANGALORE-560076

Appellant(s)

Versus

C.C-BANGALORE-CUS

C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE
KARNATAKA
560001

Respondent(s)

Appearance:

**Mr. N.Anand, Advocate and Mr.
K.S. RAVI SHANKAR, Advocate**

152, RACE COURSE ROAD,BANGALORE
BANGALORE
KARNATAKA
560001

For the Appellant

Mrs. Kavita Podwal, AR

For the Respondent

Date of Hearing: 31/07/2018

Date of Decision:07/08/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21109/2018

Per : P. ANJANI KUMAR

M/s. Kaveri Telecom Products Ltd. (the appellants) are
holders of Public Bonded Warehouse Licence bearing No.

510/2000 dated 18.09.2000 valid upto 01.06.2010 for the manufacture of Antennas etc. falling under Chapter 8536.90. During 2000 and 20001, the appellants are imported connectors by availing exemption under Notification No. 53/97-Cus dated 03.06.1997. The Department alleged that they have violated the conditions of the Notification and the Bond executed as they have not utilized the connectors in the manufacture and export of their final products within the prescribed time limit. A SCN demanding Customs duty of Rs.7,29,441/- along with the interest and penalty was issued to the appellants. The Assistant Commissioner of Customs vide Order No. 5/AC/2007 dated 31.07.2007 has confirmed the demand and imposing penalty of Rs.10,000/- in respect of 4 Bonds executed by the appellants. The Commissioner (Appeals) vide Order No. 23/2008 dated 07.02.2008 was upheld the OIA. Hence this appeal.

2. The counsel for the appellants has submitted that they have executed 4 Bonds and have imported equipment required for the manufacture of Antennas, however, in the aftermath of 11.09.2001, their orders to U.S. were affected seriously and they have lost the market; therefore, they could not use the imported goods for the manufacture of exported goods vide their letter dated May 12, 2004; they have requested the Chief Commissioner

of Customs to extend the warehousing period for the imported goods. They followed up the letter with a series of letters but they did not get any reply from the Chief Commissioner's office. The Superintendent of Customs vide letter dated 01.12.2006 has informed them that Commissioner of Customs has rejected the request for extension and they are required to pay duty along with interest. The appellants vide letter dated 11.12.2006 have intimated the Department about abandonment/relinquishment of title to raw materials. The letter intimated the rejection of the appellants' request for extension was appealed before Commissioner (A) who has remanded back to the adjudicating authority. They have relied upon the case of ***Pradeep Ullal Vs. Commissioner of Cus., Bangalore, 2001 (133) ELT 428 (Tri. Bang)*** in which it was held that Commissioner was under duty to consider application even though belatedly made.

3. The counsel for the respondent submitted from the findings of the Commissioner (A) that Commissioner of Customs had rejected the extension of warehousing period and that goods are no more in the warehoused conditions is not sustainable in law and the appellants have right to relinquish the title of goods. They have relied upon the following cases.

(i) CC Vs. i2 Technologies Software Pvt. Ltd., 2007 (217) ELT 176 (Kar.) and 2006 (193) ELT 341 (Tri. Bang.)

(ii) PSI Data Systems Ltd. Vs. CC, 2006 (202) ELT 316 (Tri. Bang.) affirmed by the Karnataka High Court in 2010 (255) ELT 55 (Kar.)

(iii) RPG Cables Ltd. Vs. CC, 2007 (212) ELT 538 (Tri. Mum.)

(iv) CCE Vs. Garden Silk Mills Ltd., 2000 (118) ELT 369 (Tri. Mum.)

4. The learned counsel for the appellants further submitted that if they are not entitled to abandon or relinquish the goods, they would be entitled to remission of duty in terms of Section 23(1) of the Customs Act, 1962 as the goods have become totally useless for the appellants and the same shall be construed as "destroyed". They placed reliance on the decision of **Symphony Services Corporation Ltd. Vs. CC, 2009 (245) ELT 661 (Tri-Bang.)** which was reported by High Court Karnataka in their own case **2012 (275) ELT 369**. The learned counsel also submitted that the taxable event in the case of warehoused goods is the date of removal of goods from the warehouse as per ratio of the Hon'ble Supreme Court in **LML Ltd. Vs. CCE, 2002 (142) ELT 273 (SC)** in their case, the taxable event had not occurred as on the date of SCN and hence the adjudication order is against the settled law. The learned counsel also submitted that in the case of **Agencies International- 2014 (307) ELT 781 (Tri. Bang.)** on relinquishment of title of warehoused goods, there is no liability

to pay interest and penalty as also confirmed by CBEC Circular No. 42/2003- Cus dated 20.05.2003.

5. The learned AR has submitted that the appellant was not vigilant and has applied for extension only after a lapse of two years. Their reliance placed on the decision of ***PSI Systems*** (Supra) is not relevant as the period was different. The learned AR has also relied upon the following case:

(i) PSI Data Systems Ltd. Vs. Asst. Collector of Customs, Bangalore, 2004 (163) ELT 302 (Kar.)

(ii) Allied Fibres Ltd. Vs. Commissioner of Customs (Import), Mumbai, 2014 (309) ELT 535 (Tri. Mumbai)

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

7. We find that the warehousing period in the case of appellants expired in 2002. However, they have made an application in May, 2004, the Chief Commissioner as can be seen from the records of the case, the Chief Commissioner has not replied to such letters even after a few reminders by the appellants. Only in 2006, the Department has informed the appellants that their application for extension of warehousing period was rejected by the Commissioner and they are required to pay duty, interest and penalties. Meanwhile, we find that the appellants have relinquished the goods vide their letter dated

11.12.2006 whereas a SCN was given in 2007. We find that the learned AR has relied upon the decision of **PSI Data Systems Ltd.** which was rendered in the year 2004, however, we find that High Court of Karnataka in the case of **PSI Data Systems (Supra)** have held that invoking of the Proviso of Section 68. The assessee claimed exemption of duty payable by it on account of circumstances of this case provided relinquishment of the title of goods by the payment of rent, interest and other charges, including penalty when the amended Proviso is so clear in regard to the ground of exemption in respect of the duty payable by the assessee; the assessee has to fulfill the other requirements of the Proviso. In view of the Proviso of Section 62 of the Act, the assessee can claim the exemptions in respect of duty payable by it are relinquishment the title of goods in the warehouses. In the instant case, we find that the respondents have relinquished the title of the goods after the amendment has come into force on 14.05.2003; however, during this time, the issue was quite alive and the appellants are entitled to make use of the amended provisions. It is also the matter of fact in this case that the SCN is given much more lately after the relinquishment of the title of the goods by the appellants. We also find that Hon'ble High Court of Karnataka in the case of **i2 Technologies Software Pvt. Ltd (Supra)** has held that owner of any warehoused goods has right to

relinquish the title of the goods at any time before an order for clearance of goods for home consumption has been made. There is no prohibition on the owner of the goods to exercise the right to relinquish the title of goods after the expiration of warehousing period or after expiration of the extended period. We find that the Hon'ble High Court has also observed that upon such relinquishments, the appellants shall not be liable to pay duty thereon; however, he has to pay rent, interest and other charges and penalties that may be payable in respect of such goods. We also find that Hon'ble High Court in the same order has distinguished the Hon'ble Supreme Court's decision in the ***Keshav Ram Case, 1996 (86) ELT 464 (SC)***. Therefore, we find that the appellants are entitled to relinquish the goods at any time before an order for clearance of the goods for home consumption has been made. In this case, we have observed above, the SCN itself has been issued much later than the date of relinquishment of the title of goods by the appellants. In view of the above we hold that no duty can be chargeable from the appellants. In view of the above, we find that the case should go back to the adjudicating authority to quantify rent, interest, other charges and penalties, if any, payable by the appellant while holding that no duty shall be paid by the appellants.

8. In view of the above, the appeal is allowed by way of remand to the original authority with the direction to quantify rent, interest, other charges and penalties, if any, payable by the appellants while accepting the relinquishment of the title of the goods by the appellants.

(Order was pronounced
in Open Court on **07/08/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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