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

Appeal(s) Involved:

C/20574/2018-SM

[Arising out of Order-in-Original No. COC-CUSTOMS-000-COM-40/17-18 dated 16/01/2018 passed by the Commissioner of Customs, Cochin]

Jaihind Traders 29/621 K, Jain Tower, Near Vytilla Junction, Cochin – 682 019 Kerala	**Appellant(s)**

Versus

C.C-Cochin Custom House Cochin – 682 009 Kerala	**Respondent(s)**

Appearance:

Shri. S.P. Mathew, Advocate 1st Floor, Chenganath, Near Suplyco Vyttila – Ponnurunni Road Vyttila P.O. Cochin – 682 019	For the Appellant
Shri. Madhup Sharan, Assistant Commissioner (AR)	For the Respondent

Date of Hearing: 20/09/2018
Date of Decision:26/09/2018

CORAM:
HON'BLE SHRI. S.S GARG, JUDICIAL MEMBER

Final Order No. 21480 / 2018

Per: S.S GARG

The present appeal is directed against the impugned order dated 17.01.2018 passed by the Commissioner whereby the Commissioner has ordered for confiscation of the goods covered under various Bills of Entry under the provisions of Section 111(d) and 111(o) of the Customs Act, 1962 and read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 but allowed redemption of the goods for the sole purpose of re-export on payment of fine of Rs. 10,00,000/- (Rupees Ten Lakhs only) as per the provisions of Section 125 of the Customs Act, 1962. The Commissioner also imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the importer-appellant under Section 112(a) of the Customs Act. Briefly the facts of the present case are that the appellant filed Bills of Entry numbers 3285422 dated 18.09.2017, with a declared assessable value of Rs. 60,69,865 (Rupees Sixty Lakhs Sixty Nine Thousand Eight Hundred and Sixty Five only) and with duty liability of Rs. 18,30,307.00 (Rupees Eighteen Lakhs Thirty Thousand Three Hundred and Seven only) 3284356 dated 18.09.2017, with a declared assessable value of Rs. 58,02,708.00 (Rupees Fifty Eight Lakhs Two Thousand Seven Hundred and Eight only) and with duty liability of Rs. 17,49,748.80.00, (Rupees Seventeen Lakhs Forty Nine Thousand Seven Hundred and Forty Eight only) 3284359 dated 18.09.2017 with a declared assessable value of Rs. 63,17,144.00 (Rupees Sixty Three Lakhs Seventeen Thousand One Hundred and Forty Four only) and with duty liability of Rs. 19,04,871.60 (Rupees Nineteen Lakhs Four Thousand Eight Hundred and Seventy One only) in group VII, under MEIS and Bill of Entry Number 3941363 dated 10.11.2017 with a declared assessable value of Rs. 19,38,036.79 (Rupees Nineteen Lakhs Thirty Eight Thousand and Thirty Six only) and with duty liability of Rs. 5,84,396.00 (Rupees Five Lakhs Eighty Four Thousand Three Hundred and Ninety Six only) in Group V for clearance of goods described as "Galvanised steel Tubes for structural purpose.” On examination of the Bill of Entry, it was found that the goods covered by the Bill of Entry are prohibited goods and the importer is required to file a certificate from the BIS. Though the importer produced one certificate from BIS but the same was found for one grade only i.e. Yst 210 which is not seen in the imported goods. Thereafter the importer was asked to clarify certain points and also required to produce the BIS certification. After giving proper hearing to the appellant, the Commissioner of Customs found that the importer has not complied with the BIS Regulation and consequently he confiscated the goods and ordered for redemption for the purpose of re-export on payment of fine of Rs. 10,00,000/- (Rupees Ten Lakhs only) and penalty of Rs. 1,00,000/- (Rupees One Lakh only) was also imposed. The appellant is before this Tribunal only challenging the imposition of redemption fine and penalty as the goods have been re-exported as per the order of the Commissioner.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that admittedly he could not produce the BIS certification with regard to the impugned goods. He further submitted that in pursuance of the order of the Commissioner, appellant though has paid the redemption fine and penalty and thereafter goods covered by the said four Bills of Entry were re-exported under the cover of four different shipping bills bearing No. 105678, 105679, 105680 and 105681 of dated 05.02.2018. He further submitted that once the goods

have been re-exported then the imposition of redemption fine and penalty is not sustainable in law. In support of his submission, he relied upon the decision of the Supreme Court in the case of ***Siemens Ltd. Vs. Collector of Customs*** reported in ***1999 (113) E.L.T. 776 (S.C).*** He further submitted that the decision of the Supreme Court was subsequently followed by the Mumbai Bench of the CESTAT in the case of ***Zenith Rubber & Plastic Works Vs. CC, Mumbai*** reported in ***2010 (262) E.L.T. 272***.

4. On the other hand the learned AR defended the impugned order and submitted that the appellant imported the prohibited goods without any BIS certification which was rightly confiscated and thereafter redeemed on payment of redemption fine and penalty. He further submitted that the appellant imported the impugned goods which are liable for confiscation under Section 111(d) and (o) of the Customs Act 1962 for non-compliance of the provisions of Foreign Trade Policy read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

5. After considering the submissions of both the parties and perusal of the material on record, I find that admittedly the appellant did not have the BIS certification which was required for the purpose of import of the impugned goods. Further I find that the Commissioner of Customs has rightly confiscated the goods. Further I find that in view of the order of the Commissioner of Customs, the goods have been re-exported also vide various shipping bills which are on record dated 05.02.2018. The Hon'ble Supreme Court in the case of **Siemens Ltd.** held that once the goods are

re-exported then in that event, the redemption fine is not imposable. The said judgment of the Hon'ble Apex Court was followed by the Tribunal in the case of **Zenith Rubber & Plastic Works** cited supra. Therefore, by following the ratio of the decision of the Hon'ble Supreme Court, I am of the view that redemption fine imposed by the Commissioner for the purpose of re-export is not sustainable in law. Therefore, I set aside the imposition of redemption fine. Further I find that the Commissioner has also imposed the penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the appellant under Section 112(a) of the Customs Act. Section 112(a) of the Customs Act 1962 provided that *"any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, shall be liable to a penalty."*

6. In this case since the appellant has violated the conditions of Foreign Trade (Development and Regulation) Act, therefore, the penalty imposed on the appellant under Section 112(a) is justified and therefore, I uphold the imposition of penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the appellant. Consequently, the redemption fine is set aside and the penalty is upheld. Appeal is partly allowed.

(Order Pronounced in Open Court on **26/09/2018**)

(S.S GARG)
JUDICIAL MEMBER

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