# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 20780 of 2024**

(Arising out of Order-in-Appeal No. 16-17/2024 dated 29.01.2024 passed by the Commissioner of Customs (Appeals), Bangalore.)

**M/s. Ascent Circuits Pvt. Ltd.**
B13, ITC Ancillary Industrial Estate,
Mahadevapura,
Bangalore – 560 048.

Appellant(s)

*VERSUS*

**Commissioner of Customs,**
Airport and Air Cargo Complex, KIAL,
Devanahalli,
Bengaluru - 560 300.

Respondent(s)

**APPEARANCE:**

Mr. K.V. Srinivasa Prasad, Advocate for the Appellant

Ms. Daisy Joseph, Superintendent (AR) for the Respondent

**CORAM:**

**HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 20996 / 2026**

DATE OF HEARING: 27.08.2026
DATE OF DECISION: 27.08.2026

**PER : R. BHAGYA DEVI**

This appeal is filed by the appellant M/s. Ascent Circuits Pvt. Ltd., against Order-in-Appeal No. 16-17/2024 dated 29.01.2024 wherein the Commissioner (Appeals) had decided two appeals; one filed by the appellant and other filed by the Revenue against the Order-in-Original No. 405/2022-23-DC dated 05.08.2022.

2. Briefly the facts are that the appellant had imported "Posalux Machine DLR Measuring Unit" which on examination are found to be second hand goods which are restricted as per the

Foreign Trade Policy and hence, the goods are liable for absolute confiscation and accordingly, the original authority held that the products imported by the appellant were to be redeemed on payment of Rs.30,000/- under Section 125 of the Customs Act, 1962 and also imposed penalty of Rs.10,000/- under Section 112(a) of the Customs Act, 1962. On appeal by the Revenue and the appellant, the Commissioner (Appeals) dismissed the appeal filed by the appellant and allowed the appeal filed by the Revenue and held that the goods were liable for absolute confiscation without redemption fine and also enhanced the penalty under Section 114AA of the Customs Act, 1962 from Rs.10,000/- to Rs.1,00,000/-.

3. The learned Authorised Representative (AR) for the Revenue reiterating the findings of the Commissioner (Appeals) submits that the goods were liable for absolute confiscation in view of the fact that the goods were found to be second hand goods on examination and are restricted as per the Foreign Trade Policy and the Commissioner (Appeals) hence absolutely confiscated the goods and also enhanced the penalty.

4. Countering his arguments, the learned counsel for the appellant submits that the goods were not second hand goods; hence, the question of holding the imported goods as restricted goods cannot be sustained. Accordingly, redemption fine and penalty also cannot be sustained.

5. Heard both sides. The Commissioner (Appeals) in the impugned order at para 8.2 after referring to the Section 125 of the Customs Act, 1962 observes as follows:

> "8.2. Further, it is pertinent to mention that Section 125 of the Customs Act, 1962 allowed to redeem the goods so confiscated under Section 111 of the Customs Act, 1962. For the sake of clarity, Section 125 of the Customs Act is reproduced below for reference-

*"Section 125. Option to pay fine in lieu of confiscation.*

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

*Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where 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.*

The provisions of Section 125 are very clear, and it give discretionary power to the adjudication authority to give an option to the owner of goods to redeem the goods on payment of redemption fine. Before proceeding further, the adjudicating authority has to clearly construe as to whether the goods in question are liable for absolute confiscation or not. In the instant case, the lower authority has failed to exercise the discretion vested under Section 125 of the Customs Act, 1962. It is true that, ordinarily, when a statutory authority is invested with discretion, the same deserves to be left for exercise by that authority consciously with reasoned findings. The findings of the lower authority are not justifiable on the redemption of the goods. I will rely on the judgement of Hon'ble Supreme Court of India in the case of Union of India Vs Raj Grow Impex LLP [2021 (377) E.L.T. 145 (S.C.)] which will suffice.

Redemption fine in lieu of confiscation - Option to pay Adjudicating Authority had exercised discretion to release goods with redemption fine and penalty; thus, option to pay redemption fine given without consideration of other alternative to absolute confiscation - Exercise of such discretion was assumptive and ritualistic, rather than conscious and cautious adherence to applicable principles On facts, as imports were contrary to relevant D.G.F.T. Notification Nos. S.O. 1478(E), 1479(E), 1480(E) and 1481(E), dated 29-3-2019 Notice and subsequent D.G.F.T. Trade Notice No. 6/2019-2020, dated 16-4-2019 regarding quantities more than annual quota that could adversely impact economy, absolute confiscation was proper - As imports were not bona fide no leniency can be given to importer on basis of equity and having suffered huge losses - Section 125(1) of Customs Act, 1962. [paras 80, 81, 86.11.

(Emphasized)

Adjudication-Discretion - Exercise of discretion by Adjudicating Authority as per first part of Customs Act has to be guided by law, according to rules of reason and justice, based on relevant considerations - Exercise of discretion is discernment of what is right and proper by differentiating between shadow and substance as also equity and pretence - It has to further purpose underlying conferment of power - Reasonableness, rationality, impartiality, fairness and equity are inherent-It cannot be according to private opinion - Discretion has to be exercised judiciously and, for matter, all facts and all relevant surrounding factors as also implication of exercise of discretion either way have to be properly weighed and balanced decision is required to be taken…………"

(Emphasized)

5.1 The Commissioner (Appeals) at paragraph 9.1 observed that:

"9.1. Now, I am taking up the next contentious issue as to whether the imposition of meagre penalty imposed of Rs.10,000/-on the Respondent / Importer under Section 114 AA of the Customs Ac, 1962 is legally tenable and justifiable or not. It is to note that the lower adjudicating authority has imposed redeemed on payment of Rs.30,000/- under Section 125 of Customs Act, 1962 to allow the goods. In the departmental appeal it is contended that in the instant case the confiscated goods are Rs. 2,74,767/- and accordingly, the maximum penalty imposable under Section 114AA is five times of Rs. 2,74,767/- which amounts to Rs.13,73,835/-. Whereas the LAA has imposed a meagre penalty of Rs. 10,000/- which appears to be very less when compared to the intensity of fraud by the importer. Before proceeding further, it needs to be checked whether appellate authority has power vested to reduce or enhance the penalty imposed by the lower adjudicating authority or not. I find that Section 128A(2) provides that the appellate authority, after giving opportunity has the power to enhance the levy of penalty. For the sake of clarity, relevant provisions of Section 128A of the Customs Act, 1962 are reproduced below -

> **Section 128A. Procedure in appeal. -**
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> (1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires.
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> (2) The Commissioner (Appeals) may, at the hearing of an appeal.......
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> (3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper-
>
> (a) confirming, modifying, or annulling the decision or order appealed against; or (b) referring the matter back to the adjudicating authority.......
>
> (i) where an order or decision has been passed without following the principles of natural justice; or
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> (ii) where no order or decision has been passed after re-assessment under section 17; or
>
> (iii) where an order of refund under section 27...... the applicant.]:
>
> Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.
>
> Provided further that where the Commissioner (Appeals) is of opinion that any duty has......................... in section 28 to show cause against the proposed order.
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> (Emphasized)

The provisions of Section 128A are very clear and reading the aforementioned provisions indicates that appellate authority has power vested to reduce or enhance the penalty imposed by the lower adjudicating authority by providing reasonable opportunity to the appellant or respondent company.

Also, at para 9.1 the Commissioner (Appeals) justifies the enhancement of penalty under Section 114AA, considering the fact that the goods are valued at Rs.2,74,767/- and the maximum penalty under this Act is five times the value which amounts to Rs.13,73,835/-; accordingly, he goes on to enhance penalty from Rs.10,000/- to Rs.1,00,000/-. I find that the goods are found to be restricted as per the Foreign Trade Policy, hence there are no reasons found in the above para of the Commissioner (Appeals) in the impugned order to justify absolute confiscation and the reliance placed by the Commissioner (Appeals) on the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Raj Grow Impex LLP: 2021 (377) ELT 145 (SC)* is on different set of facts where the appellant-importer was very well aware of the goods being restricted but continued to import without license. The Hon'ble Supreme Court in the said case of observed as:

> "**67.4.3** The present case is of an entirely different restriction where import of the referred peas/pulses has been restricted to a particular quantity and could be made only against a licence. The letter and spirit of this restriction, as expounded by this Court earlier, is that, any import beyond the specified quantity is clearly impermissible and is prohibited. This Court has highlighted the adverse impact of excessive quantity of imports of these commodities on the agricultural market economy in the case of *Agricas* (supra) whereas, it had not been the case in *Atul Automations* (supra) that the import was otherwise likely to affect the domestic market economy. In contrast to the case of *Atul Automations,* where the goods were permitted to be imported (albeit with authorisation) for the reason that they were not manufactured in the country, in the present case, the underlying feature for restricting the imports by quantum has been the availability of excessive stocks and adverse impact on the price obtainable by the farmers of the country. The decision in *Atul Automations* (supra), by no stretch of imagination, could be considered having any application to the present case.
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> **68.** Thus, we have no hesitation in holding that the goods in question, having been imported in contravention of the notifications dated 29-3-2019 and trade notice dated 16-4-2019; and being of import beyond the permissible quantity and without licence, are 'prohibited
>
> xxxx
>
> **82.** The sum and substance of the matter is that as regards the imports in question, the personal interests of the importers who made improper imports are pitted against the interests of national economy and more particularly, the interests of farmers. This factor alone is sufficient to find the direction in which discretion ought to be exercised in these matters.

> When personal business interests of importers clash with public interest, the former has to, obviously, give way to the latter. Further, not a lengthy discussion is required to say that, if excessive improperly imported peas/pulses are allowed to enter the country's market, the entire purpose of the notifications would be defeated. The discretion in the cases of present nature, involving far-reaching impact on national economy, cannot be exercised only with reference to the hardship suggested by the importers, who had made such improper imports only for personal gains. The imports in question suffer from the vices of breach of law as also lack of *bona fide* and the only proper exercise of discretion would be of absolute confiscation and ensuring that these tainted goods do not enter Indian markets. Imposition of penalty on such importers; and rather heavier penalty on those who have been able to get some part of goods released is, obviously, warranted."

6. In the instant case, I find that as per the paragraphs 2.31 (II) and para 2.10 of Foreign Trade Policy 2015-2020 reads as follows:

> "Import of second hand goods other than capital goods is restricted and importable only against authorisation. Further, goods which are importable freely without any "restrictions' may be imported by any person. However, if such imports require an authorisation, actual user condition is specifically dispensed with by DGFT."

In view of the above, the goods are found to be restricted only. Therefore, I do not find any reason for absolute confiscation of the goods, since the goods are found to be restricted as they are second hand goods, the same can be allowed on redemption fine. I also find that in view of the above decision of the Hon'ble Supreme Court unless there are specific reasons specified as to why the goods have to be absolutely confiscated, the discretion as provided under Section 125 of Customs Act, 1962 cannot be invoked and I find no specific reasons provided by the Commissioner (Appeals) in the impugned order for absolutely confiscating the goods, hence the same cannot be sustained.

7. The contention of the appellant that goods are not second hand goods is also misplaced since they have foregone the issuance of show-cause notice and also have not appeared for the personal hearing asking the original authority to decide the case on merits. Hence, they cannot now argue that the goods were not second-hand goods since the examination report clearly establishes that the goods were second hand goods and they were restricted. Also, I find that the Commissioner (Appeals) in the impugned order notes that the importer had claimed that the goods are not liable for confiscation as the Chartered Engineer had concluded that the goods are not refurbished or reconditioned. He also observed as follows: *"I have seen the Chartered Engineer report No. NEC/BNG/22-23/3445 dated 13.05.2022 issued by M/s. Nagson Engineers & Consultants and noted that 'the goods are second-hand parts of capital goods aged above six months with residual life over six years".* In view of the above, there is no dispute that they are second-hand goods. Therefore, the original authority was justified in releasing the goods on payment of redemption fine. Secondly, I also find that the original authority has imposed penalty under Section 112(a) but the Commissioner (Appeals) goes on to enhance the penalty under Section 114AA which is absolutely misplaced since these two provisions are entirely on different premises; hence, the same is set aside. Accordingly, the impugned Order-in-Appeal is set aside by upholding the order of the original authority.

Appeal is allowed.

(Order dictated and pronounced in Open Court.)

**(R. BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

Gb/RV