IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. C/57/2012

(Arising out of Order-in-Original No. 18181/2012 dated 27.1.2012 passed by the Commissioner of Customs (Seaport - Import), Chennai)

M/s. United Wireless (Tamilnadu) Pvt. Ltd. Appellant

Vs.

Commissioner of Customs, Chennai Respondent

Appearance

Ms. M. Swarupa, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **13.04.2018**

Final Order No. **41285 / 2018**

Per Bench

Brief facts are that the appellants filed Bill of Entry for clearance of goods declared as "Telecom Equipment". The subject goods require license from Wireless Planning and Coordination Wing, Ministry of Communications and Information Technology for import as these are in restricted category. The appellants applied for license and also entered into an agreement with the high sea sellers M/s. Huawei Telecommunication India Pvt. Ltd. for purchase of telecom equipment on the belief that the license from the Wireless Planning and Coordination Wing would be received within the time of import. As the appellants did not obtain license from Wireless Planning and Coordination Wing, they requested for re-export of the goods. Though Commissioner allowed re-export, but imposed redemption fine of Rs.20 lakhs and penalty of Rs.6 lakhs under section 112(a) of the Customs Act, 1962. Hence this appeal.

2. On behalf of the appellant, ld. counsel Ms. M. Swarupa submitted that the appellant had entered into high sea sales agreement for the telecom equipment only on the bonafide belief that Wireless Planning and Coordination Wing license will be issued to them at the earliest. As the license was not issued for more than six months and they were incurring demurrage and storage charges, they were forced to re-export the telecom equipment. She contended that there was no intention on the part of the appellant to evade any provisions of law and they were under bonafide belief that the license would be issued to them in due time. They were forced to re-export for no mistake of theirs and the redemption fine and penalty imposed are very high since the goods have already been re-exported. She placed reliance on the following decisions:-

(a) Joseph Eye Hospital Vs. Commissioner of Customs, Chennai – 2006 (193) ELT 91 (Chennai.)

(b) Dredging and Contracting Vs. Commissioner of Customs, Kandla – 2005 (83) ELT 29 (Tri. Mum.)

3. The ld. AR Shri A. Cletus reiterated the findings in the impugned order.

4. Heard both sides.

5. It is brought out from the facts as well as submissions made before us that the appellant had applied for license and were awaiting the issue of such license. They did not receive the license and were forced to re-export the goods. Taking note of the fact that the goods are redeemed for re-export and not redeemed for home consumption, we are of the considered view that the redemption fine of Rs.20 lakhs and penalty of Rs.6 lakhs imposed is highly excessive and requires to be reduced. We therefore reduce the redemption fine to Rs.10,00,000/- (Rupees ten lakhs only) and the penalty to Rs.3,00,000/- (Rupees three lakhs only).

6. In the result, the impugned order is modified to the extent of reducing the redemption fine and penalty as aforesaid mentioned. The appeal is partly allowed in the above terms.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex