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

Appeal No. C/41608/2018

(Arising out of Order-in-Appeal No. 105/2018-TTN (CUS) dated 27.3.2018 passed by the Commissioner of CGST and Central Excise (Appeals), Coimbatore at Trichy)

M/s. Atlantic Shipping Pvt. Ltd. Appellant

Vs.

Commissioner of Customs, Tuticorin Respondent

Appearance

Shri Anthony I Carneiro and
Shri Maximo Andrade, Consultants for the Appellant
Shri L. Nanadakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **13.08.2018**

Final Order No. **42237 / 2018**

Brief facts are that the Vessel MT NORCA at the time of arrival at Tuticorin Port did not declare that they possess Thuraya Satellite Phone. On intelligence received by SIIB from the State Police authorities, investigation was conducted and the said satellite phones were seized and allowed for provisional release on deposit of cash security of Rs.1,32,000/-. The appellant paid the same on 23.4.2014. Subsequently, the vessel was permitted to sail and the satellite phone was deposited in the warehouse at Customs House, Tuticorin. The issue was then adjudicated by the Assistant Commissioner, TTN and vide Order-in-Original dated 19.6.2015, the goods / satellite phone was confiscated and allowed to be redeemed on payment of redemption fine of Rs.1,32,000/-. A separate penalty of Rs.22,000/- was imposed. The appellant did not file any appeal against such order as they did not intend to redeem the goods. They then filed a refund claim for return of the balance cash deposit of Rs.1,10,000/- after adjusting the penalty of Rs.22,000/-. The refund claim was rejected saying that the appellant have not filed an appeal against the order passed by the adjudicating authority imposing redemption fine and penalty and also that the adjudicating authority has not specifically stated as to how the balance Rs.1,10,000/- has to be adjusted / returned. Against such order of the adjudicating authority dated 4.5.2017 rejecting the refund claim, the appellant preferred an appeal before Commissioner (Appeals) who upheld the rejection on the very same grounds and in addition stating that the refund is hit by time-bar. Aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellant, Shri Anthony I Carneiro and Shri Maximo Andrade, Consultants appeared and argued the matter. It is submitted by them that the reason for rejecting the refund claim is that the appellant has not preferred appeal against the imposition of redemption fine and penalty. The

appellant did not want to redeem the goods and therefore have opted to take back the cash deposit paid by them. The appellants initially filed a letter for refund with the department and with the insistence of the department they had filed a refund claim under Section 27B of the Customs Act. It is submitted by him that when the appellants have no intention to redeem the goods, there is no question of paying the redemption fine and therefore the entire amount of Rs.1,10,000/- after adjusting the penalty of Rs.22,000/- ought to have been returned to the appellant. Further, it is submitted by them, in appeal, the Commissioner (Appeals) has gone on a different tangent in analyzing the issue where he has stated that the refund claim is hit by time bar. That the amount paid by the appellant is mere security deposit which is in the nature of predeposit and does not have the character of duty or interest. That therefore there is no question of the refund being hit by time-bar.

3. The ld. AR Shri L. Nandakumar supported the findings in the impugned order. He argued that the appellant did not file appeal against the order passed by the adjudicating authority wherein the redemption fine was imposed. They ought to have filed an appeal against such order if they wanted return of the balance amount. Since the order passed by the adjudicating authority is silent as to how the balance amount has to be adjusted, the refund claim has been rightly rejected. It is also

observed by the Commissioner (Appeals) that the refund claim is filed beyond the limitation.

4. Heard both sides.

5. The issue is with regard to the refund claim filed by the appellant for refund of the security deposit made by them. While the adjudicating authority vide order dated 19.6.2015 had imposed a penalty of Rs.22,000/- and also gave an option to the appellant to redeem the goods by paying the redemption fine of Rs.1,32,000/-, the appellant have however not opted to redeem the goods and therefore have not filed any appeal against such order. They then filed a refund claim for the balance amount of Rs.1,10,000/- after adjusting the penalty of Rs.22,000/-. That has been rejected by the department stating that the adjudicating authority has not stated in the order as to how the balance of Rs.1,10,000/- has to be adjusted. I am unable to agree with this observation of the department. The adjudicating authority has correctly imposed redemption fine as well as penalty. Only after passing the order, the appellant can chose to redeem the goods or waive the option to redeem the goods. In such circumstances, after passing the order, the appellant has chosen not to redeem the goods and filed refund claim for balance security deposit. The security deposit is not in the nature of duty or interest. It is only an amount paid by the appellant as a security for the dues that may arise in case of adjudication proceedings. Since the appellant has not opted to

redeem the goods, I find that the balance amount after adjusting the penalty has to be returned to the appellant. The rejection of refund claim is unjustified as discussed above. I hold that the impugned order is liable to be set aside, which I hereby do. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

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

Rex