IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 41404 of 2019

(Arising out of Order-in-Appeal No.58/2019 – TTN (CUS) dated 1.7.2019 passed by the Commissioner of GST & Central Excise (Appeals), Trichy)

M/s. A.Y. Traders **Appellant**
4/357, A-5, Erattupeta
Kottayam District
Kerala – 686 122.

Vs.

Commissioner of Customs **Respondent**
No. 1, Williams Road
Cantonment, Trichy – 620 001.

APPEARANCE:

Shri Abdul Nazeer, Advocate for the Appellant
Ms. K. Komathi, JC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order No. **41200 / 2019**

Date of Hearing: 30.10.2019
Date of Decision: 30.10.2019

Per Ms. Sulekha Beevi C.S

The appellant filed Bill of Entry dated 28.11.2018 for import of Arecanuts. On FSSAI, Tuticorin examination and analysis, the cargo was rejected under section 25 of FSSAI Act, 20006 as samples did not conform to Food Safety and Stands (Food Products Standards and Food Additives) Regulations 2011. After due process of law, the original authority ordered confiscation of the goods and also gave option to redeem the goods on payment of fine of Rs. 10 lakhs in lieu of confiscation for the purpose of re-export only. A penalty of Rs. 5 lakhs was imposed on the appellant under section 112 of the Customs Act, 1962. Aggrieved by such order, the appellant approached the Commissioner (Appeals), who vide the order impugned upheld the confiscation as well as the direction for re-export. The redemption fine was reduced to Rs. 3 lakhs and the penalty to Rs.2 lakhs. Aggrieved by such order, the appellant is now before the Tribunal.

2. The ld. counsel Shri Abdul Nazeer appearing for the appellant submitted that the appellant does not contest the direction for re-export of the goods. He prayed that the redemption fine and penalty may be set aside. The decision of the jurisdictional High Court in the case of Sankar Pandi Vs. UOI – 2002 (141) ELT 635 (Mad.) was relied by him to argue that when the goods are directed to be re-exported by the importer, redemption fine cannot be imposed. It is also submitted by him that the appellant has suffered huge demurrage charges and therefore the penalty may be set aside.

3. The ld. AR Ms. K. Komathi supported the findings in the impugned order.

4. Heard both sides.

5. The main contention of the appellant is with regard to the redemption fine imposed when the goods have been ordered to be re-exported. The appellant does not challenge the findings with regard to re-export of the goods. The jurisdictional High Court in the case of Sankar Pandi (supra) has held that imposition of redemption fine cannot sustain when the goods are to be redeemed for the

purpose of re-export only. The said decision has been upheld by the Hon'ble Supreme Court as reported in 2018 (360) ELT A214 (SC). Following the said decisions, we are of the considered opinion that the redemption fine requires to be set aside, which we hereby do.

6. The appellant has contested the imposition of penalty imposed under section 112(a) of the Customs Act, 1962. The Commissioner (Appeals) has reduced the penalty to Rs.2 lakhs. The ld. AR has pointed out that the goods imported were intended for human consumption and that the goods did not conform the FSSAI standards, penalty imposed is reasonable. We are in full agreement with the argument put forward by the ld. AR and therefore we find that the imposition of penalty does not require any interference.

7. From the discussions made above, the impugned order is modified to the extent of setting aside the redemption fine only. The appeal is allowed partly in the above terms.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

Rex