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

Customs Appeal No.40060 of 2020

(Arising out of Order-in-Appeal No. 84/2019-TTN (CUS) dated 18.10.2019 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

M/s. Selvam Industries Ltd. **Appellant**
198, Pudhumakkadu
Veeranam Palayam Village
Kangeyam – 636 007.

Vs.

Commissioner of Customs **Respondent**
Custom House, New Harbour Estate
Tuticorin – 628004.

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

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

Final Order No. **41381 / 2021**

Date of Hearing: 02.03.2021
Date of Decision: 02.03.2021

Brief facts are that the appellant had filed the Bill of Entry No. 8517911 dated 19.10.2018 for clearance of 106.25 MT of goods declared as 'Petroleum Hydrocarbon Solvent (Low aromatic)' and classified under Customs Tariff Heading No. 27101990. In contradiction to the above said declaration, the test report of CRCL in C. No. 35/CRCL/Cus./2018-19/CL-1317(1)/ 26.11.2018 dated 29.11.2018 and C. No. 35/CRCL/Cus./2018-19/CL-221 (SIIB)/07.01.2019 dated 22.1.2019 revealed that the imported cargo was found to be 'Kerosene' falling under Custom

Tariff heading No. 2710 1910. As per policy Condition 2 of the Chapter 27 of the ITC (HS) 2017, import of superior kerosene oil shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with State Trading Corporation (STC) being nominated as a State Trading Enterprises (STE) for supplies to Advance License holders. Advance License holders shall, however, have the option to import superior kerosene oil from the above mentioned STEs including STC. The appellant in this case is not an STE. Further, the appellant have not submitted any documents showing grant of such licenses by the DGFT to import any of the goods notified for exclusive trading through STEs. Therefore, the appellant is not authorized to import kerosene.

2. As per the information given by SIIB, adjudication proceedings were initiated and Order in Original No. 29/2019 dated 27.5.2019 was passed confirming that the goods imported are Kerosene. The original authority directed the appellant to re-export the goods and for that purpose of such re-exporting, redemption fine of Rs. 6 lakhs was imposed. Besides this, the original authority imposed a penalty of Rs.4 lakhs under section 112(a) of the Customs Act, 1962. Against such order, the appellant preferred an appeal before Commissioner (Appeals) who vide order impugned herein upheld the finding that the goods imported are Kerosene but however modified the order by reducing the redemption fine to Rs. 3 lakhs and penalty to Rs.2

lakhs. Aggrieved by such order, the appellant is now before the Tribunal.

3. The ld. Counsel Shri A.K. Jayaraj appeared and argued on behalf of the appellant. It is submitted by him that the appellant is not contesting the finding that the imported goods are Kerosene. So also the appellant is not challenging the direction to re-export the goods. It is submitted by him that when the goods are re-exported the appellant does not benefit by sale of the goods and therefore no redemption fine can be imposed. To support this argument, he relied upon the judgment of the jurisdictional High Court in the case of Sankar Pandi Vs. UOI reported in 2002 (141) ELT 635 (Mad.). It is further submitted that the said decision was followed by the Tribunal in the case of M/s. Simplex Engineers & Traders vide Final Order No. 41581/2019 dated 26.11.2019. Similar view was taken in the case of OMS Sivajothi Mills vide Final Order No. 41028/2019 dated 22.8.2019 and in the case of Rose Mary International vide Final Order No. 40148/2020 dated 14.1.2020. He prayed to set aside the redemption fine confirmed. With regard to the penalty, ld. Counsel submitted that the appellant has incurred huge demurrage and detention charges and also the burden of re-exporting the goods. From the import of goods, the appellant has not made any profit. He prayed to set aside the penalty entirely.

4. The ld. AR Shri S. Balakumar supported the findings in the impugned order. It is stressed by him that the appellant has

misdeclared the goods and therefore the above case laws relied by the ld. Counsel for the appellant cannot be applied to the facts of the present case. It is further stated by him that the Commissioner (Appeals) has already given substantial reduction in redemption fine and penalty. He prayed to dismiss the appeal.

5. Heard both sides.

6. From the judgment of the Hon'ble jurisdictional High Court in Sankar Pandi, it is seen that when the goods are re-exported no redemption fine can be imposed. The said decision was affirmed by the Hon'ble Supreme Court as reported in 2018 (360) ELT A214 (SC). The Tribunal in the decisions relied by the ld. Counsel for appellant has followed the said decisions to hold that redemption fine cannot be imposed when the goods are released only for the purpose of re-export. Following the above decision, I am of the view that the imposition of redemption fine to the tune of Rs. 3 lakhs cannot sustain and requires to be set aside, which I hereby do.

7. As regards the penalty imposed under section 112(a) of the Customs Act, I find that the Commissioner (Appeals) has already taken a lenient view by reducing the penalty from Rs. 4 lakhs to Rs. 2 lakhs. However, it is noted in para 22 that the appellant has suffered huge charges towards demurrage and detention besides having to incur freight charges on the re-export. Taking this into consideration and also the fact that the appellant has not profited from the import as the goods were re-exported, I am of the view

that the penalty can be reduced from Rs. 2 lakhs to Rs.1,00,000/- (Rupees one lakh only).

8. The impugned order is modified to the extent of setting aside the redemption fine totally and reducing the penalty from Rs.2 lakhs to Rs.1,00,000/- (Rupees one lakh only). The appeal is partly allowed in the above terms.

(Dictated in open court)

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

Rex