CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Customs Appeal No.41730 of 2019-SM

[arising out of Order-in-Appeal No.59/2019-TTN (CUS), dated 01.07.2019 passed by Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli]

M/s.GT Spices, **Appellant**
No.539, Dheshpandu Street,
Cape Road,Kottar, Nagercoil,
Kanyakumari, Tamil Nadu.

VERSUS

Commissioner of Customs & Central Excise **Respondent**
No.1, Williams Road, Cantonment,
Tiruchirapalli 620 001.

APPEARANCE :

Shri A.K. Jayaraj, Advocate for the Appellant
Shri M. Jagan Babu, Authorized Representative for the Respondent

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 16.03.2021
Date of Decision : 16.03.2021

FINAL ORDER No.

Brief facts are that the appellant filed bill of entry dated 04.12.2018 for import of 1800 kgs. of "Mace" of Sri Lankan origin classifying the same under CTH 09082100. The Food Safety Authority vide report dated 28.01.2019 rejected the imported cargo on the ground it does not conform to the specifications under Food Safety and Standards Authority of Act, 2006 read with rules and regulations. The test report of the sample was found to be unfit for home consumption. The adjudicating authority after due process of law, confiscated the goods valued at Rs.21,86,872/- imposed redemption fine of Rs.6 lakhs under section 125 and Rs.3 lakhs under section 112(a) of the Customs Act, 1962. Aggrieved by the above order, the appellant filed appeal before the Commissioner (Appeals) who permitted re-export of goods on payment of redemption fine of Rs.2 lakhs and reduced the penalty to Rs.50,000/-. Aggrieved the appellant is before the Tribunal.

2. The learned counsel Shri A.K. Jayaraj appeared and argued for the appellant. He submitted that when the goods have been redeemed only for the purpose of re-export, the department cannot impose any redemption fine. He relied upon the decision of the Hon'ble Supreme Court in the case of *M/s. Siemens Ltd. Vs Commissioner of Customs* reported in *1999 (113) E.L.T.776 (S.C.)* as well as the decision of the jurisdictional High Court in the case of *M/s. Sankar Pandi Vs Union of India* reported in *2002 (141) E.L.T.635 (Mad.)*. He prayed to set aside the redemption fine entirely. With regard to the penalty of Rs.50,000/-, the learned counsel submitted that the appellant has not been benefitted from the import but in fact, had to suffer huger demurrage

charges and also expenses to re-export the goods. He prayed that a lenient view may be taken with regard to the penalty.

3. The learned Authorised Representative supported the findings in the impugned order.

4. The appellant does not challenge the direction to re-export the goods. The contest is confined to the redemption fine and penalty imposed. The Commissioner (Appeals) has reduced the redemption fine from Rs. 6 lakhs to Rs.2 lakhs. However, in the case of *M/s. Sankar Pandi* (supra), the jurisdictional High Court has held that redemption fine cannot be imposed when the goods are redeemed for re-export. The above decision was upheld by Supreme Court as reported in *2018 (316) E.L.T.A.214 (S.C.)*. For these reasons, I hold that the redemption fine of Rs.2 lakhs requires to be set aside, which I hereby do.

4.1 The second issue is with regard to the penalty of Rs.50,000/-. The learned counsel has submitted that though the appellant incurred heavy financial risk to import the goods had not benefitted in any manner from the transactions. The appellant has incurred heavy loss by way of demurrage charges /re-export freight charges. Taking note of these aspects, I am of the view that the penalty can be reduced to Rs.25,000/-. Ordered accordingly.

5. The impugned order is modified to the extent of setting aside the redemption fine and reducing the penalty to Rs.25,000/- [Rupees Twenty Five Thousand only]. The appeal is partly allowed in the above terms with consequential reliefs, if any.

(Dictated and pronounced in open court)

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

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