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

Appeal No. C/40728/2016

(Arising out of Order-in-Appeal C. Cus. II No.882/2015 dated 3.9.2015 passed by the Commissioner of Customs (Appeals - II), Chennai)

M/s. Sri and Company — Appellant

Vs.

Commissioner of Customs, Chennai – II — Respondent

Appearance

Shri A.K. Jayaraj, Advocate for the Appellant
Shri B. Balamurugan, AC (AR) for the Respondent

CORAM

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **28.06.2017**

Final Order No. 41099/2017

Learned counsel Shri A.K. Jayaraj submits that the issue pertains to import of goods declared as 'used tyres' of various sizes. Department took a view that the goods though would fall under the category of Hazardous Waste (Management, Handling and Transboundary) Rules, as such permission from Ministry of Environment & Forest is required for such goods which was not produced. Hence the goods valued at Rs.9,59,109/- were confiscated under section 111(d) of the Customs Act, 1962, however, with option to redeem the goods only for the purpose of re-export of payment of redemption fine under section 125 ibid. Penalty of Rs.2,00,000/- was also imposed on importer under section 112(a) ibid.

2. Today, when the matter came up for hearing, learned counsel for the appellant submitted that the very identical issue has been decided in their favour by the Division Bench of this Tribunal vide Final Order No. 40998/2017 dated 7.6.2017 in the case of Al-Noor Exports & Imports Vs. Commissioner of Customs.

3. Learned AR fairly concedes that the facts of the issue in the present case are similar to that in the said final order.

4. Heard both sides.

5. I find that the facts of this appeal are pari materia with those of that decided in the final order supra relied upon by the learned counsel.

6. The relevant portions of the said order are reproduced as follows:-

> *5.2. It is not in dispute that all second hand goods except second hand capital goods are restricted for imports in terms of para 2.17 of the Foreign Trade Policy, 2009-2014. From the facts on record, we find that the Government of India vide Notification dt. 07.04.2006 had included used tyres as a restricted item. This being so, the appellant would require a specific licence for the import of such used tyres which has not been produced. We therefore do not find any infirmity with that part of the order holding that the goods are liable for confiscation under Section 112 (d) of the Customs Act, 1962 read with Section 3 (3) of Foreign Trade (Development and Regulation Act, 1992, for import without specific licence. We also do not find any fault with the findings of lower authorities that for this particular infraction, the importers are also be liable for penal action.*

xxxx xxxx xxxx xxxxxx

5.4 Coming to the third issue concerning hazardous waste nature of the imported goods, we find from the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 that the said rules apply only to the handling of hazardous waste specified in Schedule-3 (Part-B) of the Rules which gives a 'List of Hazardous Wastes applicable for Import and Export not Requiring Prior Informed Consent' based on Annexure IX of the Basel Convention. The foot note to the schedule clarifies that all other wastes listed in Schedule-3 Part-B having 'Star/s' (...) can only be imported in to the country with the permission of MOEF. The following entry concerns "waste tyres":*

"B3140 Waste pneumatic tyres, ***excluding those which do not lead to resource recovery, recycling, reclamation or direct reuse****."*

(emphasis added)

After careful analysis and interpretation of the above schedule-3 (Part-B) and the conditionalities therein, there is no doubt that waste pneumatic tyres has been listed as a hazardous waste which can be imported only with the permission of MOEF. At the same time, the said entry excludes such waste pneumatic tyres which do not lead to resource recovery, recycling, reclamation or ***direct reuse.***

*5.5 There is no dispute in this case that the imported tyres are capable of direct reuse. Examination by Chartered Engineer appointed by the department has certified that "****present status of these tyres are not scrap items and waste****. These facts have been recorded in para-2 of the de novo order of original authority dt. 30.03.2015.*

5.6 Perusal of the inspection report dt. 28.07.2011 of the TNPCB also brings out that the said authority have repeatedly certified that the tyres are used ones and are capable of direct reuse. From perusal of the report in page 71 and 72 of the appeal book, in the third part of the report, the authority certifies that 12", 13", 15", 16" tyres were not worn, but the tyres were found to be used ones. In the 5th para, it is even more clearly certified that "thus the tyres were not new ones and only used ones and falls under waste pneumatic tyres for direct use."

5.7 In the back ground of such a certification of the status of the imported goods, by an authority competent to do so under the Hazardous Waste Rules, impugned *goods will surely have to be considered as those capable of direct reuse, hence excluded from the purview of Entry B 3140 and consequently, falling in the category, which do not require permission of MOEF for importation.*

xxxx xxxx xxxx xxxxxx

6. In the light of these discussions, and also following the ratio of the judgements/decisions cited supra, we hold that the imported tyres are used tyres, capable of direct reuse, accordingly they will fall in the categories excluded one 3140, they cannot be then treated as hazardous waste and hence their import will not require MOEF permission. The findings of the lower authorities to the contrary will therefore not sustain and require to be set aside, which we hereby do.

7. Coming to the issue of confiscability and imposition of penalty, in view of our discussions in para 5.2., we hold in the affirmative. The goods being restricted and there being no specific licence for the import, the goods were rightly confiscated and penalty imposed in the impugned order. However, as we have found that imported goods cannot be treated as "hazardous waste", redemption fine under Section 125 of the Act ***but only*** *for the purpose of re-export will not sustain. They can very well be permitted clearance for home consumption on imposition of redemption fine under Section 125 ibid. Also, considering that the goods were imported in April 2011 and have been lying in the customs custody ever since with demurrage and other charges mounting up, not to mention the deterioration in quality of the goods, toned down suitably. We therefore order that redemption fine under Section 125 ibid will be limited to 15% (fifteen percent) of the penalty under Section 112 ibid to 10% (ten percent) of the redetermined value which would be in line with the decision taken by the Tribunal in Jibran Overseas (supra). So ordered."*

7. In the circumstances and particularly taking note that there are no new facts or circumstances that require me to take a view different from that taken in the Alnoor Exports & Imports case (supra), I, therefore order, that the clearance of goods shall be allowed for home consumption, however, on payment of redemption fine under section 125 ibid and penalty

under section 112(a) ibid which is reduced to 15% and 10% of assessed value respectively.

8. On payment of the redemption fine, penalty and applicable duties and charges, the clearance of goods shall be allowed for home consumption.

9. Appeal disposed of on above terms.

(Dictated and pronounced in open court)

28/06/2017

(Madhu Mohan Damodhar)
Member (Technical)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
17/7
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai