

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal Nos. 40807 to 40809 of 2016

(Arising out of Order-in-Appeal C.Cus. II No. 209, 210 & 211/2016 dated 26.02.2016 passed by Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001.)

M/s. SDS Ramcides Crop Science Pvt. Ltd.,

VBC Solitaire, 7th Floor, 47 & 49,
Bazullah Road, T.Nagar,
Chennai – 600 017.

...Appellant

Versus

Commissioner of Customs,

Chennai II Commissionerate,
Custom House,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Shri Hari Radhakrishnan, Advocate

For the Respondent : Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 14.07.2023

DATE OF DECISION : 20.07.2023

FINAL ORDER Nos. 40593-40595/2023

Order : Per MS. SULEKHA BEEVI C.S.

The above appeals are filed against the order passed by the original authority who ordered for confiscation of the goods under Section 111(d) of

Customs Act, 1962 read with Section 17 of the insecticides Act, 1968 giving an option to the importer to redeem the goods only for the purpose of re-export on payment of redemption fine under Section 125 of Customs Act, 1962 and also imposed penalty under Section 112(a) of the Customs Act, 1962.

2. Brief facts are that the appellant M/s. SDS Ramcides Crop Science Pvt. Ltd., Chennai imported goods declared as "Cartap Hydrochloride Technical 98%" under Bills of Entry dated 02.06.2015 and "Paraquat Diochloride 42 % Technical" under Bill of Entry dated 15.05.2015 and 01.06.2012. The Bills of Entry were marked for verification by RMS system to Group-2 and a query was raised to the importer to furnish import documents including CIB & RC registration certificate. On perusal of the documents submitted it was seen that the goods were not imported directly from the manufacturer.

3. The check list for customs in case of import of pesticides (Annexure - 1) issued by CIB, Registration Committee vide its 350th meeting held on 29.08.2014, which is communicated to field by CBEC vide letter dated 11.11.2014.

(a) As insecticides, i.e., any substance included in the Schedule to the Insecticides Act, 1968 or any preparation containing anyone or more thereof, require mandatory registration under Section 9 by the Registration Committee, constituted under Section 5 of the said Act for insecticidal use or an import permit, issued by the same committee for non-insecticidal use. Therefore, no insecticide should be allowed to be imported without a valid Certificate of Registration or an Import Permit, issued by the Secretary, Central Insecticides Board &

Registration Committee under his signature and official seal.

- (b) The Certificate of Registration or the Import Permit should be checked with respect to date of validity, if any mentioned thereon. In case, it is not mentioned, such certificate of import permit shall be treated as a permanent document. In case of any date of validity is mentioned, the import should not be allowed on or after its expiry.
- (c) The Import should be allowed only if the insecticide is originating from the source of import, as mentioned in the Certificate of Registration. In case, the name of a supplier is also mentioned therein, a material should route only through the supplier and should not be allowed directly from the source of import. A list of approved sources of import of various insecticides is available on the website.**
- (d) In case, there is any variation in the name or address of either the source of import or the supplier and the endorsement of such change has not been obtained by the registrant from the Secretary, Central Insecticides Board & Registration Committee before the import, such import should not be allowed.**
- (e) The consignment should be accompanied by an invoice of that insecticide issued by the source of import. Even in case of routing the material through the supplier, the material is required to originate from the source of import, duly accompanied by an invoice issued only by the source of import.**
- (f) In cases of Certificate of Registration issued for pesticides for Import / Export category, it is to be ensured that the entire quantity imported against that Certificate is Exported too.
- (g) In case of doubt, a material should not be released. Only on receiving confirmatory

information from the Secretary, Central Insecticides Board & Registration Committee the consignment may be dealt with further.

4. As per Section 9 of the Insecticide Act, 1968, 'any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the registration of such insecticide and there shall be separate application for each such insecticide'. Further under Section 3(k) (vi) of the said Act, an insecticide shall be deemed to be misbranded, if it is not registered in the manner required by or under this Act. On examination of the documents of import as well as board circular and relevant statutes, it appeared that the importer has not registered their goods with CIB & RC as prescribed in the manner under Insecticides Act. Therefore, the imported goods are to be treated as misbranded goods under the said Act. The goods imported appeared to be prohibited for import as per Section 2 (33) of Customs Act, 1962 and are thus liable for confiscation under Section 111(d) of the Customs Act, 1962. The importer is also liable for penalty under Section 112 (a) Customs Act, 1962 for having rendered the said goods liable for confiscation.

5. Accordingly, Show Cause Notices were issued to the appellant proposing to hold the goods as prohibited, to confiscate the goods under Section 111(d) and to impose penalties. After due process of law, the original authority ordered for confiscation of the goods. The importer was given an option to redeem the goods only for the purpose of re-export on payment of redemption fine. Penalty was also imposed under Section 112(a). Aggrieved by the redemption fine and penalties, the appellant is now before the Tribunal.

6. The Ld. counsel Shri S. Hari Radhakrishnan appeared and argued for the appellant.

7. It is submitted that the appellant is a regular importer of insecticides, and they also import various raw materials required for manufacture of fertilisers and other products and is an assessee under the Central Excise Act, 1944. In the course of their business, the appellant had imported goods declared as 'Paraquat Dichloride 42% Technical' vide Bill of Entry dated 15.05.2015 and 01.06.2015. The goods were not cleared by the Customs Department on the ground that the goods were not imported directly from the manufacturer, viz., M/s. Comlets Chemical Industrial Company Limited, Taiwan. The appellant made several representations to the Proper Officer of Customs informing that the goods were imported from the authorised distributor of the manufacturer and that there was no substantial violation of the condition that the goods are to be imported from the manufacturer, M/s. Comlets Chemical Industrial Company Limited.

8. The appellant had filed another Bill of Entry dated 02.06.2015 for import of goods declared as 'Cartap Hydrochloride Technical 98%'. The said goods also were not cleared for home consumption on the ground that the goods were not imported directly from the manufacturer, viz., M/s. Liyang Chemical Factory, China. It is submitted that the appellant has already re-exported the entire goods and is now contesting only the redemption fine and penalty imposed. In the appellant's own case on identical facts and issue as reported in [2018 (359) ELT 239 (Tri. Chennai)] the redemption fine and penalties were set aside. The Department has not filed any appeal against such order.

9. It is submitted by the Ld. Counsel that the only allegation is that the goods were not directly imported from the manufacturer. There is also no dispute regarding the fact that the goods were actually

manufactured by the above companies M/s. Comlets Chemicals Industrial Company Limited and M/s. Liyang Chemical Factory, China as the case may be. The purpose of registration under the provisions of the insecticides Act, 1968, is to ensure that products of desired quality and standard are used on the crops so that there is no adverse impact either on the crops or on the consumers who consume the produce. To keep a check on the standard and quality of the insecticides being imported, the Central Insecticides Board ensures that only products manufactured by certain manufacturers are permitted to be imported. It is in this context that the Certificate of registration issued by the Central Insecticides Board is to be considered.

10. In respect of the import of Paraquat Dichloride the registration certificate issued to the appellant states that the insecticides shall be imported from M/s. Comlets Chemical Industrial Company Limited, Taiwan and that it should also be supplied by same company. In the present case, this condition is satisfied for the reason that M/s. Comlets Chemical Industrial Company Limited, Taiwan have actually manufactured the goods under import and have supplied these goods to the appellant through their authorizer distributor, M/s. Pacific Spot Ltd., Hong Kong. The Department does not dispute that M/s. Comlets Chemical Industrial Company Limited, Taiwan is the manufacturer. The appellant had produced commercial invoices dated April 2017, 2015 issued by the manufacturer, M/s. Comlets Chemical Industrial Company Limited, Taiwan, which clearly mentioned that the goods are to be delivered in Chennai, through their authorizer distributor. It can be reasonably inferred that there is no violation on the part of the appellant.

11. It is further argued that on perusal of the commercial invoices, it is very much clear that the goods were consigned by M/s. Comlets Chemical Industrial Company Limited, Taiwan, to the appellant. The buyer

has been mentioned as M/s. Pacific Spot Ltd., who is the authorizer distributor. The facts therefore remains that the goods have been manufactured by M/s. Comlets Chemical Industrial Company Limited, Taiwan and supplied by them to the appellant through their authorizer distributor. There has been substantial compliance of the conditions of the provisions and the statutes. The authorities below have failed to consider these invoices. In regard to the import of Cartap Hydrochloride, it is submitted that the Certificate of Registration issued to the appellant states that the insecticides shall be imported from M/s. Liyang Chemical Factory, China. There is no requirement in the Certificate that the goods must be directly shipped by the manufacturer. During the course of personal hearing before the adjudicating authority, the appellant had produced commercial invoice dated 26.02.2015 issued by the manufacturer M/s. Jiansu Tianrong Group Co. Ltd., (formerly known as Liyang Chemical Factory, China), which clearly mentioned that the goods are to be delivered in Chennai, through their authorizer distributor. It is submitted by the Ld. Counsel that there has been substantial compliance with regard to the conditions, and the penalties imposed are unwarranted.

12. Without prejudice to the above contentions, it is submitted by the Ld. Counsel that no redemption fine can be imposed as the goods have been re-exported. The decisions in the cases of *Siemens Ltd. Vs. Collector* [1999 (113) ELT 776 (SC)], *Union of India Vs. Sankar Pandi* [2018 (360) ELT A 214 (SC)], *Selvam Industries Ltd., VS. Commissioner of Customs, Chennai* [2021 (377) ELT 458 (Tri. Chennai)] and *Shree Salasar Tools (An HUF) VS. Commissioner of Customs, Chennai* [2023 (5) CENTAX 128 (Tri. Mad.)] were relied. The Ld. Counsel for the appellant prayed that the redemption fine and penalty may be set aside.

13. The Ld. Authorized Representative Shri Harendra Singh Pal appeared for the Department. It is argued that there is violation of the conditions and therefore the redemption fine and penalty imposed is legal and proper.

14. Heard both sides.

15. The goods have been ordered for re-export. The appellant is not contesting the order directing to re-export. Appellant is contesting only the redemption fine and penalty imposed. In the appellant's own case on the very same issue and import of identical goods, the Tribunal set aside the redemption fine and penalties. The discussion made by the Tribunal is as under:-

"3.1 After hearing both the sides and after going through the impugned order, I find that as per the certificate of registration issued by the Central Insecticides Board, the appellant was permitted to import the goods from the manufacturer mentioned therein including M/s. Liyang Chemical Factory, Jiangsu Province, China. Instead of importing the goods directly from the manufacturer's factory, the same stands routed through their distributor M/s. HC Agro Chemicals Co. Ltd., China. I have been shown the commercial invoice raised by the manufacturer to the said distributor and the commercial invoice issued indicating that the goods are required to be shifted to Chennai, India. In the Bill of lading the appellant's name appears as the notified party and the name of the manufacturer has been shown as M/s. Jiangsu Tianrong Co. Ltd., China formerly known as M/s. Liyang Chemical Factory. As such, it is clear that the goods imported by the appellant were actually manufactured by M/s. Liyang Chemical Factory, whose name appears in the registration certificate. The appellant's contention is that as per the provision of the Insecticides Act, such insecticides can be imported either from the manufacturer or through its distributor. Inasmuch as the appellants were under the bona fide belief that the manufacturer would directly supply the goods instead of supplying through the distributor, they applied for only the manufacturer's at the time of obtaining the registration. Had they known that the goods would be supplied by the manufacturer through its authorized distributor, they could have applied for incorporation of the distributors name in the registration certificate and the same would have been done by Central Insecticide Board. As such, it is only a technical breach, if at all, not justifying the imposition of redemption fine and penalty.

3.2 *Ld. Advocate, Shri Hari Radhakrishnan, appearing for the appellant further submitted that inasmuch as goods were losing its shelf life they have already re-exported the same. The Tribunal in number of decisions has held while allowing re-export of goods, redemption fine should not be imposed. For the similar reason, the penalty imposition is not justified as it is only a technical venial breach of legal provision, which flow from the bona fide belief that the import from the distributor is also covered by the registration certificate.*

3.3 *After hearing the Ld. AR, I find that there is no dispute about the fact that the imported goods were actually manufactured by M/s. Jiangsu Tianrong Co. Ltd., China and as such the prime condition of the notification and registration is satisfied. I also find that such registration is required so as to ensure that the good quality insecticides only are imported. When the goods are admittedly manufactured by the empanelled manufacturer, the fact that the same have come through the distributor will not make much difference, inasmuch as the Insecticide Board itself could have allowed such Import through the distributor. The commercial invoice, Bill of lading as also the Bill of entry clearly indicate that the goods have been manufactured and exported by M/s. Liyang Chemical Factory only and it may be for the business reasons that the documentation have been routed through the distributor. It can be safely concluded that there is no contravention of the registration certificate and even if it is there, it is too technical to be taken note of so as to penalize the assessee.*

4. *Further, in the case of Padia Sales Corporation v. C.C. - [1992 \(61\) E.L.T. 90](#) (Tribunal), the Tribunal has held that redemption fine imposition is not justified while permitting re-export of the goods. As I have already observed that there is no violation of the registration certificate and it is only a hyper technical objection taken by the Revenue, I find no reasons to sustain the impugned order imposing redemption fine and penalty on the assessee. The same is accordingly set aside and the appeal is allowed with consequential relief to the appellant."*

16. From the above order, it can be seen that the import was also made from manufacturer viz., M/s. Liyang Chemical Factory, China.

17. The Hon'ble Apex Court in the case of Siemens Limited Vs. Collector of Custom (supra) held that no

redemption fine can be imposed when the goods are re-exported. The relevant paragraph reads as under:-

"4. The appellant paid the redemption fine of Rupees Six lakhs. It was unable to re-export the goods within three months because of certain actions on the part of the Customs authorities with which we do not need to concern ourselves here in any detail. To prevent further time being wasted, the appellant moved this Court by an interim application in this appeal and an order was passed thereon on 22nd February, 1999. It is clear that by this order this Court, having regard to the facts that were brought to its notice, extended the period of three months fixed by the adjudicating authority for re-export of the goods, in which event neither the redemption fine nor the duty were to be paid. The re-export took place accordingly.

5. We think that, in these circumstances, the appellant's appeal must be allowed and the respondents directed to refund to the appellant the amount of Rupees Six lakhs paid as and by way of redemption fine."

18. In the case of Sankar Pandi Vs. Union of India (supra) is as follows:-

"3. It appears that the question relating to re-export is covered by the decision of the Supreme Court rendered in the case of Siemens Limited v. Collector of Customs reported in S.C. [1999 \(113\) E.L.T. 776](#). Keeping in view the abovesaid decision there cannot be any doubt that the petitioner is entitled to re-export the articles in question and for the abovesaid purpose, it is not necessary for him to pay redemption fine as imposed by the authorities.

4. The learned Counsel for the petitioner further submitted that since the petitioner is not going to import the articles and use or sell the articles within India, the imposition of penalty of Rs. 33,000/- should be quashed.

5. The learned Counsel appearing for the Department has opposed to this stating that the petitioner has violated and the penalty has been rightly imposed.

6. In the facts and circumstances of the case, I feel the imposition of penalty of Rs. 33,000/-, keeping in view the relevant value of the articles concerned, appears to be grossly high and interest of justice would be met by reducing the penalty to Rs. 15,000/- and such amount should be paid by the petitioner within a period of two weeks from the date of receipt of this order. Only after the amount is paid, the petitioner would be permitted to re-export the items concerned.

7. In the result, the Writ Petition is partly allowed. No costs. Consequently, connected W.M.Ps. are closed."

19. After appreciating the facts and taking into consideration that the goods have already been exported, we are of the view that the redemption fine and penalties imposed require to be set aside, which we hereby do.

20. The impugned order is modified to the extent of setting aside the redemption fine and penalties imposed without disturbing the order of confiscation and direction to re-export. The appeal is partly allowed in the above terms.

(Order pronounced in open court on 20.07.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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