CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Customs Appeal No. 52199 of 2019

[Arising out of Order-in-Appeal No. D-I/ACC-EXP/194/2019-20 dated 24.05.2019, passed by the Commissioner of Customs (Appeals), New Delhi]

PME POWER SOLUTIONS (INDIA) LTD. ... **APPELLANT**
B-10, & B-11, UPSIDC
Grater Noida 201 306 (UP)

VERSUS

COMMISSIONER OF CUSTOMS, ... **RESPONDENT**
(Exports) New customs House,
Indira Gandhi Air Port New
NEW DELHI.

APPEARANCE:

Shri Harbir Singh, Advocate for the Appellant
Shri Yasbir Singh, Authorised Representative for the Department

CORAM:
HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: April 16, 2021

FINAL ORDER No. 51553 /2021

PER RACHNA GUPTA

Present appeal is preferred by M/s. PMC Power Solutions (India) Ltd. against the order of Commissioner (Appeals) bearing No. 194/2019-20 dated 24.5.2019. The facts that lead to the filing of impugned appears are as follows:

That the appellant herein had imported Container of Water treatment plant (hereinafter referred to as RWT) from Checz Republic against the Bill of Entry No. 224 dated 19.11.2014 for the value USD 1,70,000. The said RWT otherwise attract the Customs duty along with the additional duty which worked at Rs. 24,78,015/-. The appellant imported the said RWT under Notification No. 3/1989-Cus dated 09.01.1989 for display in exhibition titled “Clean and Pure Water Resources Exhibition” to be held on 30.10.14 at Yamuna Bank, Near Kalindi Kunj, Sarita Vihar, New Delhi. The said notification envisages exemption from payment of customs duty to such goods as are imported for display or use at fair, exhibition, and the goods so imported were required to be re-exported within a period of six months from the date of official closure of the concerned event. The appellants had not re-exported the same within six months. However, vide letter dated 19.05.2014, importers prayed for the extension of period for re-export. The request was accepted and the time was granted upto 19.11.2015 by the concerned Deputy Commissioner of Customs. After the expiry of said period also, the appellant did not re-export the said RWT.

That the appellants case is that there have been subsequent request dated 05.11.2015 and 15.3.2016 for further extension of time period for re-export but apparently no such request was considered. The RWT was not re-exported which resulted into contravention of the provisions of Notification No. 3/1989 dated

09.01.1989 by the appellant thereby making the appellant liable to payment of duty. Before the Show cause notice could be issued based on said contravention that the appellant vide letter dated 2/5.5.2016 requested that no show cause notice may be issued to them vide their letter dated 02.05.2016 before the Commissioner of Customs for allowing them the payment of customs duties involved in the goods imported. In furtherance, thereof the said concerned Deputy Commissioner vide order No. 76/2016 dated 19.5.2016 ordered confiscation of RWT imported on account of the above mentioned contravention of the notification No. 3/89 by the appellant with an option to getting the goods redeemed on payment of Redemption Fine of Rs.17,12,325/-. The demand of Customs duty involved amounting to Rs. 24,78,015/- was confirmed along with the interest and the penalty under section 117 of Customs Act read with section 112 thereof was also imposed upon the appellant. Being aggrieved, the appellant filed an appeal before Commissioner (Appeals) which has also been rejected vide order under challenge. Being aggrieved, the appellant is before this Tribunal.

2. It is submitted by the learned Counsel appearing for the appellant that there is no show cause notice ever issued upon the appellant containing alleged contravention by the appellant of the notification No. 03/1989. The appellant was diligently seeking time extension which was not considered. Learned Counsel has also submitted that original order has been passed by the Deputy

Commissioner, Customs. He has the power for adjudicating the matter of the preliminary limit of Rs.5 lakh. Since the demand herein is much above Rs.5 lakh, the order in original passed by the Deputy Commissioner of Customs is without jurisdiction, hence the order is non-est. The said statement was made before the Commissioner (Appeals) also. But the Order under challenge has been passed in sheer non consideration of the law point raised by the appellant as far as the jurisdiction of the original authority is concerned. The order under challenge is therefore, liable to be set aside on this score itself. The appeal is accordingly, prayed to be allowed.

3. While rebutting this argument, it is submitted by the learned Departmental representative that the RWT was imported for being displayed in exhibition for few days and it was to be re-exported within six months of the closure of that exhibition which was in the year 2014 but RWT has not been re-exported till date despite the fact that time extension beyond one year of said exhibition was not considered. With respect to the submission that there has been no Show cause notice, learned Departmental Representative has brought to the notice that it was the appellant's own request that no show cause notice may be issued rather he has rendered himself liable for payment of Customs duty involved on the said RWT. Hence, there is no infirmity in the order of adjudicating authority passing the above order in absence of show cause notice. With respect to the arguments about jurisdictional it is

submitted by the learned Departmental Representative that the Deputy Commissioner has no power to pass the order beyond his limit. Matter may be remanded back for being adjudicated by the competent authority.

4. In rebuttal, learned Counsel has objected the request of remand with the submission that the order was without jurisdiction as non est in law and cannot be sustained. Appeal is prayed to be allowed.

5. After hearing both the parties and perusal of the record, I observe and held as follows:

(i) The appellant imported the container of RWT from Czech Republic on 19.11.2014 for being kept in exhibition as “Container Water Treatment Plant RWT” which was held to be on 13.04.2014. The said import was for promotion and exhibition purpose. Accordingly, same was imported under notification No. 03/1989 dated 09.01.1989. In terms thereof, the RWT was to be re-exported within six months from the date of closure of event. Admittedly, the appellant could not re-export the same within the required period. Hence requested for time extension for another six months.

6. The appellant could not meet the extended time limit as well. Hence sought another time extension on the ground that the RWT is required for event at Varanasi to be demonstrated over a period of two months. Letter dated 15.3.2016 as annexed on the record

shows that while seeking the time extension the appellants were repeatedly acknowledging that in case of failure to re-export within the time extended, the appellants shall be depositing the requisite customs duty along with interest. Further extension was not granted to the appellant despite that said RWT has not been re-exported till date. In view of this admitted facts Notification No. 03/89 is hereby reproduced:

> "(2) the importer undertakes through the execution of a bond or an instrument to the satisfaction of the Assistant Commissioner of Customs to re-export the goods within a period of six months from the date of official closure of the concerned event or within such extended period as the Assistant Commissioner of Customs may allow and, in the event of failure to re-export as aforesaid, to pay the duty which would have been levied thereon but for the exemption contained herein."

The totality of the circumstances are sufficient for me to hold that the appellant is liable to pay customs duty upon RWT which was imported on the assurance of being used in display for a period and re-export thereafter.

7. However, the original adjudicating authority i.e. Deputy Commissioner of Customs in terms of section 122 of Customs Act, 1962, has the pecuniary jurisdiction to decide the matter with the value of less than Rs. 5 lakh. Apparently, the value of the impugned matter is beyond Rs. 5 lakh. Also there is nothing on record till date about any delegation of power to the said Deputy Commissioner nor the law has the provision of such delegation. Hence, it is held that Deputy Commissioner of Customs was not competent authority to pass the order in original dated 19.5.2016,

Commissioner (Appeals) should also have considered the plea of jurisdiction as was taken before him. Since the order passed without jurisdiction is not sustainable in law as being non-est, none of these orders are sustainable.

8. However the fact remains, as discussed above, is that appellant is liable to pay the customs duty. In the given circumstances, I hereby remand the matter to the department for being placed before the competent authority for the appropriate adjudication. Appellant is at liberty to discharge his liability within one month from this order. In that case, the present order of remand will have no effect. Hence consequential relief to follow to appellants. Appeal shall be re-adjudicated by the competent original Adjudicating Authority. Accordingly, appeal stands disposed of by way of remand.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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