

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 50006 of 2022 (SM)

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-137-2020-21 dated 24.02.2021 passed by the Commissioner (Appeals) Customs, CGST & Central Excise, Indore (M.P.))

Shri Balaji Ceramic Products

E-338 & E-339, RIICO Industrial Area
Pahse-I, Bhiwadi, Distt- Alwar-301019.

Appellant

VERSUS

Commissioner of Customs

Manik Bagh Palace
Post Box No. 10, Indore,
Madhya Pradesh-453771

Respondent

APPEARANCE:

Mr. Arun Goyal, Advocate for the Appellant

Ms Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50024 / 2023

Date of Hearing: 10.01.2023

Date of Decision: 10.01.2023

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the re-imported petroleum coke have been rightly confiscated alongwith imposition of penalty under Section 112(b) of the Customs Act. The brief facts are as follows:

(i) The Appellant had filed a Bill of Entry bearing No. 7159403 dated 08.03.2020.at ICD Mandideep (Bhopal) for clearance of

purportedly re-imported goods (calcined Petroleum Coke) which were claimed to have been exported against SB No. 1275899 dated 1.12.2017, on the grounds of rejection of the goods by the Buyer, and were accompanied with re-export invoice no. SBCP-53/2019 dated 21.01.2020 issued by M/s NAJD STEEL, Riyadh.

(ii) It was observed during routine physical verification of the goods that:

- Most of the bags were un-marked.
- 42 bags were exported vide SB No. 1275899 dtd. 1.12.2017 and only 20 jumbo bags were re-imported, and all the jumbo bags were in open condition and the weight of each and every bag deviated from that mentioned in Shipping Bill.
- Total weight of purportedly re-imported goods was found to be 19,526.20 KGs, against declared weight of 19,690 Kgs.

Hence it could not be established that the said imported goods pertained to those goods which were exported from India, as per shipping bill dated 01.12.2017, attached.

Also, re-import of the calcined Petroleum coke appeared not allowable as per applicable Notifications, Circulars.

(iii) As per DGFT Notification No. 42/2015-2020 dtd. 23.10.2018, the import of pet coke for fuel purpose is prohibited. However, import of pet coke is free for cement, lime Kiln, calcium carbide, 'gasification Industries, and graphite electrode industries for use as feed stock or in the manufacturing process. Further, Aluminum industry can import calcined pet coke not exceeding 0.5 MT per annum and calcined Pet coke manufacturing units can import raw pet coke not exceeding 1.4 MT per annum.

(iv) It was observed that 42 bags were exported vide S.B. No. 1275899 dtd. 1.12.2017 and on the contrary only 20 jumbo bags

were re-imported and all the Jumbo bags were found in open condition and the weight of each and every bag was found to be different. Hence, it could not be established that the said re-imported goods pertained to those goods which were exported from India, as per the referred shipping bill. Further, all the goods appeared not of good quality and the party was unable to provide the gradation test report of the goods imported, and copy of reversal of amount in Bank statement as per BOE.

(v) In terms of Notification No. 45/2017- Customs dated 30.06.2017, in the case of goods exported under the Duty Exemption Scheme or Export Promotion Capital Goods Scheme or Duty Entitlement Passbook Scheme or any reward scheme of Chapter 3 of Foreign Trade Policy, re-importation, of such goods are allowed within 1 year of exportation. The exporter had availed the benefit of MEIS scheme and therefore the importer had availed reward scheme.

(vi) In terms of MOEF guidelines for regulation and monitoring of imported Petcoke in India, import of petcoke for use as fuel is prohibited. Further, consent issued by the concerned SPCB/PCC shall clearly specify the quantity permitted for import and its use on a per month and or per annum basis-. Only registered industrial units with valid consent from SPCBs/PCC shall be permitted to directly import pet coke and consignment shall be in the name of user industrial unit for their own use only. Import of Pet Coke for the purpose of trading shall not be permitted.

(vii) Further, identity of goods exported as per shipping bill was not established with respect to BOE filed. Also, the importer is engaged

in trading of goods and not connected with any manufacturing activity.

(ix) Accordingly the Show Cause Notice No 01/DC/CUS/MDP/ 2020 dated 08.06.2020 was issued to appellant by the Deputy Commissioner, ID Mandideep proposing therein:

- Confiscation of 19,526.20 Kgs of "calcined Petroleum Coke" valued at Rs. 6,06,156.22/-, in terms of Section 111 of the Customs Act, 1962.
- Penalty for improper importation of restricted/prohibited goods etc. under Section 112 of the Customs Act, 1962.
- For Non-compliance of all the provisions of Customs Act, 1962 and any other act and order enforced, the goods should be disposed off/destroyed as the case may in supervision of Pollution Control Board, M.P. at the importers own cost in such a manner as prescribed by Pollution Control Board, M.P. or any other authority as per applicable rules and regulations read with provisions of Customs Act thereof.
- A penalty for knowingly or unknowingly or intentionally importation of incorrect material.
- A penalty for any other contravention of the Customs Act, 1962 under section 117 of the said Act.

3. The SCN was adjudicated on contest and the goods were absolutely confiscated being 19,506.20 kg of CPC valued at Rs. 6,06,156.22/-. Further penalty of Rs. 6,06,156/- was imposed under Section 112(b) of the Act. Being aggrieved the appellant preferred appeal before the learned Commissioner (Appeals) who vide impugned Order-in-Appeal have been pleased to reject the appeal. Being aggrieved, the appellant exporter (re-importer) have filed present the appeal before this Tribunal.

4. Learned Counsel for the appellant, Mr. Arun Goel, *inter alia* urges that this is a case of re-import by the appellant who had exported the goods to the actual user-NAJD Steel, Saudi Arabia.

However, as they found part of the goods not suitable, they have returned part of the goods after negotiation and agreement between the parties. The learned Counsel have referred to the correspondence between the parties regarding the goods which were exported. The Director of the appellant had also travelled to Saudi Arabia to settle the dispute, and agreed to take back 20 bags equivalent to 20,000 kg of CPC. Accordingly, NAJD Steel re-exported the rejected CPC packed in 20 Jumbo bags mentioning net weight at 19.690 kg valued at USD 8072.90/- vide re-export invoice dated 21.01.2020 to the appellant. As the buyer NAJD Steel had made advance payment for these goods at the time of purchase, they also advised the appellant to refund the amount, giving swift details. The goods were booked vide bill of lading on 28.10.2020, wherein the shipper is NAJD Steel and the consignee is the appellant. Further, it is mentioned in the bill of lading that the goods are being sent which have been received by the shipper against invoice no. SBCP-53 dated 30.11.2017 and Shipping Bill No. 1275899 dated 01.12.2017. Thus, evidently rejected goods have been sent by the buyer from Saudi Arabia back to the appellant exporter. Further admittedly, the goods are CPC which had been exported to Saudi Arabia.

5. Learned Counsel, further urges, as per Section 20 of the Customs Act, if goods are re-imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subjects, on the importation thereof. Further, notification 45/2017-Cus dated 30.06.2017 exempts goods falling under any Chapter of the Customs Tariff Act when re-imported into

India, from so much of the duty of the customs leviable thereon, as well as the whole of integrated tax, compensation cess leviable. Below the table in the said notification, conditions precedent are mentioned. As per condition no. (b), goods other than goods exported under any incentive scheme can be re-imported within three years after their exportation or within such extended period, not extending two years, as the Principal Commissioner of Customs, on sufficient cause being shown for the delay, may be allowed. Further, condition Clause (d) mentions that the goods are the same which were exported.

6. Learned Counsel further urges that the Court below have erred in relying on Notification No. 42/15-16-Cus dated 23.10.2018 which provides for restriction on import of petroleum coke, and it is allowed to be imported only on actual user basis for the specified purpose. The notification also provides for import of raw petroleum coke for manufacture of calcined petroleum coke, subject to quantitative restriction.

7. Learned Counsel further draws attention to para 1.05 of Chapter 1 of Foreign Trade Policy, 2015-2020 (as amended), wherein in Clause B of para 1.05, it is provided- in case of change of policy from free to restricted/ prohibited/ state trading or otherwise regulated, the import/export already made before the date of such regulation/restriction, will not be affected.

8. Learned Counsel further points out that the learned Commissioner appeals have also committed mistake of fact inasmuch as, it has been observed that the re-import have been

made after more than three years, wherein the actual re-import have been made within three years as allowable by Section 20 of the Customs Act r/w Notification No. 45/2017-Cus. Further, learned Commissioner observed that CPC is not freely importable, treating import as a fresh import and not re-import of the goods.

9. Accordingly, learned Counsel prays for allowing the appeal with consequential benefits.

10. Learned AR for Revenue relies on the impugned order and further draws the attention to the inspection report wherein, the customs officers were of the view that the goods claimed to be re-imported do not appear to be the same goods, in absence of marking on the Jumbo bags. Further, it appeared to the customs that the appellant have taken benefit of MEIS scheme and they were entitled to import only within one year of export or extended period as may have been allowed.

11. Having considered the rival contentions, I find that the learned Commissioner (Appeals) have recorded the findings that the appellant had purchased the goods for export and on being rejected by the buyer in Saudi Arabia, the goods have been re-imported and admittedly, appellant have not availed any export benefit on the impugned goods. Thus, I find that both the identity of the goods is also established and also that the appellant had genuinely exported the goods to the user buyer in Saudi Arabia. Further, on rejection by the buyer, the appellant was obligated to re-import the goods to mitigate his loss. Further, admittedly, the re-imported goods have been found to be CPC. The minor variation in weight is normal

variation in the weight of the goods, due to normal loss in transit. I further find that as per para 1.05 (Clause B) of Chapter 1 of FTP 2015-2020, provides that in case of change of policy from free to restricted/prohibited etc. the imports or export already made before the date of such regulation/restrictions will not be effected. Admittedly, the export in this case was made through shipping bill dated 01.12.2017, which is before the date of restriction imposed vide aforementioned Notifications. Thus, I hold that CPC was free for export-import on the day of export, the re-import by the appellant of the rejected goods, has to be treated as freely importable under the Foreign Trade Policy.

12. In view of my aforementioned findings and observations, I allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits, in accordance with law.

13. Appeal allowed.

(order dictated in the open Court)

Anil Choudhary
Member(Judicial)