In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.C/53215/2015
(Arising out of Order-in-Appeal No.CC(A)/Cus/D-I/Exp/255/2015 dated 28.05.2015 passed by Commissioner of Customs (Appeals), New Delhi)

Jagatjit Industries Ltd …Appellant
Vs
CC New Delhi …Respondent

Appearance:
Present for the Appellant : Sh Sudhir Malhotra, Advocate
Present for the Respondent : Sh S.Nunthuk & Sh R.K. Manjhi, DRs

Coram:
HON'BLE JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR V. PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 13.11.2017
Date of decision: 17.11.2017

Final Order No.57950/2017

Per V.Padmanabhan

The appeal is against the Order-in-Appeal No.255/2015 dated 27.05.2015. The appellant imported certain goods and warehoused the same in Public Bonded Warehouse under Section 60 of the Customs Act, 1962. Upon expiry of the warehousing period, the warehoused goods were not cleared by the appellant. They did not request for extension of the warehousing period. The adjudicating authority ordered confiscation of the warehousing goods and allowed the same to be redeemed upon payment of redemption fine amounting to Rs.56,79,548/-. He also imposed penalty of Rs.5 lakhs. When the order was challenged before

Commissioner (Appeals), he upheld the same. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri Sudhir Malhotra, Advocate for the appellant as well as S/Sh S.Nunthuk and R.K.Manjhi, DRs appearing for Revenue.

3. The ld Counsel submitted that for delay in clearance of warehoused goods, the same cannot be confiscated under Section 111 (d), (j) and (o) of the Customs Act. He contended that the appellant will be liable to pay only the customs duty along with interest as applicable. Accordingly, he submitted that the confiscation, redemption fine and penalty imposed may be set-aside. He also relied on the following case laws:

i) Modern Suitings Ltd-2009(237) ELT 421 (Tri.Del)

ii) AIR India-2001(132) ELT 305 (Tri.Mumbai)

4. The ld DR submitted that goods were permitted to be stored in the warehouse subject to the conditions of the bond executed by the importer. The appellant has violated the terms of the bond by not clearing the goods upon expiry of the warehousing period. He argued that such goods are to be considered as improperly removed from the warehouse as per Section 72(1) (b) of the Act. Consequently, the goods have been rightly confiscated and redemption fine and penalty are fully justified.

5. We heard both sides and perused the records. The facts are not in dispute. The appellant has imported certain goods and stored the same in a public bonded warehouse. However, in violation of the warehousing bond executed by them, the appellant has failed to clear the goods even after expiry of the warehousing period. Such goods are to be deemed as improperly removed in terms of Section 72 (1) (b) of the Act. Consequently, the goods are liable to be confiscated under Section 111(d) of the Act. Hence, we find no infirmity in the order passed by the lower authorities to confiscate the imported goods. However, keeping in view the peculiar facts and circumstances of the present case, we find that the redemption fine and penalty imposed are on the higher side. To meet the ends of justice, we reduce the redemption fine to Rs.4 lakhs and penalty to Rs.2 lakhs. However, the appellant will be liable to pay the custom duty along with interest as ordered by the lower authorities.

6. In view of above discussions, appeal is partially allowed and impugned order is modified.

(Pronounced in Court on 17.11.2017)

(Justice (Dr) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

pcs