IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 78181 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/41/2018 dated 15.05.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Shree Renuka Sugars Limited **: Appellant**
P.O. Debhog, City Centre, Haldia,
Purba Medinipur, West Bengal – 721 657
[Regd. Add: 7th Floor, Devchand House, Dr. Annie Besant Road,
Worli, Mumbai – 400 018 (Maharashtra)]

VERSUS

Commissioner of Customs **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 78334 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/41/2018 dated 15.05.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs **: Appellant**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

VERSUS

M/s. Shree Renuka Sugars Limited **: Respondent**
P.O. Debhog, City Centre, Haldia,
Purba Medinipur, West Bengal – 721 657

AND

Customs Appeal No. 77955 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/41/2018 dated 15.05.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. J.M. Baxi & Company **: Appellant**
Central Plaza, 5th Floor,
Room No. 508, 2/6, Sarat Bose Road,
Kolkata – 700 020

VERSUS

Commissioner of Customs **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Dr. Samir Chakraborty,Senior Advocate
Shri Abhijit Biswas, Advocate
Shri Chandrasekhar Gupta, Chartered Accountant
for the Assessees(s)

Shri Tariq Sulaiman, Authorized Representative
For the Revenue

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75015-75017 / 2025

DATE OF HEARING: 12.12.2024

DATE OF DECISION: 07.01.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 78181 of 2018 has been filed by M/s. Shree Renuka Sugars Limited (hereinafter referred as the 'appellant-importer') against the Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/41/2018 dated 15.05.2018 passed by the Commissioner of Customs (Port), Custom House,15/1, Strand Road, Kolkata – 700 001.

1.1. **Customs Appeal No. 77955 of 2018** has been filed by M/s. J.M. Baxi & Co (hereinafter referred as the 'CHA') against the Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/41/2018 dated 15.05.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001 challenging the penalty imposed against them in the impugned order.

1.2. The Commissioner has dropped the proceedings against five officers of the company holding that they were not found to be liable for penal action under the Customs Act, 1962. Aggrieved against the dropping of the proceedings against five officers of the appellant-importer, the Revenue has preferred the Customs **Appeal No. 78334 of 2018.**

2. The appellant-importer, M/s. Shree Renuka Sugars Ltd., is a sugar manufacturer, and has imported raw sugar for home consumption during the material period through Haldia Port, by availing the benefit of Notification No. 12/2012-Cus (Serial No. 76, condition 3A). During the period between October, 2012 and July, 2013, the appellant-importer imported 5,98,865 M.T. of raw sugar under several bills of entry which were assessed finally by the Customs Authorities.

2.1. On February 21, 2014, a Show Cause Notice was issued by the Commissioner of Customs (Port), Kolkata (hereinafter referred as "the Commissioner") wherein it was alleged that the appellant-importer had cleared the said goods during the period from April 8, 2011 to July 4, 2013 (hereinafter referred to as the "said period") by allegedly wrongfully claiming exemption from additional duty of customs leviable under Section 3(5) of the Customs Tariff Act, 1975 (hereinafter referred as "CTA,1975"), availing the benefit under Serial No. 12 of the said Notification and had thereby allegedly evaded payment of additional duty of Customs leviable on the said goods under Section 3(5) of the CTA, 1975 amounting to Rs. 73.04 crores.

2.2. During the pendency of the adjudication, the appellant-importer deposited the entire amount of duty of Rs. 73,04,91,656/-demanded in the notice from March, 2014 to September 15, 2015, along with part of the interest.

2.3. The Notice was adjudicated by the Ld. Commissioner vide Order-In-Original No. KOL/CUS/ COMMISSIONER/PORT/41/2018 dated May 15, 2018, whereby he has confirmed the duty demand of Rs. 73.04 crores of additional duty of customs, under Section 28(8) of the Customs Act, 1962, along with interest thereon under Section 28AA of the Act. Penalties of Rs. 73.04 crores under Section 114A of the Act and Rs. 1.00 crore under Section 114AA of the Act were imposed on the appellant-importer. The Commissioner appropriated the amounts of Rs. 73.04 crores and Rs.1.00 crore deposited by the appellant-importertowards the duty and interest demands respectively. The Ld. Commissioner also allowed the appellant-importer to make the payment of interest in 12 instalments with effect from June, 2018. As allowed under the said Order-in-Original, the appellant-importer, on 28.06.2018, deposited an amount of Rs.2.00 crores and on 27.07.2018 Rs 2.00 crores towards the said interest liability.

2.4. The appellant-importer has filed the present appeal against the imposition of penalties and interest only. They have not contested the demand of Customs duty confirmed in the impugned order.

3. During the course of hearing, the appellant-importer has made the submission thatthere was no dispute with respect to the classification of the said imported raw sugar or the duty payable thereon at the

time of clearance of the said goods availing benefit under the said Notification No. 12/2012-Cus dated March 17, 2012, until July 2013. The appellant-importer was informed by the officers that the Finance Act, 2011 omitted product 'sugar' from the list of First Schedule to the "Goods of Special Importance Act" and the necessary notification thereof was issued in 2012 and therefore the appellant-importerwas liable to pay SAD on the raw sugar imported by them under the Customs Tariff Act, 1975, under Advance Authorisation.It is informed that the appellant-importer had export commitment to be fulfilled within the stipulated period utilizing the said imported sugar and hence they challenged the detention order in the Hon'ble Gujarat High Court; the Hon'ble High Court thereafter quashed the detention order and directed the Commissioner of Customs, Kandla to adjudicate and decide the issue. The appellant-importer states that by the time the detention issue was settled by the Hon'ble Gujarat High Court and the Customs authorities at Kandla released the detained goods, further import of the said goods at Haldia refinery had stopped because production activity at the said refinery was suspended for the reason that the Government had raised Customs duty on sugar from 25% to 40%.

3.1. The appellant-importer submits that Kandla Custom Authorities issued Alert Notice No. 01/13-14 dated April 10, 2013 in F.No.S/43-29/SIIB/2012-13 asking all Customs formations, including Kolkata/Haldia Customs, to levy 4% additional duty under Section 3(5) of the Customs Tariff Act on the ground that the exemption vide Sr. No. 12 of the said Notification was not available to the goods in question, as sugar was omitted from the list of goods covered by the Additional Duty of Excise (Goods of Special Importance) Act, 1957 with effect from April 08, 2011.

3.2. The appellant-importer submits that the issue involved is interpretory in nature; they have not suppressed any information from the Department and have been importing raw sugar prior to April 2011 without payment of SAD and continued to avail the SAD exemption during the period April 8, 2011 to July 4, 2013. It is pointed out that the Notice has been issued alleging that they have wrongfully claimed the exemption from additional duty of customs leviable under Section 3(5) of the CTA, 1975, by availing the benefit under Serial No. 12 of the Notification No. 12/2012-Cus dated March 17, 2012, until July 2013; in this regard, the appellant-importer submits that they were under the bona fide belief that SAD was exempted for the raw sugar imported and continued to avail the exemption even after April 8, 2011. They contend that ff the exemption was not available, the Customs authorities should have pointed out the same; instead, the Bills of entry filed by them were cleared without raising any query. Thus, the appellant-importer contends that they cannot be held responsible for the non-payment of SAD. Thus, when the liability of SAD was pointed out and the goods imported were detained, to avoid accruing of huge interest on the said purported demand of SAD in the show cause notice in the event of the appellant-importer not succeeding in contesting the purported duty demand, they have deposited the said duty demand of Rs. 73.04 crores during the pendency of the adjudication proceedings. The appellant-importeralso submits that the demand of interest under Section 28AA of the Act on the wrongfully confirmed duty demand of Rs. 73.04 crores is illegal, invalid and bad in law; therefore, the Commissioner should return the interest of Rs. 1.00 crore deposited by them during the course of adjudication proceedings; instead, the Ld. Commissioner has appropriated and adjusted the same towards the non-leviable interest liability. In this regard, the appellant-importer submits that they have established their bonafides in availing the exemption and hence prayed for waiver of interest and penalty imposed on them.

3.3. The appellant-importerfurther submits that the demand for SAD has been madeunder Section 3(5) of CTA; Section 3(12) of CTA provides that the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, "including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section, as they apply in relation to the duties leviable" under that Act. It is their contention that it would thus be seen that there is no provision in CTA, including Section 3 thereof, for levy of interest and penalty for non-payment / delayed payment of *inter alia* SAD nor has the said section 3, including sub-section (12) thereof, borrowed the provision relating to interest under Section 28AB of the Customs Act, to apply. In such circumstances, the appellant-importer contends, as held by the Hon'ble Supreme Court in *Union of India Vs. Mahindra and Mahindra Ltd. [2023(3) Centax 261 (Bom.)]*upholding the decision of the Hon'ble Bombay High Court in *Union of India Vs. Mahindra and Mahindra Ltd. [2023 (9) Centax 361 (S.C.)]*there can be no levy/demand of interest nor imposition of penalty for non-payment and/or delayed payment of, *inter alia*, SAD; the charging section according to the Hon'ble Bombay High Court for CVD / SAD / Surcharge was section 90(1) of the Finance Act, 2000 and Section 3(1) of the CTA and not Section 12 of the Custom Act. In these premises, as held by the above decisions, there being no substantive provision for levy / demand of interest and imposition of penalty on, inter alia, SAD, the appellant-importer submits such imposition would be without any authority of law. In this regard, it is further pointed out that the distinction which the Legislature has made in CTA between the provisions relating to Additional Duty under Section 3(8) on the one hand and, inter alia, Sections 8B(5A) (Safeguard Duty) and Section 9A(8) (Anti-Dumping Duty) also, in clear terms, supports the aforesaid view. Therefore, they submit that for this reason also the demand for interest and collections thereof from the appellant-importer is without authority of law, and unsustainable. Accordingly, the appellant-importer prayed for waiver of interest and penalties imposed in the impugned order.

3.4. The appellant-importer submits that it is settled by the Hon'ble Apex Court and followed by the High Courts and Tribunals that in such cases, neither there can be confiscation of the subject goods nor imposition of any penalty upon the assessee-importer. In this regard reliance is placed upon inter alia the following decisions :-

- ***i. Northern Plastic Ltd. Vs. CC & CE [1998 (101) ELT 549 (SC)]***
- ***ii. Commissioner of Customs Vs. Gaurav Enterprises [2006 (193) ELT 532 (Bom.)]***

iii. ***A.V. Global Corporation Pvt. Ltd. Vs. Commissioner of Customs [2024(10) TMI 159-CESTAT, NEW DELHI.]***

3.5. The appellant-importer submits that confiscation of the goods importer is not warranted as there was no wilful, intentional and deliberate non-payment of SAD. They submit that all the Bills of entry were cleared after obtaining due permission from the jurisdictional Customs authorities. The customs authorities at Kolkata/Haldia initiated the instant proceeding against the appellant only after issue of the Alert Notice dated April 10, 2013 by the Kandla Customs authorities asking all Customs formations in the country, including the respondent, to levy 4% SAD on the plea that exemption from SAD was no longer available. Thus, the appellant-importer submits that the goods imported after obtaining due permission from the proper officers are not liable for confiscation. In this regard reliance is placed upon, inter alia, the following decisions :-

i. ***Commissioner of Customs (Import)*** *Vs.* ***Finesse Creation Inc****,* ***2009 (248) ELT 122(Bom)***

   - affirmed by Supreme Court in ***Commissioner*** *Vs.* ***Finesse Creation Inc.****,* ***2010 (255) ELT A120(SC)***

ii. ***Commissioner of Customs (Import)*** *Vs.* ***Air India Limited****, (****2023) 9 Centax 111 (Bom)***

iii. ***Commissioner of Customs*** *Vs.* ***Indian Airlines Ltd.****, (****2024) 16 Centax 337 (T)***

iv. ***Commissioner of Customs (Import)*** *Vs.* ***SB Impex****,* ***2017(358) ELT 358(T)***

3.6. Regarding invocation of extended period of limitation to confirm the demand, the appellant-importer submits that in this case, there is no wilful misstatement or suppression of any material fact and hence the extended period of limitation as contained in Section 28(4) of the Act cannot be invoked.

3.7. Regarding imposition of penalty under Section 114A and Section 114AA of the Customs Act, the appellant-importer submits that Section 114A provides for imposition of penalty for short levy or non-levy or short payment or non-payment of duty by the reason of collusion or any wilful misstatement or suppression of facts. In this case, there is no wilful misstatement or suppression of fact on the part of the appellant and hence the primary condition precedent for invoking Section 114A are absent. Regarding the penalty imposed under Section 114AA of the Act, the appellant-importer submits that there is no finding in the impugned order as to how the appellant-importer is liable for penalty under Section 114AA. Thus, it is his submission that the penalty imposed under Section 114AA of the Act is ex-facie illegal, invalid, untenable and unsustainable.

3.8. Regarding the appeal filed by the Revenue against dropping of the proposal to impose penalties on five officers of the appellant and Renuka Agri Ventures Ltd, the appellant-importer submits that for imposition of penalties the said officers must have played a role which are considered as offence under the sections 112(a) or section 112(b) of the Customs Act, 1962. Section 112(a) provides for imposition of penalty upon a person who in relation to any goods does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111 or abets the doing or omission of such an act. Neither in the impugned order nor in the Appeal Petition/Review Order of the Revenue there is any material evidence provided as to how and in what manner the said specific requirements under 112(a) has been satisfied in the instant case. Since the condition precedent for imposing penalty on the officers under Section 112(a) of the Act has not been satisfied, the Ld. Commissioner has rightly dropped the proceedings for imposing penalty against the five officers. Thus, they prayed for rejecting the Revenue's appeal.

3.9. Regarding the penalty imposed against M/s. J.M. Baxi & Co., the CHA, it has been submitted that they have filed the bills of entry as per the documents furnished by the appellant-importer; they have been filing Bills of Entry for importing raw sugar prior to April 2011, by claiming the exemption as provided under the Notification No. 12/2012-Cus (Serial No. 76, condition 3A), without payment of SAD for the period prior to April 8, 2011; they continued to file the Bills of Entry by claiming the same exemption even after April 2008. It is contended that ff the exemption was not available to them, then the Customs authorities should have pointed out the same and raised the query; instead, the Bills of entry filed by them were cleared without raising any query by the officers. Thus, it is argued that the appellant-CHA cannot be held responsible for the wrong claim of the benefit of the exemption as provided under the Notification No. 12/2012-Cus. Accordingly, they prayed that the penalty imposed on them is not sustainable.

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. Regarding the appeal filed by the Revenue, the Ld. Departmental Representative submits that the Ld.

Commissioner has given his findings in paragraphs 31.2 and 31.3 of the impugned order that the said officers had played a role in filing of the Bills of Entry to unduly avail the benefit of Additional Duty of Custom and accordingly, he submitted that the Ld. adjudicating authority should not have dropped the penalty proceedings against the five officers of the appellant-importer company.

5. Heard both sides and perused the appeal documents.

6. In the present appeal, we find that the appellant-importer has not contested the demand of Customs duty confirmed in the impugned order. They are only contesting the demand of interest for the delayed payment of SAD and imposition of penalties against them. The CHA, M/s. J.M. Baxi & Company, has filed their appeal against the imposition of penalty on them. The Revenue has filed the appeal in respect of dropping of the proceedings against five officers of the company viz. M/s. Shree Renuka Sugars Limited, in the impugned order wherein it was held that they were not found to be liable for penal action under the Customs Act, 1962.

6.1. Regarding the demand of interest for the delayed payment of SAD and imposition of penalty for violation of the provisions of the CTA, the appellant-importer has contended before us that there are no machinery provisions available in the Customs Tariff Act, 1975 to collect interest for the delay in payment of SAD or imposition of penalty. In this regard, we observe that Section 3(12) of CTA provides that the provisions of the Customs Act, 1962 and the rules and regulations made there under, "including those relating to drawbacks, refunds and exemption from duties shall apply in relation to the duties leviable" under that Act. By citing this provision, the appellant-importer has claimed that there is no provision in CTA, including Section 3 thereof, for levy of interest and penalty for non-payment / delayed payment of SAD. We observe that Section 3(12) is an inclusive provision. It makes the provisions of the Customs Act applicable in relation to levy of SAD under the Customs Tariff Act. The section specifically includes provisions such as drawback, refund and exemptions applicable in Customs Act, and has been made applicable to SAD levied under CTA also. It does not mean that the provisions relating to levy of demand of interest under Customs Act are not made applicable for the delay in payment of SAD. When there is a delay in payment of SAD, interest is automatically liable to be paid as per Section 28AB of Customs Act, 1962, which is applicable in this case. Accordingly, we hold that interest has been rightly demanded in the impugned order. Accordingly, we appropriate the interest already paid by the appellant-importer against their interest liability confirmed in the impugned order.

6.2. Regarding imposition of penalty on the appellant-importer, we observe that penalties have been imposed under Sections 114A and 114AA of the Customs Act, 1962. We observe that the issue involved is of interpretational in nature. It is also observed that the appellant-importer has not suppressed any information from the Department. They have been importing raw sugar prior to April 2011 without payment of SAD and continued to avail the SAD exemption during the period April 8, 2011 to July 4, 2013. We observe that the appellant-importer were under the bona fide belief that SAD was exempted for the raw sugar was available even after April 8, 2011 and filed the bills of entry claiming the exemption. If the exemption was not available to them, the Customs authorities should have pointed out the same. Instead, we observe that the Bills of Entry filed by the appellant-importer were cleared without raising any query by the officers. Thus, we hold that the appellant-importer cannot be held responsible for the delay in payment of SAD. Further, we observe that Section 114A provides for imposition of penalty for short levy or non-levy or short payment or non-payment of duty by the reason of collusion or any wilful misstatement or suppression of facts. In this case, we observe that there is no wilful misstatement or suppression of fact on the part of the appellant and hence the primary condition precedent for invoking Section 114A are absent. Accordingly, we hold that the penalties imposed on the appellant-importer under Sections 114A and 114AA of the Customs Act, 1962 are not sustainable and hence we set aside the same.

7. Regarding confiscation of the goods imported, we observe that there was no wilful, intentional and deliberate non-payment of SAD. We find that all the Bills of entry were cleared after obtaining due permission from the jurisdictional Customs authorities. The customs authorities at Kolkata/Haldia initiated the instant proceeding against the appellant-importer only after issue of the Alert Notice dated April 10, 2013 by the Kandla Customs authorities asking all Customs formations in the country, including the

respondent, to levy 4% SAD on the plea that exemption from SAD was no longer available. Thus, we hold that the goods imported by the appellant-importer and cleared after obtaining due permission from the proper officers are not liable for confiscation.

8. Regarding the penalty imposed on the CHA, M/s. J.M.Baxi & Co., we observe that they have filed the bills of entry as per the documents furnished by the appellant-importer. They have been filing Bills of Entry for importing raw sugar prior to April 2011, by claiming the exemption as provided under the Notification No. 12/2012-Cus (Serial No. 76, condition 3A), without payment of SAD for the period prior to April 8, 2011. They continued to file the Bills of Entry by claiming the same exemption even after April 2008. If the exemption was not available to them, then the Customs authorities should have pointed out the same and raised the query. Instead, we observe that the Bills of entry filed by the CHA were cleared without raising any query by the officers. Thus, we hold that the appellant-CHA cannot be held responsible for the wrong claim of the benefit of the exemption as provided under the Notification No. 12/2012-Cus. Accordingly, we hold that the penalty imposed on the CHA under Section 112(a)(ii) of the Act is not sustainable and hence, we set aside the same.

9. Regarding the Revenue's appeal in respect of dropping of the proceedings against five officers of the appellant-importer holding that they were not found to be liable for penal action under the Customs Act, 1962, we find that the ld. adjudicating authority has given a finding for dropping the proceedings against these persons. For the sake of ready reference, the

relevant paragraph from the impugned Order-in-Original is reproduced below: -

> *"35. I do not find the persons concerned namely Shri Narendra M. Murukumbi, Vice Chairman & Managing Director, Shri Nandan V.Yalgi, Executive Director, Shri Vijendra Singh, Executive Director, Shri Sunil Kadam, General Manager, and Shri Hemant Kumar, Addl. General Manager here to penal action under the Customs Act as they were acting as employees of M/s Shree Renuka Sugars Limited."*

9.1. From the above findings, we observe that the ld. adjudicating authority could not find any valid reason for imposing penalty on the said five persons of the company and hence dropped the proceedings against the said officials. We do not find any infirmity in the impugned order dropping the proceedings against the said persons. Accordingly, we uphold the dropping of the proceedings against the five officers of the appellant-importer and reject the Revenue's appeal.

10. In view of the above findings, we pass the following order:

(i) We hold that the appellant-importer is liable to pay interest for the delay in payment of SAD. The interest already paid by the appellant-importer is appropriated against this liability.

(ii) We hold that the goods imported by the appellant-importer are not liable for confiscation.

(iii) We set aside the penalty imposed on the appellant-importer under Sections 114A and 114AA of the Customs Act, 1962.

(iv) We set aside the penalty imposed on the CHA under Section 112(a)(ii) of the Customs Act, 1962.

(v) We uphold the dropping of the proceedings against the five officers of the company and reject the Revenue's appeal.

11. All the appeals are disposed of in the above terms, with consequential relief, if any, to the appellants, as per law.

(Order pronounced in the open court on **07.01.2025**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd