

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2
(Virtual Hearing)

Customs Appeal No. 77063 of 2019

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AA/99/D/2019 dated 10.07.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s Atul Commodities Private Limited,
(8, Bentinck Street, Kolkata-700001).

..Appellant

VERSUS

Commissioner of Customs (Port), Kolkata,
Customs House, 15/1, Kolkata-700001

...Respondent

..
APPEARANCE :

Shri N. Vishwanath, Advocate for the Appellant

Shri Sourab Chakraborty, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

Final Order No...75623/2025

VIRTUAL OF HEARING : 13.02.2025

DATE OF PRONOUNCEMENT: 05.03.2025

PER R. Muralidhar:

The appellant has imported 8 PLT of Toner for Multifunction Printers classifiable under CTH 84439959 on 30.8.2017 by Bill of Entry No. 3041643. After finding that, as per Rule 5 and 3 of E-Waste Management Rules 2016, the appellant was required to produce the certificate known name Extended Producer Responsibility, but this was not done in the case of the imported goods, the appellant was asked to furnish the EPR certificate. The Appellant made a submission before the Adjudicating Authority that they could not produce this certificate at the time of import, but would submit subsequently.

2. Considering the fact that these new Rules had come into effect in 2016, and probably the appellant was not aware that such a certificate should be filed at the time of imports, the adjudicating authority has taken a lenient view and has imposed a Redemption Fine of Rs.13,600/- and imposed a penalty of Rs.10,000/-, vide OIO dated 8-9-2017. Being aggrieved, the Revenue filed an appeal before the Commissioner (Appeals).

3. The Commissioner (Appeals), vide the impugned OIA has held that the proposed fine and penalty are not commensurate with the offence caused by the importer. Accordingly he set aside the Redemption fine and penalty imposed under the OIO and revised the same to the extent of 10% of the value of the goods as Redemption Fine and penalty of 5% of the value of the goods. Being aggrieved, the appellant is before the Tribunal.

4. The Learned Advocate, appearing on behalf of the appellant, submits that the appellant was not aware of the Rule towards EPR. They were also under the impression that for their product, this certificate was not required to be given. Subsequently, after pointing out by the Department after the import of the goods, they have submitted the same.

5. He submits that this should be taken as a minor deviation and therefore the penalty and Redemption Fine imposed by the Commissioner (Appeals) should be set aside. He further submits that they are not disputing the Redemption Fine and penalty imposed by the Adjudicating Authority. They are only agitating the enhancement of Redemption Fine and penalty by the Commissioner (Appeals).

6. He further submits that even otherwise, the order passed by the Commissioner (Appeals) is legally not sustainable. He points out to First Proviso to Section 128A(3) of the Customs Act, wherein it is specified that if the Commissioner (Appeals) proposes to enhance the penalty or fine, he should issue a Show Cause Notice to the appellant towards this. Such a notice was never issued to the appellant. Hence, the appellant was not even aware that the Redemption Fine and penalty would be enhanced. Therefore, the Commissioner (Appeals) is in error in directly enhancing the Redemption Fine and penalty without causing any Show Cause Notice on the appellant. The Learned Advocate submits that even on this count, the impugned OIA is required to be set aside.

7. The Learned authorized representative of the Revenue, reiterates the findings of the Commissioner (Appeals) and submits that the appellant was required to file the EPR at the time of clearance of the goods, but they did not furnish it even at the time of hearing by the adjudicating authority. Therefore, there was no justification for the

adjudicating authority to take a lenient view and impose low the Redemption Fine and penalty. He justifies the enhanced Redemption Fine and penalty imposed by the Commissioner (Appeals).

8. Heard both sides perused the appeal papers and the synopsis submitted by the Learned Advocate. I find that the very fact as to whether the appellant is required to file EPR in case of the goods imported by them is under question. E-waste Rules were implemented from 2016 and the appellant has imported in 2017. Probably, they were not even aware that they are required to file the same. The Learned Advocates submits that the imported goods do not require this condition to be fulfilled. However, on being pointed out, they have subsequently filed the EPR. Therefore, this has to be taken only as a minor deviation on the part of the importer.

9. Therefore, I find that in view of these facts, the adjudicating authority was correct in taking a lenient view and imposing a Redemption Fine of Rs.13,600/- and penalty of Rs.10,000/-.

10. I also find force in the argument of the Learned Advocate that the Commissioner (Appeals) has exceeded the brief available to him and has not followed the correct procedure while enhancing the Redemption Fine and the penalty. The First Proviso to Section 128A(3) of the Customs Act clearly states that in case if any enhancement of the

penalty or fine is being considered by the Commissioner (Appeals), he is required to give a proper notice to the importer/assessee. This would enable the assessee to put forth their arguments in defense of their case. In this case, this procedure was not adopted, which means that principles of natural justice have not been fulfilled. Therefore, even on this count, I find that the impugned OIA is not legally sustainable.

11. In view of the foregoing, I set aside the impugned order and restore the OIO passed by the adjudicating authority. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on...05.03.2025....)

Sd/-
(R. Muralidhar)
Member (Judicial)

Tushar Kr.