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

REGIONAL BENCH – COURT NO.1

<u>Customs Appeal No.75132 of 2020</u>

(Arising out of Order-in-Appeal No.Cus(CCP)/WB(PETRAPOLE)/168/2020 dated 10.01.2020 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s R.G.Overseas
(484/13, Katra Ishwar Bhavan,Khari Baoli, Delhi-110006)

Appellant

VERSUS

Commissioner of Customs (Prev.), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

<u>APPERANCE :</u>
Shri Nilotpal Chowdhury, Advocate for the Appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75978/2025

<u>DATE OF HEARING : 21 APRIL 2025</u>
<u>DATE OF DECISION : 21 APRIL 2025</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order.

2. The facts of the case are that after prolonged litigation, the Assistant Commissioner of Customs, Petrapole Land Customs Station in view of Final Assessment Order dated 19.04.2017 and Adjudication Order dated 01.05.2017 issued Refund Order No.261/17-18 dated 09.09.2017, sanctioning refund of duty amounting to Rs.62,84,583/- after adjusting amount of SAD (already refunded) and redemption fine & penalty, as imposed. Being aggrieved, the Revenue filed their appeal before the Commissioner (Appeals),WB, Kolkata, who passed the impugned Order-in-Appeal dated 10.01.2020, thereby setting-aside the

Refund Order dated 09.09.2017 and remanded the matter. Being aggrieved with this Order-in-Appeal, the appellant is before us.

3. The Ld Advocate appearing for the appellant submits that the issue has arisen on account of 984785 kgs of “Processed Betal Nut” from Bangladesh under 10 Bills of Entry through Petropole Land Customs Station during the period 14.08.2012 to 12.05.2013. Initially the goods were cleared on provisional assessment basis. Show Cause Notice was issued proposing confiscation of goods so imported u/s 111(d) of CA’62 and imposition of penalty u/s 112 of Customs Act, 1962. Vide Adjudication Order No.11/ CUS/ CC(P)/ WB/2017 dated 01.05.2017, redemption fine of Rs.44,03,000/- was imposed in lieu of confiscation of goods imported under said 10 B/Es along with penalty of Rs.4,40,300/- u/s 112 of Customs Act, 1962 upon the appellant.

4. In the meanwhile, the Provisional assessment was taken up for finalization. Vide Final Assessment Order No.06/2017-18 dated 19.04.2017, the Assistant Commissioner of Customs, Petrapole Land Customs Station finalized assessment on such 10 B/Es thereby accepting the declared value of import and ordered for release of PD Bonds and Bank Guarantees. Consequently, under Refund Order No.261/17-18 dated 09.09.2017, the Assistant Commissioner of Customs, Petrapole Land Customs Station, considering the Final Assessment Order dated 19.04.2017 and Adjudication Order dated 01.05.2017 sanctioned refund of duty amounting to Rs.62,84,583/- after adjusting amount of SAD (already refunded) and redemption fine & penalty.

5. Against the Adjudication Order 11/Cus/CC(P)/WB/2016 dated 01.05.2017, the Revenue filed an appeal before the Tribunal, seeking to enhance the Redemption Fine and Penalty imposed. The appellants filed their Cross-objection, questioning the very RF and Penalty imposed. This Tribunal vide Final Order No.78114-78148/2017 dated 28.11.2017, set-aside the redemption fine and penalty imposed vide Adjudication Order dated 01.05.2017.

6. Being aggrieved, the Revenue filed their Appeal before the Kolkata High Court, which dismissed the same on the ground that the issue pertained to Valuation and hence the Appeal lies before the Supreme Court. Thereafter, the Revenue filed their appeal before the Supreme Court. On 12.12.2024, the Hon'ble Supreme Court has dismissed the Appeal filed by the Revenue both on the ground of delayed filing and on account of the low value of the litigated amount in terms of the National Litigation Policy.

7. The Ld Counsel basically raises two points in support of their case:

(1) The issue as to whether the goods are liable to be confiscated and whether penalty can be imposed, is fully and finally settled in view of the Final Order No.78114-78148/2017 dated 28.11.2017 of this Tribunal, which now stands affirmed by the Order dated 12.12.2024 of the Supreme Court.

(2) The Department did not challenge the finalization of the provisional assessment vide Order No. 27/2016-17 dated 29.01.2017. Hence, the valuation issue has also reached finality.

8. In view of the above submissions, the Ld Counsel prays the present appeal may be allowed along with consequential relief.

9. The Ld. AR representing the Revenue submits that the impugned OIA was passed by the Commissioner (Appeals), when the issue was pending before the Tribunal. After the Final Order was passed by the Tribunal, the Revenue had taken up their appeal before the High Court and subsequently before the Supreme Court. He submits that the claim of the appellant that the Revenue's appeal has been dismissed by the Supreme Court is correct.

10. Heard both the sides and considered the submissions.

11. As could be gathered from the facts discussed above, this case has a chequered history. In order to get some clarity, the appellant was asked to submit a Table showing the chronological events, which is reproduced below:

Sl. No.	Date	Event
1.	14.08.2012 to 12.05.2013	Appellant imported 984785 kgs. of processed Betel Nuts from Bangladesh under 10 B/Es through Petrapole Land Customs Station.
2.	----	All 10 B/Es were assessed provisionally and were allowed to be cleared for home consumption against Bank Guarantee and on payment of excess Import Duty.
3.	----	SCN u/s 124 of CA'62 issued against said 10 B/Es alleging violation of DGFT Notification No. 10 (RE-2012)/2011-2014 dated 14.08.2012 and proposing confiscation of goods so imported u/s 111(d) of CA'62 and imposition of penalty u/s 112 of CA'62.
4.	19.04.2017	Vide Final Assessment Order No. 06/2017-18 Ld. Deputy Commissioner of Customs, Petrapole Land Customs Station finalized assessment on such 10 B/Es thereby accepting the declared value of import and

		ordered for release of PD Bonds and Bank Guarantees. ... [Pg. 81 to 87]
5.	01.05.2017	SCN u/s 124 of CA'62 so issued was adjudicated vide Adjudication Order No. 11/ CUS/ CC(P)/ WB/2017 by the respondent herein thereby imposing redemption fine of Rs.44,03,000/- in lieu of confiscation of goods imported under said 10 B/Es and also imposing penalty of Rs.4,40,300/- u/s 112 of CA'62 upon the appellant. ...[Pg. 88 to 92]
6.	09.09.2017	Ld. Assistant Commissioner of Customs, Petrapole Land Customs Station in view of Final Assessment Order dated 19.04.2017 and Adjudication Order dated 01.05.2017 *supra*, issued Refund Order No. 261/17-18 thereby sanctioning refund of duty amounting to Rs.62,84,583/- after adjusting amount of SAD (already refunded) and redemption fine & penalty, as imposed. [...Pg. 78 to 80]
7.	----	Revenue preferred Appeal No. C/76351/2017 before this Ld. Tribunal against Adjudication Order dated 01.05.2017 *supra* thereby praying for enhancement of the amount of fine and penalty when the appellant preferred Cross-Objection thereby praying for quashing/setting-aside of the redemption fine and penalty.
8.	23.11.2017	Revenue preferred an appeal before the Ld. Commissioner of Customs (Appeals), WB, Kolkata against Refund Order dated 09.09.2017*supra* on the ground of pendency of appeal before this Ld. Tribunal against Adjudication Order dated 01.05.2017. [...Pg 70 to 77]
9.	28.11.2017	This Ld. Tribunal vide Final Order No. 78114-78148/2017 has been pleased to set-aside the redemption fine and penalty imposed vide Adjudication Order dated 01.05.2017*supra*, *amongst others*. [... Pg. 52 to 58]
10.	22.03.2018	This Ld. Tribunal, on application of Revenue, vide Order No. MO/75433-75434/2018 was pleased to delete the word "Tariff" from the Final Order dated 28.11.2017 *supra*.

		[... Pg. 59 to 60]
11.	----	Revenue preferred appeal being CUSTA No. 54 of 2018 before the Hon'ble High Court, Calcutta against Final Order dated 28.11.2017 *supra* of this Ld. Tribunal.
12.	17.04.2019	The Hon'ble High Court, Calcutta was pleased to held that in the said appeal, *amongst others*, of the Revenue, the dispute is with valuation and hence, the Hon'ble Court has no jurisdiction over the matter and the appeal of Revenue was disposed of by Judgement & Order dated 17.04.2019. [... Pg. 61 to 67]
13.	10.01.2020	Ld. Commissioner of Customs (Appeals),WB, Kolkata passed the impugned Order-in-Appeal thereby setting-aside the Refund Order dated 09.09.2017*supra* and remanded the matter back to the lower authority. [... Pg. 93 to 98]
14.	29.06.2020	Appellant preferred the instant appeal before this Ld. Tribunal against impugned Order-in-Appeal dated 10.01.2020.
15.	01.12.2021	Revenue preferred Civil Appeal Diary No. 29652 of 2021 [The Commissioner of Customs (Preventive), Kolkata v. M/s. R. G Overseas] before the Hon'ble Supreme Court of India against Final Order dated 28.11.2017 *supra* passed by this Ld. Tribunal and Judgement & Order dated 17.04.2019 *supra* passed by the Hon'ble High Court, Calcutta.
16.	12.12.2024	The Hon'ble Supreme Court of India has been pleased to dismiss the said Civil Appeal, *amongst others*, on the ground of delay as well as low tax effect.

12. From the above Table it gets clarified that :

- The import under 10 Bills of Entry was under Provisional Assessment basis.

- Proceeding were initiated towards confiscation and penalty
- Provisional Assessment was completed vide Order dated 29.01.2017, wherein the value adopted by the appellant was held as correct.
- No further appeal was filed by the Revenue against this Finalization Order
- The proceedings initiated towards confiscation and penalty resulted in Order dated 01.05.2017 wherein Rs.44,03,000/- was imposed as Redemption Fine in lieu of confiscation and penalty of Rs.4,40,300/- was imposed. Being aggrieved by low RF and penalty, the Revenue filed its appeal before the Tribunal.
- Seeking to quash the already RF and penalty the appellants filed their cross-objection.
- The Tribunal vide Final Order No. Final Order No. 78114-78148/2017 dated 28.11.2017, quashed the RF and Penalty resulting in dismissal of Revenue's appeal and allowing the Appellant's cross-objection.
- Being aggrieved, the Revenue knocked the doors of High Court. On their refusal to entertain the same, Revenue filed their Appeal before the Supreme Court.
- On 12.12.2024, the Revenue's appeal has been dismissed by the Hon'ble Supreme Court.

13. Based on the above factual matrix, we take the view that the Redemption Fine and Penalty imposed by the Revenue stands fully quashed after the Hon'ble Supreme Court's order dated 12.12.2024.

14. The finalization of the assessment of Bills of Entry was never challenged by the Revenue. Therefore, on that score itself the valuation matter has reached finality.

15. As a result, the impugned Order-in-Appeal, which was passed when the matter was *sub judice* before the Tribunal, does not survive. Accordingly, we set aside the same and allow the Appeal filed by the appellant.

16. The appellants would be eligible for consequential relief, including the refund of the initial recovery of Redemption Fine and Penalty, as per law.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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