IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. C/820/09

(Arising out of Order-in-Appeal No. 137/2009/MCH/JC/Container/09-10 dated 03.06.2009 passed by the Commissioner of Customs (Appeals), Mumbai).

M/s SKS Logistics Ltd.	Appellant

Vs.

Commissioner of Customs (Import), Mumbai	Respondent

Appearance:

Shri R.B. Pardeshi, Advocate with Shri N.S. Patel, Advocate	for Appellant

Shri K.M. D'Souza, Assistant Commissioner (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 04.04.2018

Date of Decision: 11.05.2018

ORDER NO. **A/86333 / 2018**

Per: Ramesh Nair

The facts of the case are that the appellant had imported containers during the year 1996 by availing the exemption under Notification No. 104/94-Cus dated 16.3.1994, which required as a condition of exemption that the containers should be re-exported within six months. The case of the Department is that 31 containers were re-exported but after the prescribed time period of six months, therefore, the adjudicating authority confiscated 26 containers valued at Rs. 7,80,000/- and imposed redemption fine of Rs.80,000/- and 5 containers valued at Rs.1,60,000/- and imposed redemption fine of Rs.20,000/-. A penalty of Rs.1 lakh was also imposed.

2. Shri R.B. Pardeshi, learned Counsel with Shri N.S. Patel, learned Advocate appearing on behalf of the appellant. He submits that the appellant is contesting only redemption fine and penalty. He submits that the containers which ordered for confiscation was never seized and not released provisionally, therefore, there is no question of imposition of redemption fine. The redemption fine can be imposed only for redemption of the confiscated goods and confiscation is only possible either if the goods are available or the goods are seized and released provisionally. Both the situations do not exist in the present case. Therefore, the redemption fine and penalty deserved to be set aside. He relies on the following judgments: -

(a) *Commissioner of Customs, Bangalore Vs. Indo Nissin Foods Ltd. – 2013 (294) ELT 259 (Tri-Bang).*

(b) *Maruti Udyog Ltd. Vs. Commissioner of Customs, Kandla – 2001 (132) ELT 340 (Tri-Mum)*

(c) *Intermark Shipping Agencies Pvt. Ltd. Vs. Commissioner of Customs, Kandla – 2014 (314) ELT 557 (Tri-Ahmd).*

3. Shri K.M. D'Souza, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both sides. We are only addressing the issue of redemption fine and

penalty. As per the facts of the case, the containers which were ordered to be confiscated were never seized and released provisionally nor the containers are available for confiscation. In such case, the confiscation of goods and consequent redemption fine cannot be imposed as held by Larger Bench of this Tribunal in the case of *Shiv Kripa Ispat Pvt. Ltd. – 2009 (235) ELT 623 (Tri-LB).* Therefore, we set aside the redemption fine.

4.1 As regards the penalty imposed by the adjudicating authority and upheld by the Commissioner (Appeals), we find that there is admitted violation of condition of Notification No. 104/94-Cus dated 16.3.1994 inasmuch as the appellant did not re-export the containers within six months, therefore, for such violation, the appellant is liable for penalty. However, considering the overall facts and circumstances of the case, we reduce the penalty from Rs.1 lakh to Rs.50,000/-.

5. The appeal is disposed of in the above terms.

(Pronounced in Court on 11.05.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha