IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. C/85316/18

(Arising out of Order-in-Appeal No. 713[Adjn(I)]/2017(JNCH)/ Appeal-II dated 17.10.2017 passed by Commissioner of Customs (Appeals), Nhava Sheva, Raigad)

Saksham Impex Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs **Respondent**
NS-II, NHCH, Nhava Sheva

<u>Appearance:</u>

Ms Lakshmi Menon, Advocate for appellant
Shri M K Mall, Asst. Commr (AR) for respondent

<u>CORAM:</u>

Hon'ble Mr CJ Mathew, Member (Technical)

Date of Hearing: 09.04.2018
Date of Decision: 09.04.2018

FINAL ORDER NO...A/86583/2018

Per: CJ Mathew

M/s Saksham Impex Pvt Ltd challenges order-in-appeal no. 713[Adjn(I)]/2017(JNCH)/ Appeal-II dated 17th October 2017 of Commissioner of Customs (Appeals), Nhava Sheva for rejecting their plea for benefit of reduction in penalty from 25% to 15% which in consequence of amendment to section 28 of the Customs Act, 1962, was extended to such assessees as discharged their duty and interest liability with reduced penalty within thirty days of issue of show-cause notice. A specific *proviso* in section 28 of Customs Act made this applicable to all noticees where proceedings that had not concluded till Finance Bill, 2015 was assented to by the President. The impugned order denied the plea on the ground that duty, interest and penalty, though, admittedly, tendered initially through demand draft within the prescribed thirty days, had not been credited to the exchequer and it was only upon fresh submission of the demand draft in September 2015 that credit accrued in the Consolidated Fund of India.

2. Learned Counsel for appellant submits that the appellant had effected imports following which combined show-cause notice had been issued for recovery of amount short paid in the respective bills of entry at Nhava Sheva and Inland Container Depot, Tughlakabad and that at both the obligation prescribed in section 28(6) of Customs Act, 1962 had been discharged within one month of the issue of show-cause notice. Though the amounts paid at ICD Tughlakabad had been encashed, the competent authority denied them the benefit of reduced penalty which, upon being carried to the Tribunal, was resolved in favour of the appellant.

3. The contention of the appellant is that eligibility to penalty of 15% is not deniable and that the failure on the part of tax

authorities to encash the demand draft should not be held to their detriment. According to Learned Counsel, the tendering of demand draft, failure to encash the same and resubmission of demand draft afresh on request of departmental authorities is recorded in the order of the lower authorities. Relying upon the decision of the Tribunal in *Hetero Drugs Ltd. v. Commissioner of Customs [2004 (168) ELT 211 (Tri. Bang.]* and *Vera Laboratories Ltd. v. Commissioner of Central Excise* [*2005 (180) ELT 242 (Tri. Bang*), it is contended that tendering of demand draft should suffice as compliance to entitle them to reduced penalty. On a specific query, it was also admitted that interest liability had also been discharged for the period upto the encashment of the subsequent demand draft.

4. Learned Authorised Representative reiterated the contents of the impugned order

5. It is seen that the impugned order admits to the submission of the demand draft within the stipulated deadline and the failure to encash it. Notwithstanding this, the first appellate authority has taken the view that, while it is open to the appellant to take suitable action as per the law, the benefit of reduced penalty is premised upon strict compliance with the requirements of section 28(6) of the Customs Act, 1962. It is seen from the decision of the Tribunal in *re Hetero Drugs Ltd,*

that the Larger Bench of the Tribunal in *Commissioner of Central Excise, Jaipur v. Genus Overseas [2003 (155) ELT 541 (Tri. LB),* in enunciating that

> *"8. The submission of the appellants that in view of the evidence that in respect of the 68 Bills of Entry the amounts in question have been sent by the appellants by way of demand drafts drawn in favour of the Commissioner of Customs - A/c. Hetero Drugs, the duty in respect of these consignments is deemed to have been paid on the date the demand draft is deposited with the Customs authorities has to be approved. In fact the Larger Bench of this Tribunal in the case of CCE v. Genus Overseas Electronics [2003 (155) E.L.T. 541 (Tri.-LB) = 2003 (56) RLT 759 (LB)] held that payment of duty by cheque would be date of Tender of the same and not realisation following the same, the date of Tender of the demand draft would be date of payment for the duty. That the demand draft got accounted elsewhere and not as tendered by the appellants due to no fault of the appellants cannot be held to make the goods of the appellants to be non-duty paid",*

held submission of demand draft to be tantamount to payment by assessee.

6. From above it appears that the dereliction has been on the part of the tax authorities in failing to deposit the demand draft tendered by the appellant. The appellant has also has been subjected to interest in consequence which was also discharged without demur. Considering the various decisions cited *supra*, it would appear that the appellant is eligible to benefit of reduced penalty for having tendered duty and interest as well as penalty

within the prescribed time in accordance wih section 28 of the Customs Act, 1962.

7. In view of the above, the appeal is allowed by reducing the penalty imposed on the appellant to 15%.

(order dictated in Court)

(C.J. Mathew)
Member (Technical)

nsk