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

Appeal No. C/1004/2009

(Arising out of Order-in-Appeal No. 343(GR-IV)/2009 (JNCH) dt. 08.06.2009 passed by the Commissioner of Customs (Appeals), Mumbai-II JNCH, Sheva)

M/s. Sandoz Metals (India)	:	**Appellant**
VS		
Commissioner of Customs, JNPT, Nhava Sheva	:	**Respondent**

<u>Appearance</u>

None for Appellant

Ms. Trupti Chavan, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 09/04/2018
Date of pronouncement : 25/05/2018

ORDER NO. A/86580/2018

Per : Ramesh Nair

Brief facts of the case are that the Appellant had imported Stainless Steel Pipes Grade vide Bills of Entry No. 742947 on 09.01.2009. The goods at the material time were falling into restricted category under DGFT Notification No. 64(RE-2008/2004-2009 dated 24.11.2008. The goods were confiscated but allowed to be redeemed on payment of redemption fine of Rs.1,75,000/- and penalty of Rs. 75,000/-vide OIO dated 23/27.01.2009. The appellant filed appeal before the Commissioner (Appeals) who upheld the adjudication order. Hence the present appeal.

2. None appeared for the appellants. Ms Trupti Chavan Ld. AC(AR) appearing for revenue supports the impugned order. She submits that since the goods were restricted therefore impugned order has been rightly passed.

3. We have heard the Ld. AR and perused the records.

4. The appellant has submitted that the restriction were imposed during the period 21.11.2008 to 16.01.2009 as per which the goods were to be imported under import license; that in respect of goods which were though imported during the period of restriction, but the Bills of Entry was filed after 16.01.2009, the clearance was allowed without license. They had imported goods during the restricted period and filed Bill of Entry resulting into confiscation of goods. However it should be seen that the restriction was subsequently withdrawn and had they would have waited for one week to file Bill of Entry, the consignment would have cleared without any restriction and confiscation. Hence the impugned order is not legal.

5. After perusal of the facts of the case, we find that certainly the Appellant is at loss since the restriction was not applicable in case of consignments which though imported during restricted period but in respect of which Bills of Entry were not filed till 16.01.2009, such importers were eligible to import the impugned goods freely. On the other hand the importers like Appellants who imported the goods

during restricted period and also filed Bills of Entry during such period had to suffer the confiscation, redemption fine and penalties. The Appellant cannot be found faulted with. In such circumstances looking to the facts, circumstances of the case we deem it appropriate to reduce the redemption fine to Rs. 50,000/- and penalty to Rs. 15000/- respectively.

6. The impugned order is modified to the above extent and the appeal is partly allowed in the above terms.

(Pronounced in court on 25/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.