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

Appeal No. C/535/2009

(Arising out of Order-in-Original No. 176/2008/CAC/CC(I)/SR/Gr.IV/ dtd. 24/12/2008 passed by the Commissioner of Customs (Import), Mumbai)

Commissioner of customs (Import) Mumbai : **Appellant**

VS

M/s. G.S.P. International : **Respondent**

<u>Appearance</u>

None for Appellant

Shri M.K. Mall, 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/86581/2018

Per : Ramesh Nair

This appeal has been filed by the Revenue against order dt. 23.12.2008 passed by the Commissioner of the Customs (Import), New Custom House, Mumbai. The brief facts of case are that the Respondent filed Bill of Entry no. 873975 & 873976 dt. 10.12.2008 for clearance of goods described as "Secondary Second Choice Carbon Steel Pipes in Mix Size Mix Thickness". The goods were imported from M/s Asia Countries Co., Kuwait. The goods were examined by the Shed Assessor who reported that the goods were old and used seamless steel pipes which were restricted for imports as per Para

2.17 of the FTP 2004 – 09. The Respondent responded to the Customs that the goods imported by them devoid of their special application were lying in the yard exposed to various atmospheric conditions, moisture, heat, dust etc without preservation or anti rust coating. Further according to them even the price of US$ 440 per MT supported their claim that these pipes were unused. The importer also submitted letter from supplier that the pipes in mix thickness were Secondary Second Choice Carbon Steel Pipes. Further they have facilitated the procurement of these pipes from the manufacturer to Respondent and the pipes has remained unused after manufacturing. Also the Pipes had failed to pass hydrostatic text and therefore could not be used for the application they were meant for and hence they were termed as Secondary Second Choice Carbon Steel Pipes. The Respondent had waived the SCN. The adjudicating authority agreeing with the submission of the Respondent held that the goods are not used. The second hand refers to possession and title of some goods changing over from one person to another presumably after appreciable use. He thus held that the goods are not used and are not hit by restriction under FTP and allowed the importation. Being aggrieved, the revenue has filed the present appeal.

2. Shri M.K. Mall Ld. AC, (AR) appearing for the revenue submits that all second hand goods were restricted at the material time. The goods appeared to be old and used and this was clear cut case of mis-description and mis-declaration of the goods imported by the importer. The adjudicating authority should have either accepted the report of the Shed Examiner or should have ordered for re-examination/ testing of the goods by an expert. The importer had

furnished test inspection certificate from the supplier which does not indicate about quality of goods. The Mill test certificate issued by the manufacturer should have been examined which was not done. The adjudicating authority has relied upon the copy of letter dt. 14.12.2008 of the supplier. However no supporting documents have been furnished. He submits that suitable redemption fine under section 125 of the Customs Act should be imposed alongwith penalty u/s 112 and personal penalty on Shri Rajesh Bohra (Vice president) of company.

3. None appeared for the Respondent.

4. Heard Ld. AR and perused the records. We find that the adjudicating authority in his findings has adequately dealt with the facts of imports. In terms of FTP Policy the restriction was in respect of " all second hand goods, except second hand capital goods are restricted for import and are allowed to be imported only in accordance with provisions of FTP, ITC (HS), HBPV1, Public notice or an authorization issued in this regard". The adjudicating authority has held that the restriction is in respect of second hand goods. That the imported goods as per the letter dt. 14.12.2008 of the supplier had remained unused after manufacturing. It also stated that the pipes had failed to pass hydrostatic test and thus could not be used for the application they were meant for and hence they were termed as "Secondary Second Choice Carbon Steel". He further held that it appears that the pipes got rusted while lying idle at supplier's yard which has influenced the mind of the Docks examining staff and it

was reported that the pipes are old and used. We are in agreement of the above reasoning adopted by the ld. Adjudicating authority. The second grade pipes cannot be termed as second hand as the pipes had remained unused. We thus do not find any infirmity in the impugned Order. Even though on merits we are not convince by the contention of the revenue but on legal side also we find that the revenue is asking for imposition of redemption fine and penalty. However it is to be seen that the goods were never seized/ confiscated and in absence of same there is no ground to impose redemption fine and penalty. Also no penalty can be imposed upon Shri Bohra as it was never proposed to impose penalty upon him by issuing show cause notice nor there is any mention of any malafide intention in the revenue's appeal on facts of the case. We thus uphold the impugned order and reject the appeal filed by the revenue.

(Pronounced in court on 25/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.