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

Appeal No. C/1133/09

(Arising out Order-in- Appeal No. 374-375-GR.IV/2009-JNCH/IMP-23 to 24 dated 31.07.2009 passed by the Commissioner of Customs (Import), Nhava Sheva)

For approval and signature:
Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Sweet Concepts — Appellant

Vs.

CC (Import), Nhava Sheva — Respondent

Appearance:

None for the appellant
Shri Manoj Kumar, AC (AR) for the respondent

CORAM:
Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing : 06.02.2018
Date of decision : 05.06.2018

O R D E R No: **A/86609/2018**

Per: C J Mathew

M/s Sweet Concept procured 65300 kg and 30290 kg of ‘heavy melting scrap’ valued at `9,50,000/- and `6,00,000/- and, having entered them for importation under section 46, paid duty as per their own declaration. Subsequently, they were unable to clear them owing to lack of ‘pre-shipment inspection’ certificate mandated in paragraph 2.32 of Handbook of Procedures (Vol I) of the Foreign Trade Policy 2004-09.

2. Having been subject to proceedings under section 48 of Customs Act, 1962, the goods were taken up for action under section 111 of Customs Act, 1962 with consequent penalties for not having overcome the restriction on import of such scrap. The original authority had confiscated the goods but allowed redemption on payment of fine of `1,90,000/- and `1,20,000/- respectively, which was upheld by first appellate authority. Penalties of `95,000 and `60,000 imposed under section 112 of Customs Act, 1962 were also affirmed.

3. We have heard the rival submissions. The appellant is not in possession of the mandatory certificate in the absence of which the goods are prohibited for input.

Consequences of confiscation and penalties are attendant on that contravention.

4. However, we are of the opinion that the redemption fine and quantum of penalties are disproportionately high considering the absence of any windfall gain from the lack of the certificate. The value of the goods and the duty liability also do not justify such disproportionate detriment. We, therefore, reduce the redemption fine to `30,000 and `15,000 respectively and modify the penalties to `10,000 and `5000 respectively.

5. Appeals are allowed to the extent above.

(Pronounced in Court on 05.06.2018)

(Ramesh Nair)
Member (Judicial)

(C J Mathew)
Member (Technical)

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