CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 1249 OF 2009

[Arising out of Order-in-Original No: 133/2009/CAC/CC (I) SHH/GR. VB dated 4th September 2009 passed by the Commissioner of Customs (Import), New Custom House, Mumba e Commissioner of Central Excise (Appeals), Pune – II.]

NYK Line (India) Ltd
Neville House, 1st Floor, JN Heredia Marg
Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Commissioner of Customs (Import)
Ballard Estate, New Custom House,
Mumbai - 400001 ***…Respondent***

APPEARANCE:

None for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85875 / 2020

DATE OF HEARING: 29/01/2020
DATE OF DECISION: 29/01/2020

PER: C J MATHEW

This appeal of M/s NYK Line (India) Limited lies against order-in-original no. 133/2009/CAC/CC(I) SHH/GR. VB dated 4th September

2009 of Commissioner of Customs (Import), New Custom House, Mumbai challenging the penalty of ₹ 10,00,000 imposed under section 112(a) of Customs Act, 1962.

2. None appeared for the appellant. We have heard Learned Authorised Representative.

3. The appellant had imported one ‘tug master with goose neck’ against the bill of entry no. 896446/28.05.2009 and, upon being informed that the said goods, procured on lease, would not be registered under the Motor Vehicles Act, 1988 by the competent authority sought re-export of the goods. However, while holding the goods liable to confiscation for violation of provisions of Foreign Trade Policy, the adjudicating authority did not consider it necessary to impose a fine for redemption but, nevertheless, invoked the penal provision under section 112 of Customs Act, 1962.

4. The appellant had not cleared the goods for home consumption and had sought re-export owing to the statutory impossibility of registration of the vehicle in India. It would appear that the goods, procured on lease, was intended for use as equipment and there is no evidence that the appellant had any intention to misuse of the same. From the submissions made, and absence of any finding to the contrary, it would appear that the awareness of ineligibility for import came to the attention of the appellant only upon it be pointed out to them. In any

case, the goods could not have been deployed, under any circumstances, without proper registration by the competent authority. There is, therefore, no evidence that the appellant would have been complicit in attempting to import goods that could be concealed from the registering authorities.

5. In view of the above, we find no reason for burdening the importer with penalty, intended by law for deterrence, under section 112 of Customs Act, 1962. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

**/as*