CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 628 OF 2010

[Arising out of Order-in-Original No: 14/2010 dated 28th May 2010 passed by the Commissioner of Customs (Export), Nhava Sheva.]

U M Cables Ltd
2A Shakespeare Sarani, Kolkata - 700071 … ***Appellant***

versus

Commissioner of Customs (Export)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Mayank Jain, Advocate for the appellant

Shri Manoj Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85090 /2022

DATE OF HEARING:	20/12/2021
DATE OF DECISION:	10/02/2022

PER: C J MATHEW

This appeal of M/s UM Cables Ltd, exporter of 68.249 metric tons of ‘insulated copper cables’ valued at ₹ 69,97,961 against shipping bill no. 6219615/15.04.2008 destined for Afghanistan through Karachi port, is consequent upon confiscation of the goods under section 113(g) of Customs Act, 1962 though allowed to be redeemed on payment of ₹ 7,00,000 and further imposition of penalty of ₹ 7,00,000 under section 114 (iii) of Customs Act, 1962 for the four containers of the consignment having been loaded onto the vessel, MV Itha Bhum (Voy-149W), that sailed on 18th April 2008 even as the ‘let export order (LEO)’ was granted only on 19th April 2008. In the proceedings initiated against the appellant herein, along with their ‘custom house agent’ and the agent of the shipping line, by show cause notice dated 14th December 2009, it was alleged that M/s UM Cables Ltd had disregarded the requirements mandated in section 50 of Customs Act, 1962 by failing to produce the shipping bill before the ‘proper officer’ leading to consequent breach of section 35 and section 40 of Customs Act, 1962 by the others and, therefore, liable to the consequences devolving on offending goods and persons concerned with rendering the goods liable to confiscation.

2. Though the shipping line concerned did attempt to justify the departure of the vessel with offending export containers by pleading that the date of sailing, 18th April 2008, was a public holiday, it is not controverted that the impugned goods had indeed been loaded on

board without ‘let export order (LEO)’ and, thereby, in breach of requirements of section 50, mandating clearance by ‘proper officer’, and section 40, requiring person-in-charge of conveyance to not permit loading without handing over of shipping bill duly passed by the ‘proper officer’, of Customs Act, 1962. It is seen that section 35 of Customs Act, 1962, which places restrictions on goods being water-borne without ‘boat note’, is inapplicable to the impugned consignment which was placed directly on the vessel. That the goods were placed on board is evidenced by the ‘mate receipt’, a temporary document of shipping, issued by the person-in-charge of the vessel on the basis of which bill of lading is prepared.

3. It is the contention of Learned Counsel for the appellant that imposition of fine, for redemption of goods that were not available for confiscation, was before the Hon’ble High Court of Bombay in *Commissioner of Customs (Import), Mumbai v. Finesse Creations Inc. [2009 (248) ELT 122 (Bom.)]* and it was held that

> *‘5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of*

> *redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*
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> *6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed.'*

4. It is also contended that the appellant was not concerned with the loading of the containers as all the procedural formalities, including 'examination' mandated under section 50 of Customs Act, 1962, had been completed at the factory itself and the endorsement on the shipping bill was a mere formality at the port of loading. It is his contention that this technical lapse had been effectively condoned by grant of 'let export order (LEO)' on 19th April 2008 and, therefore, imposition of penalty is unwarranted. It was also pointed out that the penalty imposed on their 'custom house agent' had been set aside by the Tribunal.

5. We have heard Learned Authorised Representative who contends that illegality of loading export containers on the vessel and

its shipment thereof has not been disputed; he submits that the confiscation is a justifiable consequence with penalties attendant thereto.

6. We find that the ‘let export order (LEO)’, stipulated in section 50 of Customs Act, 1962, had been granted on 19th April 2008. With that, the process of export which was the responsibility of the exporter stood completed even if belatedly. The breach in loading of the cargo on the vessel ahead of grant of ‘let export order (LEO)’ is attributable to the person-in-charge of the conveyance and not the exporter. Nonetheless, the goods, having been loaded in contravention of the prescription in section 40 of Customs Act, 1962, was liable to confiscation under section 113 (g) of Customs Act, 1962. That finding in the impugned order is without fault. However, the goods were not available for confiscation by the adjudicating authority and, therefore, as held by the Hon’ble High Court of Bombay in *re Finesse Creations Inc*, the imposition of redemption fine is without authority of law.

7. The regularisation of the process for export is on record. Moreover, the vessel had been allowed to depart in accordance with section 42 of Customs Act, 1962 after issue of ‘port clearance’ by the ‘proper officer’ though it was well within the authority of such officer to offload the offending goods. Therefore, it cannot be said that the appellant was in any way connected with illicit shipment of export

cargo. Consequently, the imposition of penalty under section 114 of Customs Act, 1962 is unjustified.

8. In view of the findings above, we set aside the impugned order and allowed the appeal of M/s UM Cables Ltd.

(Order pronounced in the open court on 10/02/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*