CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86263 OF 2014

[Arising out of Order-in-Original No: 05/PKA/2013-14/CC-CONTAINER CELL dated 3rd January 2014 passed by the Commissioner of Customs (General), Mumbai.]

Forbes Gokak Ltd
Charanjeet Rai Marg, Fort, Mumbai - 400001 ... ***Appellant***

versus

Commissioner of Customs (General)
New Customs House, Ballard Estate
Mumbai-400001 ***...Respondent***

APPEARANCE:

Shri Swapnendu Mishra, Advocate with Shri Nazish Alam, Advocate for the appellant

Shri K Azad, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO: 85770/2024

DATE OF HEARING: 25/07/2024
DATE OF DECISION: 08/08/2024

PER: P. ANJANI KUMAR

Heard both sides and perused the records of the case.

2. The appellants are before us assailing the impugned order

dated 03/01/2014 vide which Learned Commissioner has confiscated the containers imported by the appellants and imposed redemption fine in lieu of confiscation on the containers which were exported; confiscated containers which are not exported and allowed the same to be re-exported on payment of redemption fine; confirmed duty on the containers which are not exported and imposed penalty of ₹ 5 lakhs under Section 112(a) of the Customs Act, 1962.

3. Brief facts of the case are that the appellants M/s Patvolk (Division of Forbes Gokak Limited) executed a bond for ₹ 9 crores in terms of the Notification 104/94-Cus dated 16/03/1994 and the Public Notice No. 59/94 dated 03/06/1994. Department alleged that during the period January to June 2000 the appellants have imported 236 containers and out of the same exported some containers within the stipulated period and the extension granted thereof but did not export some of the containers and have not obtained the exemption either. Therefore, the show cause notice dated 10/06/2002 was issued and the proposals therein was confirmed vide the impugned order.

4. Shri Swapnendu Mishra, Learned Counsel for the appellants submits that the proceedings are blatantly illegal due to the inordinate delay occurred in the adjudication. He submits that Hon'ble High Court in the case of *K-Lifestyle and Industries Ltd* stayed the proceedings, in Writ Petition No. 2370 of 2014,

due to inordinate delay in adjudication. He further relies on the following cases.

i. *Lanvin Synthetics Pvt Ltd vs. Union of India [2015 (322) ELT 429 (Bom.)]*

ii. *Eastern Agencies Aromatics Pvt Ltd. vs. Union of India [(2023) 4 Centax 227 (Bom)]*

iii. *Zodiac Clothing Co. Ltd. vs. Union of India [(2023) 3 Centax (101) (Bom.)]*

5. Learned Counsel submits that CBEC Circular No. 83/98 is not applicable and in any case it cannot travel beyond Notification No. 104/94-Cus as held in *Sandur Micro Circuits Ltd vs. Commissioner of Central Excise, Belgaum [2008 (229) ELT 641 (SC)]* and *Commissioner of Central Excise, Bolpur vs. Ratan Melting & Wire Industries [2008 (231) ELT 22 (SC)].* He submits that agency agreement with the principal owner of the containers is no more operative since 2006 and the ownership of the containers lies with the principal and thus no proceedings can be initiated against the agent i.e. the appellant.

6. He further submits that it is admitted the show cause itself that even by the year 2003, 231 containers were exported and only 5 containers were in the custody of customs; even after noting the above Learned Commissioner goes on to find that 103 containers were exported without permission as per the Board's

circular cited above; Commissioner has further ignored the fact that 73 of the said 103 containers could not be exported as customs themselves have held the containers in ICD Surat and 3 containers were under the custody of DRI, Mumbai. He submits that in the case of the appellant themselves the Tribunal [*2003 (156) ELT 590 (Tri.-Kolkata)]* held that importers are not required to submit any documentary evidence for re-export of such imported containers under Notification No. 104/94. He submits that even assuming that the containers are not exported within the stipulated period the appellant are not liable to pay duty as held in the case of *Commissioner of Customs, Kandla vs. APL (India) Pvt Ltd [2008 (230) ELT 468 (Tri.Ahmd)].* It was also held in the case of *Intermark Shipping Agencies Pvt Ltd vs. Central Excise, Customs (A), Kandla [2014 (314) ELT 557 (Tri.-Ahmd)]* that once the containers are re-exported demand of duty and consequent penalty are not sustainable even if such containers are not re-exported within stipulated period or even after extended period.

7. Shri K Azad, Learned Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that the appellants did not even seek for extension of the time limit for exporting the container in terms of the Board's Circular. The appellants were very casual in their approach and in spite of number of opportunities given and even after lapse of considerable time the appellants did neither seek extension nor

furnished the details of the containers.

8. Heard both sides and perused the records of the case.

9. It is the case of the Revenue that the appellants have not accounted for all the containers imported by them in terms of the Notification 104/94 and the bond given by them in this regard. They have not even sought for extension in the cases where they could not export containers within the permitted period. It is the case of the appellants though there was delay in export of the containers, the delay was not due to the appellants but due to the fact that the containers were under hold by the Department itself. The appellants contended that they were in constant correspondence with department as can be seen from the letters dated 24/07/2002, 26/04/2001, 31/10/2002, 30/06/2003, 25/08/2003, 11/09/2003, 12/08/2004, 13/01/2005, 03/03/2005, 05/04/2005, 28/12/2005 and 6/05/2008 submitted by them. They further submitted that the caption of the letters was clear to indicate the subject to be re-export of containers though specifically permission to export the containers beyond the stipulated period was not sought. As the department was continuously asking for the details of the containers they were giving the details of the containers. This being the situation it is not correct on the part of the department to adjudicate the case after more than 10 years confiscating the containers, imposing redemption fine and demanding duty.

10. We find that the impugned case is at best a case of procedural lapse committed by the appellants. We find from the records of the case that the appellants have exported 231 containers out of 236 containers as on the date of show cause notice. This being the case, it is not correct on the part of the Revenue to confiscate the containers and to impose redemption fine and penalty. We find that it was held by the Tribunal in the cases cited by the appellants that the appellants are not liable to pay duty or penalty when the containers are exported. We are of the considered opinion that when the containers are accounted for and have been exported, seeking extension or denial of permission are of no consequence. We find that the Tribunal in the case of *APL India Pvt Ltd (supra)* observed that

> *"3. We find that Commissioner (Appeals) has acted rightly in accepting the proof of re-export and set aside the order passed by the Dy. Commissioner. The purpose of requiring the container to be re-exported is only to ensure that containers which are used for bringing goods into India are properly accounted for and in case there is no intention to re-export, duty is paid. There was no need for the Dy. Commissioner to refuse permission for extension and the action of the Dy. Commissioner has only increased the work and litigation."*

11. We further find that in the appellant's own case Tribunal held that

> *"4. A reading of the above paragraph shows that he is not accepting the certificate issued by Calcutta Port Trust & Steamer Agent on the ground that these evidences were not in existence at the time of expiry of six months*

period and in terms of the notification the same were required to be submitted within a period of six months. However, we find that the proviso to the notification, as reproduced above is very clear and lays down that the containers have to be re-shipped within a period of six months from the date of their importation and the importer would execute a bond to the satisfaction of the Asstt. Commissioner to furnish documentary evidences thereof. There is nothing in the said notification to suggest that the documentary evidences is also required to be placed on record within a period of six months. It is sufficient if the importer shows the documentary evidences showing the re-export within a period of six months and production of such evidence thereafter cannot be held to be violation of the condition of the notification. With these observations we set aside the impugned order and remand the matter to the original adjudicating authority to look into the evidences produced by the appellant showing re-export of the containers within a period of six months. Appeal is thus allowed by way of remand. Stay petition also gets disposed of."

12. In view of the above we find that the department has not made any case for confiscation of the containers which are exported and the demand of duty thereof. However, as submitted by the appellants and as acknowledged in the show cause notice 5 containers remain to be exported and even after 14 long years the appellants did not either exported the containers nor sought permission. To this extent the commission of the violations of the appellant are on record. We are if the considered opinion that the appellants have rendered themselves to pay duty on the five containers in question and a suitable penalty for the infractions they have committed.

13. Accordingly, the appeal is partly allowed by restricting the duty demand to the five containers in question and by imposing a penalty of ₹ 50,000/- under Section 112 of the Customs Act, 1962 on the appellants. Confiscation and redemption fine imposed on 231 containers already exported is however set aside.

(Order pronounced in the open court on 08/08/2024)

(S.K. MOHANTY)
Member (Judicial)

(P. ANJANI KUMAR)
Member (Technical)

**/as*