

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85059 of 2024

(Arising out of Order-in-Appeal No. 435(Gr.I & IA)/2023(JNCH)/Appeals dated 26.04.2023 passed by the Commissioner of Customs (Appeals), Mumbai-II)

V3 Agencies P. Ltd.

Block N, Eastend Garden,
11, Mayfair Road,
Kolkata- 700 019.

.... Appellant

Versus

Commissioner of Customs, Nhava Sheva-I

Jawaharlal Nehru Custom House,
Nhava Sheva, Uran- 400 707.

.... Respondent

APPEARANCE:

Shri Jitendra Motwani & Chirag Shetty, Advocates for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87128/2024

Date of Hearing: 02.08.2024

Date of Decision: 29.11.2024

Per: S.K. MOHANTY

The present appeal has been filed by the appellants M/s V3 agencies Pvt. Ltd., who are the agents of M/s. Arvee International Pte. Ltd. (hereinafter referred to as 'unpaid seller').

2.1 Brief facts of the case, leading to this appeal are summarized herein below:

2.2 In the present case, the unpaid seller had entered into the Sales Contract Nos. 191122/1 dated 22.11.2019 and 191125 dated 25.11.2019 with M/s. Agricas LLP ('buyer/importer'), whereby the importer agreed to purchase 'Black Matpe' (Urad) (FAQ) 2019 Crop (for short, referred to as 'goods') on Cost and Freight ('CFR') basis from the unpaid seller. In terms of the said Sales Contracts, the entire payment

was required to be made by the importer on Cash Against Documents ('CAD') basis.

2.3 The goods were shipped to Nhava Sheva Port, India on 03.12.2019. However, the said cargo remained at the port, pending Customs clearance for reasons unknown to the unpaid seller. Based on the assurance that the importer will make the payment once they get clearance from Customs, the unpaid seller had permitted the importer to discharge the said cargo in Customs Bonded Warehouse under Section 49 of the Customs Act, 1962 (hereinafter referred as 'the Act of 1962').

2.4 Two numbers of Writ Petitions were filed by the importer viz., being Nos. 9321 of 2018 and 13392 of 2019 before the Hon'ble High Court of Rajasthan, challenging various notifications issued by the Directorate General of Foreign Trade ('DGFT'), as under:

(i) Notifications No. 04/2015-2020 and 05/2015-20, both dated 25.04.2018, which had revised the Import policy of Peas falling under CTH 07131000 from 'free' to 'restricted';

(ii) Notification dated 02.07.2018 read with 31/2015-20 and notification no. 32/2015-20 dated 30.08.2018, wherein the import policy of Yellow beans, Green beans, Dun Peas and Kapse Peas were amended from 'free' to 'restricted' till 30.09.2018;

(iii) Notification No. 37 /2015-2020 dated 28.09.2018, which had extended the restriction on import of these items upto 31.12.2018, which was further extended upto 31.03.2019 vide notification S.O 6364 (E) dated 28.12.2018;

(iv) Notifications dated 29.03.2019 bearing S.O. No. 1478-E, 1479-E, 1480-E and 1481-E further extended restriction on import of Peas and Pulses covered under various Customs Tariff Heading;

(v) Notification No. 37/2015-20 dated 18.12.2019 which subjected import of peas to an annual (fiscal quota) quota of 1.5 lakh MT as per procedure notified by DGFT and Minimum Import Price of Rs. 200 /- and above CIF per kilogram and import was allowed through Kolkata seaport only.

2.5 The Hon'ble High Court of Rajasthan passed the *ad interim* orders dated 24.05.2019 and 14.08.2019, staying the aforesaid notifications and directed the Customs department to release the goods. As per the said orders, the importer had cleared the goods, valued at Rs.71,01,76,920/-, against provisional assessment. However, goods of total value of Rs. 79,42,69,475/- were not cleared and were stored in

the warehouse. The present appeal relates to the aforesaid goods, which remained pending for clearance.

2.6 The Hon'ble Supreme Court vide Order dated 26.08.2020 in the Transfer Petition (Civil) Nos. 496-509 of 2020 upheld the validity of impugned notifications. Subsequent to the Order dated 26.08.2020 passed by the Hon'ble Supreme Court, the goods became liable for confiscation. Accordingly, a show cause notice (SCN) was issued to the importer in view of the aforesaid notifications, proposing for confiscation of goods and imposition of penalty. The matter arising out of the SCN was adjudicated vide Order-in-Original No. 502/RR/2020-21/JC/NS-I JNCH dated 28.12.2020, by the Additional Commissioner of Customs, Appraising Group I & IA, NS-I, JNCH, wherein the subject imported goods were ordered to be confiscated absolutely under Sections 111 (d) and 111(o) of the Act of 1962, alleging that the said goods to be "prohibited" under Section 125 of the Act of 1962. In addition, total penalty amounting to Rs. 15,00,00,000/- was imposed upon the importer under Section 112(a) of the Act of 1962.

2.7 Being aggrieved by the Order-in-Original dated 28.12.2020, the importer had filed a Writ Petition, being No. 2504 of 2021 before the Hon'ble Bombay High Court. The said Writ Petition was kept in abeyance, as the Hon'ble Supreme Court was hearing a similar matter in Civil Appeals 2217-2218 of 2021 arising out of the SLP (C) 14633-14634 of 2020 in the case of *Union of India v. M/s. Raj Grow Impex LLP and Ors.* The Hon'ble Supreme Court vide Order dated 17.06.2021 have held that the imported goods had become "prohibited goods" under Section 11 of the Act of 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. However, in the said case, an option for re-export of goods was provided in the order passed by the Hon'ble Supreme Court.

2.8 Pursuant to the Hon'ble Supreme Court's Order dated 17.06.2021, the importer had made a representation dated 22.06.2021, requesting the customs authorities to allow them to re-export 12,929.70 MTs of Black Matpe, which were pending clearance since December 2019. The importer had also requested for re-export of 480 MTs of goods, wherein a Bill of Entry was filed in December 2019, but were purged in Customs EDI system.

2.9 Thereafter, the Hon'ble Bombay High Court in Writ Petition No. 2504 of 2021 vide Order dated 08.07.2021, had disposed of the petition, by directing the Additional Commissioner of Customs, Appraising Group I & IA, Nhava Sheva- I, Jawaharlal Nehru Customs House to decide the aforesaid representation filed by the importer seeking re-export of goods.

2.10 Meanwhile, the appellants, being the unpaid seller had also filed a representation vide letter dated 05.08.2021, requesting for re-export of the goods, pending clearance on the basis of the Tripartite Agreement and the Hon'ble Supreme Court's judgment in the case of *Union of India v. M/s. Raj Grow Impex LLP and Ors.* in Civil Appeal No(s). 2217-2218 of 2021 arising out of the SLP (C) 14633-14634 of 2020.

2.11 Thereafter, a personal hearing was held on 06.08.2021 by the Additional Commissioner of Customs, Appraising Group I & IA, Nhava Sheva- I, Jawaharlal Nehru Customs House. The Additional Commissioner of Customs, vide Order-in-Original dated 16.08.2021, had imposed redemption fine of Rs. 3,00,00,000/- under Section 125 (1) of the Act of 1962, on the goods and also imposed penalty of Rs.1,45,00,000/- under Section 112(a) of the Act of 1962 on the importer. In the said order dated 16.08.2021, the representation dated 05.08.2021 filed by the unpaid seller to re-export the goods were considered and accepted by the Adjudicating authority. The said acceptance of permitting the unpaid seller to re-export the goods has attained finality inasmuch as the said order was not appealed against by the department.

2.12 Further, the importer vide letter dated 30.08.2021, *inter alia*, had stated that they are abandoning the goods and also stated that they have no objection, if the unpaid seller re-exports the goods being the owner of goods. In order to re-export the goods, the unpaid seller through the appellants was made to pay the fine and penalty imposed on the goods imported by the importer M/s. M/s. Agricas LLP.

2.13 Pursuant to the aforesaid order 16.08.2021, the appellants have preferred an appeal before the learned Commissioner (Appeals), challenging the recovery of fine and penalty on various grounds. The Commissioner (Appeals) vide Order-in-Appeal dated 26.04.2023

(hereinafter referred to as 'the impugned order'), has rejected the appeal filed by the appellants on behalf of the unpaid seller.

2.14 Being aggrieved with the impugned order 26.04.2023, the appellants have preferred this appeal before the Tribunal.

3. The appellants have assailed the impugned order on behalf of the unpaid seller, on the following grounds:

(i) Copy of Letter dated 02.09.2021 was submitted during the course of hearing, in support of the submission that the unpaid seller was forced to pay the payment of fine and penalty and the same was strictly made under protest. Copy of challan annexed at Exhibit A, further shows that the payment was made under protest. Hence, the argument of the Departmental Representative that the payment was made voluntarily and the appeal is not maintainable is without any basis.

(ii) The appellants have the locus to file the present appeal on behalf of the unpaid seller and the said fact has been accepted by the Commissioner (Appeals) in the impugned order as well. It was submitted that the aforesaid finding of the Commissioner (Appeals) has been accepted by the Department and hence the same has attained finality.

(iii) The recovery of fine and penalty on re-export of goods from the appellants are bad in law, as they were the unpaid seller in respect of such goods. It was submitted that both the Orders passed by the respective lower authorities, have not recorded any specific findings to the extent that the appellant (un paid seller) had contravened any provisions of the Act of 1962, or were in any manner involved in the alleged improper importation of the goods. It was further submitted that it is not the case of the department that the appellants had derived any benefit from the alleged improper import of the goods. Furthermore, the finding of the Hon'ble Supreme Court in the case of Raj Grow Impex LLP (supra) are in relation to importers, who were involved in import of goods. The said findings cannot be applied to an unpaid seller. It is a trite law that once the assessee is entitled to re-export the articles in question, then fine or penalty cannot be imposed by the authorities. Reliance was placed on the decision of Hon'ble Supreme Court in the case of Siemens Ltd v Collector of Customs - 1999 (113) ELT 776. Accordingly, recovery of fine and penalty from the appellants by the Customs Department on re-export of goods is not sustainable.

(iv) It was submitted that the impugned order has been passed in a mechanical way, without providing any reason for rejecting the submissions of the appellants. Hence, it is submitted that the impugned order is not a speaking order and for this reason alone the same is not sustainable.

(v) It was further submitted by the appellants that even though the redemption fine is required to be imposed on the imported goods, but considering the peculiar facts of the case, only a token amount

of fine is to be imposed. Thus, the quantum of fine imposed in the present case, is excessive and arbitrary in nature inasmuch as the appellants are the unpaid seller and had not acted in a way to make the goods liable for confiscation.

(vi) Penalty has been collected from the appellants without any authority of law and hence, the same ought to have been refunded. The Tribunal under Rule 41 of the CESTAT (Procedure) Rules, 1982 has inherent powers to pass the orders in order to secure the ends of justice. It was submitted that in the instant case, the adjudicating authority in the original order dated 16.08.2021 had imposed penalty of Rs. 1,45,00,000/- upon the importer i.e., M/s. Agricas LLP. The said order has been affirmed in the impugned Order dated 26.04.2021. It was submitted that since the goods were abandoned by the importer, i.e., M/s. Agricas LLP, collection of such penalty amount from the importer was not proper and justified. Thus, it was submitted that the Customs Department had forced the appellants to pay the penalty amount, for allowing the goods to be re-exported; even though, the said amount was required to be recovered from the concerned importer, who had imported the goods.

(vii) collection of penalty amount, which was never imposed on the unpaid seller, is without any authority of law and wrongful act on behalf of the Customs Department. Thus, it was submitted that the Customs Department cannot take benefit of its own wrong.

4. Learned Departmental representative appearing for the Revenue reiterated the findings recorded in the impugned order passed by the learned Commissioner (Appeals). Further, in response to the query from the Bench, as to whether, the findings of the learned Commissioner (Appeals) regarding locus of the appellants to file the appeal has been accepted by the Department, he has stated in affirmative, stating that the same has been accepted.

5. We have heard both sides and examined the case records. The questions involved in the present appeal, for consideration before the Tribunal are as under:

- (i) Can the Redemption fine be recovered from an unpaid seller, for re-exporting the goods, without any contravention having been committed by them under the Act of 1962?
- (ii) whether Redemption fine is imposable in the facts and circumstances of the present case, and, if the answer is in the affirmative, then can it be said that the fine imposed by the authorities below, is excessive and arbitrary?
- (iii) whether the action on the part of the Customs department is justified for recovery of the penalty amount

from the unpaid seller, on whom the same was not imposed under the provisions of the Act of 1962?

6. Before addressing the questions framed as above, we would like to refer to the adjudication order dated 16.08.2021, wherein at Paragraph 17, the following observations were made:

"PART A

For consignment pending clearance (Annexure B goods)

i. The Impugned goods imported vide 27 Bills of Entry having total assessable value of Rs 79, 42,69, 475/ (Rupees Seventy Nine Crore Forty Two Lakh Sixty nine thousand four hundred seventy five only) and total quantity 12,930 MTs as mentioned in Annexure B are held as 'prohibited' under section 125 (1) of the Act

ii. The impugned goods imported vide Bills of Entry as mentioned in Annexure B are confiscated under Section 111 (d) of the Act. However, I give an option to redeem the same for re-export on payment of redemption fine of Rs 3,00,00,000 (Rs Three Crores only) under Section 125 (1) of Customs Act, 1962.

iii. In relation to these goods I impose a penalty of Rs 1,45,00,000 (Rs One Crore & Forty Five Lakhs) on M/s Agricas LLP under Section 112 (a) of the Customs Act, 1962.

PART B

For past consignments already cleared (Annexure A goods)

(As discussed in para 2.3 above this is only re-issue of the order passed in respect of these goods vide OIO no. 502/RR/2020-21/JC/NS-I JNCH dated 28.12.2020)

i. The Impugned goods imported vide 45 Bills of Entry with total assessable value of Rs 71,01,76,920 (Rupees Seventy one crore One lakh seventy six thousand nine hundred twenty only) and total quantity of 14,799,501 kgs as mentioned in Annexure A are held 'prohibited' under section 125 (1) of the Act.

ii. The impugned goods imported vide Bills of Entry as mentioned in Annexure A are liable for confiscation under section 111 (d) and 111 (o) of the Act. However, as the goods have been released in terms of interim relief by Hon'ble Rajasthan High Court pending outcome of Writ Petitions against bond, a redemption fine of Rs 14,00,00,000 crores (Rs Fourteen crores) is imposed in lieu of confiscation in exercise of power granted under section 125 (1) of the Act.

iii. In relation to these goods I impose a penalty of Rs 7,10,00,000/ (Rs seven crores ten lakhs only) under Section 112 (a) of the Act on M/s Agricas LLP."

7. Undisputedly, in the present case, the appeal has been filed against Part A of the aforesaid adjudication order, which concerns the appellants herein, representing the unpaid seller as their agent. Part B

of the aforesaid adjudication order was passed against M/s. Agricas LLP, who are the importer of the impugned goods. It is clear from the aforesaid observations of the original authority, that while the redemption fine of Rs. 3 crores has been imposed for contravention of Section 111(d) of the Act of 1962 for redeeming the goods, penalty has been imposed specifically against M/s. Agricas LLP. In other words, while penalty has been recovered from the appellants on behalf of the unpaid seller, the same was never imposed upon them.

8. Admittedly, Notifications Nos. 04/2015-2020 and 05/2015-20, both dated 25.04.2018 were issued by the DGFT, revising the import policy for import of various dals, peas, beans, pulses, which amended the import policy from 'free' to 'restricted'. The validity of the said notifications were extended from time to time. The present appeal is filed by M/s. V3 Agencies, who are the agents of M/s. Arvee International Pte. Ltd., who are one of the largest exporters of beans and pulses and unpaid seller in the present case. M/s. Arvee International Pte. Ltd. had entered into the contacts with M/s. Agricas LLP for sell of black matpe on CFR basis. A writ petition was filed by the importer before the Hon'ble Rajasthan High Court challenging the vires of the aforesaid Notifications, amending the import policy for pulses including black matpe from 'free' to 'restricted'. The Hon'ble Rajasthan High Court vide judgements dated 25.05.2019 and 14.08.2019 had stayed the operation of the aforesaid notifications issued by the DGFT. Thereafter, the goods imported under 27 Bills of Entry (B/Es) having total assessable value of Rs. 79,42,69,475/- and total quantity of 12,930 MTs remained to be cleared. The matter was ultimately decided by the Hon'ble Supreme Court vide order dated 26.08.2020, by upholding the validity of the aforesaid notifications issued by DGFT. Thereafter, on the issue of confiscation and imposition of redemption fine, SLPs were filed by various importers i.e., M/s. Rajgrow Impex LLP and others. Vide Order dated 17.06.2021, the Hon'ble Supreme Court have held that the goods imported were in the nature of prohibited goods under Section 111(d) of the Act of 1962 and are liable for absolute confiscation, but with a relaxation of allowing re-exportation of goods, on payment of necessary redemption fine.

9. It is an admitted fact that the unpaid seller's application dated 16.08.2021 for re-export of goods was accepted by the adjudicating

authority as he was considered as the owner of goods. Irrespective of the above, it is not disputed by the department as well that the importer M/s. Agricas LLP vide letter dated 30.08.2021 had abandoned the goods and gave their no objection to the unpaid seller to seek re-export of the goods from the Customs department. Relevant extract from the original order dated 16.08.2021, which has been accepted by the department reads as under:

"7. A connected issue has arisen on account of claim of supplier Ms Arvee that they hold the title as the importer has not made any payment and hence they should be allowed to take back the goods. I find that in view of citations mentioned below it is settled that the title of the goods remain with supplier till the payment for purchase have been made if the goods were imported as per law and the importer has abandoned the goods.

*.....
In the present case it is a fact that the import of impugned goods was contrary to law and impugned goods are subject matter of show cause notice. Hence, even if the suppliers have not received any payment and title of impugned goods is with them as per contract between them and the importer, they can claim back the goods only if redemption of same is allowed on payment of fine. It is also logical to hold in light of order in Sampat Raj Duggar case supra that if the payment for goods have not been done by the importer, the title post redemption of goods would have to be treated with the supplier.*

Thus, once redemption of the offending goods is allowed for re-export on payment of fine, the supplier can put forth their claim for re-export of goods to them on ground of non payment by the importer as per terms of tripartite contract between the supplier and importer. I therefore hold that once the goods are allowed for redemption for re export the importer and supplier may follow the terms of contract between them and request for reshipment back to supplier M/s Arvee. Also if the re-export is done through third party it shall be permitted subject to non availment of any export benefit and compliance with other law as may be applicable."

10. It is clear from the aforesaid observations of the original authority that the unpaid seller's application for re-export has been allowed by him and the said fact has been accepted by the department, which is evident that no appeal against such order has been filed by the department. The said fact has not been disputed before us by the learned AR for Revenue as well.

11. Similarly, the learned Commissioner (Appeals) in the impugned order at Para 6 has also held as under:

"I find, that the present appeal has been filed by M/s V3 agencies Pvt Ltd who is neither the notice nor the importer nor the party in the Impugned order. However, as the importer M/s Agricas LLP failed to clear the goods from Customs authorities after imports and neither

has they made any payment to the supplier. The O.A at para 7 of the Impugned order has clarified that in absence of the importer failing to make payments to the supplier, the ownership of the goods remain with the supplier and as such the ownership of the goods lie with the supplier M/s Arvee International Pte Ltd. I also find that the imported failed to follow the tripartite agreement made between the importer, supplier and one other agency. In the instant case, M/s Arvee International Pte Ltd vide its letter dated 6.11.2021 have authorized M/s V3 agencies Pvt Ltd to file the said appeal and appear before the appropriate authority on their behalf in said case. Accordingly, I find that the appeal filed by M/s V 3 agencies Pvt Ltd is as per law."

12. Reading of the above quoted paragraph, makes the position clear that the learned Commissioner (Appeals) has accepted the appeal filed by the appellants M/s V3 Agencies Pvt. Ltd., on behalf of the unpaid seller M/s. Arvee International Pte. Ltd. and the aforesaid order admittedly has been accepted by the department. Accordingly, no question can be raised on the locus of the appellants to file the present appeal against the order passed by the learned Commissioner (Appeals), upholding levy of redemption fine and recovery of penalty from the appellants, which were never proposed for imposition against them and in fact, were imposed on the importer i.e., M/s. Agricas LLP.

13. Considering the above factual matrix, the following two points arose before us for consideration i.e., whether the appellants herein had paid the amount of redemption fine under protest or otherwise; and whether, the learned Commissioner (Appeals) was correct in confirming the imposition of redemption fine on goods meant for re-export. Further, we have also been called upon to consider the issue whether, the department is justified in recovering penalty from the appellants, which admittedly was not imposed on them for contravention of any of the provisions contained in the Act of 1962.

14. On the issue raised by the learned AR with regard to the right of the appellants to file the present appeal in view of voluntary payment of the redemption fine and penalty, we find that the said submission is contrary to the declaration made by the appellants in their letter dated 02.09.2021, which reads as under:

"V3 Agencies Pvt Ltd has paid redemption fine and penalty as mentioned in Part A of the above OIO on our behalf as follows:

- a) Redemption fine Rs 3,00,00,000/- pay order No. 051063 dated 26.08.2021, HCM No. 223 dated 2nd September 2021*
- b) Penalty Rs 1,45,00,000/- pay order No. 051064 dated 26.08.2021 HCM No. 224 dated 2nd September 2021*

Please note that we are paying redemption fine and penalty under protest and reserve our right to appeal for reduction/waiver of redemption fine and penalty."

15. The said letter clearly records that the payment of redemption fine and penalty were made under protest and as such, the right of the appellants to file the present appeal cannot be disputed or questioned by the department.

16. The issue regarding imposition of redemption fine on re-exportation of the goods is settled by the judgement of Hon'ble Supreme Court in the case of Siemens Ltd Vs. Collector of Customs - 1999 (113) E.L.T. 776 (S.C.), wherein the imposition of redemption fine by the department was set aside, holding that in case of re-exportation of goods, neither the redemption fine nor the duty is required to be paid and accordingly, ordered for refunding the redemption fine paid by the importer-appellants therein. Relying upon the judgement in case of Siemens Ltd. (supra), the Hon'ble Madras High Court in the case of Sankar Pandi Vs. Union of India - 2002 (141) E.L.T. 635 (Mad.) has held that redemption fine is not payable for improper importation, when goods were re-exported by the importer. The said order in the case of Sankar Pandi (supra) was upheld by the Hon'ble Supreme Court, reported in 2018 (360) E.L.T. A 214 (S.C.).

17. While the aforesaid decisions have held that redemption fine cannot be imposed on goods allowed to be re-exported, the same in view of the findings of the Hon'ble Supreme Court in the case of Raj Grow Impex (Supra) cannot be applied to the facts of the present case. The Hon'ble Supreme Court in the above case have concluded that the goods can be re-exported only after imposition of redemption fine. The relevant findings are reproduced below for sake of clarity:

"81. It needs hardly any elaboration to find that the prohibition involved in the present matters, of not allowing the imports of the commodities in question beyond a particular quantity, was not a prohibition simpliciter. It was provided with reference to the requirements of balancing the interests of the farmers on the one hand and the importers on the other. Any inflow of these prohibited goods in the domestic market is going to have a serious impact on the market economy of the country. The cascading effect of such improper imports in the previous year under the cover of interim orders was amply noticed by this Court in Agricas (supra). This Court also held that the imports were not bona fide and were made by the importers only for their personal gains.

82. The sum and substance of the matter is that as regards the imports in question, the personal interests of the importers who made improper imports are pitted against the interests of national economy and more particularly, the interests of farmers. This factor alone is sufficient to find the direction in which discretion ought to be exercised in these matters. When personal business interests of importers clash with public interest, the former has to, obviously, give way to the latter. Further, not a lengthy discussion is required to say that, if excessive improperly imported peas/pulses are allowed to enter the country's market, the entire purpose of the notifications would be defeated. The discretion in the cases of present nature, involving far-reaching impact on national economy, cannot be exercised only with reference to the hardship suggested by the importers, who had made such improper imports only for personal gains. The imports in question suffer from the vices of breach of law as also lack of bona fide and the only proper exercise of discretion would be of absolute confiscation and ensuring that these tainted goods do not enter Indian markets. Imposition of penalty on such importers; and rather heavier penalty on those who have been able to get some part of goods released is, obviously, warranted.

.....

96. For what has been discussed hereinabove, these appeals deserve to be allowed and, while setting aside the orders passed by the High Court and approving the orders-in-appeal, the goods in question are to be held liable to absolute confiscation but with a relaxation of allowing re-export, on payment of the necessary redemption fine and subject to the importer discharging other statutory obligations. The respondent-importers being responsible for the improper imports as also for the present litigation, apart from other consequences, also deserve to be saddled with heavier costs.

97. Accordingly, and in view of the above:

(a) these appeals are allowed;
 (b) the impugned order dated 15.10.2020 (read with modification order dated 09.12.2020), as passed by the High Court in Writ Petition (L) Nos. 3502-3503 of 2020, is set aside and the writ petitions so filed by the Respondent-importers are dismissed;

(c) the impugned interim order dated 05.01.2021, as passed by the High Court in Writ Petition (ST) No. 24 of 2021 is also set aside and the said writ petition shall be governed by this judgment;

(d) the orders-in-appeal dated 24.12.2020, as passed by the Appellate Authority in the respective appeals, are approved and consequently, the orders-in-original dated 28.08.2020 in the respective cases of the Respondent-importers stand quashed;

(e) the orders-in-appeal having been approved by this Court, the questions of release of goods as also the quantum of penalty stand concluded with this judgment and hence, the prayer for

keeping open the option of further statutory appeal stands rejected; and

(f) the subject goods are held liable to absolute confiscation but, in continuity with the order dated 18.03.2021 in these appeals, it is provided that if the importer concerned opts for re-export, within another period of two weeks from today, such a prayer for re-export may be granted by the authorities after recovery of the necessary redemption fine and subject to the importer discharging other statutory obligations. If no such option is exercised within two weeks from today, the goods shall stand confiscated absolutely."

18. It is clear from the aforesaid judgement that the importers have been found guilty of importing goods, which were of 'prohibited' in nature under the FTP and the same have been held to be liable to absolute confiscation. The parties have however been given liberty to seek re-export of goods on payment of redemption fine. The question of payment of redemption fine will not arise, if the goods are abandoned and not redeemed. The findings of the Hon'ble Supreme Court are importer specific, as none of the exporter and/or unpaid seller was before the Hon'ble Court. Accordingly, as far as the present appellants are concerned, the facts of the case are relevant to determine whether imposition of redemption fine was warranted, and if yes, what would be the quantum of the same.

19. We also find that the Hon'ble Supreme Court have dealt with the issue relating to the same notification and similar set of facts, as involved in the present appeal. However, the only difference being that while we appreciate the submissions of the appellants that the said findings are importer specific, we cannot lose sight of the fact that the redemption fine has been imposed on redeeming the offending goods under Section 125 of the Act of 1962.

20. We are in agreement with the submissions of the appellants that the unpaid seller has not contravened any provisions of the Act of 1962, which have rendered the goods liable for confiscation. The said argument of the appellants has been accepted by the learned AR as well and rightly so, as the adjudicating authority in the original order has held that the importer itself had not gained anything by importing the said goods. The relevant finding in the original order dated 16.08.2021 is reproduced below:

"16.4 With the above principle in mind I proceed to first determine quantum of redemption fine. I find that the importer obviously have

not derived any benefit from the import of impugned goods as no part of the imported goods have been allowed clearance. Also the impugned goods have been lying in docks for more than eighteen months. Therefore, claim of the importer that they have incurred heavy expenses had merits."

21. If the above findings against the importer have been accepted by the department, the question of there being contravention on the part of the unpaid seller does not arise. Therefore, considering the peculiar facts involved in the present case viz., application for re-export being made by an unpaid seller, who is nowhere involved in any manner with the irregular importation of the impugned goods, we are of the view that imposition of redemption fine of Rs.3,00,00,000/-(Rupees Three Crores) on the appellants is excessive and arbitrary in nature. The facts of the present case do not warrant such heavy redemption fine, as the exporter being the unpaid seller has neither contravened any provisions of the Act of 1962 and has in fact, incurred huge expenditure for getting the goods re-exported. This expenditure is over above the expenses and/or loss, which the exporter would have incurred in the form of reduction of price of goods, payment of detention/demurrage charges for the period from the date of import of the impugned goods, till their ultimate re-exportation from the country.

22. Section 125 of Act of 1962 provides discretion to an adjudicating authority to levy a redemption fine keeping the facts of each case in mind. It is expected of the adjudicating authority to use the said discretion judiciously by levying appropriate fine in deserving cases like the one under consideration. Thus, considering the overall facts and circumstances of the case in hand, we are of the view that the quantum of redemption fine can be reduced in the interest of justice. Therefore, the impugned order is modified, to the extent of reducing the redemption fine to Rs. 5,00,000/- (Rupees Five Lakhs only).

23. In relation to the imposition of penalty, admittedly the same has been imposed on the importer viz., Agricas LLP under Section 112 (a) of the Act of 1962. The aforesaid letter dated 02.09.2021 which was submitted during the hearing, clearly records that the amount towards penalty was paid under protest by the unpaid seller. It is also important to note that in terms of the direction of the Hon'ble Supreme Court in the case of Raj grow Impex (supra), the parties had to file an

application for re-export of goods within two weeks from the date of order.

24. Given the above facts, while we find merits in the contention of the appellants that they were constrained to deposit the amount of penalty, despite the fact that no penalty was imposed on them, but we are unable to entertain the plea of refund of penalty due to want of jurisdiction, as the appropriate forum to seek refund of amount wrongly collected is not at the Tribunal's end. Accordingly, liberty is granted to the appellants to approach the appropriate Court/Statutory authority(s), for seeking necessary remedy, if they so desire. Further, the department is also left with the option for recovering the penalty amount from M/s Agricas LLP, who is the importer of the impugned goods.

25. In view of the foregoing discussion and analysis, the impugned order dated 26.04.2023 is modified, to the extent of reducing the quantum of Redemption fine to Rs. 5,00,000/- (Rupees Five Lakhs only). Further, we do not interfere with the impugned order, in so far as it has upheld confirmation of the penalty demand on the importer. The appellants are at liberty to seek their remedy for grant of refund of the penalty amount before the appropriate forum.

26. In the result, the appeal filed by the appellants is partly allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 29.11.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)