CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86975 OF 2014

[Arising out of Order-in-Appeal No: 1310 (Gr.IV)/2014(JNCH)/IMP-1268 dated 13th March 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Transpek Industry Ltd
Marble Arch, 6th Floor, Race Course
Vadodara - 390007 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

APPEARANCE:

Ms Shamita Patel, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 87521/2024

DATE OF HEARING: 18/06/2024
DATE OF DECISION: 13/12/2024

PER: C J MATHEW

M/s Transpek Industry Ltd had imported 'empty ISO tank' *vide* bill of entry no. 976907/26.08.2008 which was permitted to be cleared without payment of duty owing to exemption afforded by notification[1] that, *inter alia*, prescribed furnishing of bond, along with bank guarantee, undertaking to discharge liability therein in the event of failure to export within the prescribed time or such period as permitted by designated authority. The tank was ultimately deployed for export of goods against shipping bill no. 8674429/20.07.2010. It was only thereafter, and following request for cancellation of the said bond and bank guarantee by letter of appellant dated 11th October 2012, that proceedings were initiated for recovery of duty liability. The confirmation thereto, along with interest thereon, and, consequent upon confiscation under section 111(o) of Customs Act, 1962, payment of fine of ₹ 50,000 in lieu thereof, besides imposition of penalty of ₹ 15,000/- under section 112 of Customs Act, 1962 was carried in appeal. The order[2] of Commissioner of Customs (Appeals), Mumbai – II, noting that the conditions of the notification had not been complied with and that appellant had not sought extension of time to do so, upheld all the detriments leading to present appeal.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

3. The goods in question are containers, intended for movement of goods, and had been imported for handling of export cargo; such

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[1] [no. 104/1994-Cus dated 16th March 1994]
[2] [order-in-appeal no. 1310 (Gr.IV)/2014(JNCH)/IMP-1268 dated 13th March 2014]

containers are accorded benefit of exemption in terms of notification[3] as not forming part of the goods imported or exported. The purpose of the notification is to ensure that such goods are not charged duty only to be reversed upon export and the conditions thereof are intended to ensure that such goods are not utilized in the domestic territory.

4. That the containers had been exported, even if belatedly, is not in dispute. The cavil against order of the original authority is not about duty liability arising upon the taxable event but on fastening duty liability notwithstanding the absence of taxable event, *viz*., clearance of imported goods for home consumption. There is no doubt that the appellant had been remiss in not shipping out the container within six months of its import; this has been compounded by their not having applied for extension of time as permitted by the impugned notification. Notwithstanding the negligence or dereliction on the part of the appellant, the goods were, admittedly, not within the territory of India on date of crystallization of charge and charging of duty, intended for goods imported into India, is not appropriate under Customs Act, 1962. The charging of interest thereof under Customs Act, 1962 would not, therefore, arise. The sole question for determination is the liability of the goods for confiscation under section 111(o) of Customs Act, 1962 and the appellant herein liable to penalty under section 112 of Customs

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[3] [no. 104/1994-Cus dated 16th March 1994]

Act, 1962 in consequence. The confiscation had been ordered for the sole reason that conditions appendant to exemption from duty on temporary imports had not been complied with. There is no doubt that the goods had not been exported within six months nor was any extension of the time for compliance with the conditions granted. Nonetheless, the goods do not remain within the territory of India and, consequently, are not available for confiscation. In terms of the decision of the Hon'ble High Court of Bombay, in *Commissioner of Customs (Import) v. Finesse Creation Inc [2009 (248) ELT 122 (Bom)]*, goods which are not available are not to be confiscated. Accordingly, while holding that the goods are liable for confiscation, under section 111(o) of Customs Act, 1962, for non-compliance with conditions of exemption, the imposition of redemption fine is set aside.

5. Appellant had not complied with the conditions of the exemption under notification and had not sought time for compliance with the conditions. In these circumstances, imposition of penalty of ₹ 15,000 on the appellant is not disproportionate. Accordingly, the appeal is allowed to the extent of setting aside the duty and interest as well as redemption fine.

(Order pronounced in the open court on 13/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*