# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH

## Customs Appeal No. 85783 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1554/2021-22 dated 25.01.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

**Durga Computers** **Appellant**
Office No.84, 2nd Floor,
Building No.339,
D.B. Marg, Mumbai 400 007.

Vs.

**Commissioner of Customs (Import)** **Respondent**
**Mumbai (Air Cargo Import)**
Air Cargo Complex, Navpada, Sahar Village,
Andheri (E), Mumbai 400 099.

<u>Appearance:</u>

Ms. Kiran Doiphode, Advocate, for Appellant
Shri Rajiv Ranjan, Assistant Commissioner, Authorised Representative for the Respondent

**<u>CORAM:</u>**

**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

Date of Hearing: 25.04.2025
Date of Decision: 14.05.2025

## FINAL ORDER No. 85803/2025

Brief facts of the case are that the appellant filed Bill of Entry bearing No. 3098874 on 04.05.2019 stating the goods to be computer parts viz. Hynix 2GB DDR2 800 Memory Module (RAM). On 07.05.2019 the goods were issued with an order of out of charge. On 08.05.2019 CIU wing of Customs examined the goods and noticed that RAM was having sticker "Hynix 2GB DDR2 PC2 6400U Korea" pasted on it. Statement of the proprietor of the importer company was recorded on 23.05.2019. In his statement Shri Dinesh Jain, Proprietor has stated that it was the mistake of supplier to have despatched wrong package. After waiving the show cause notice, appellant attended personal hearing on 04.02.2020 and submitted letter dated 04.02.2020 issued by the supplier of the goods stating that the supplier of the goods was ready to take the goods back and submitted before the original authority that the importer was ready to re-export the goods. The original authority through his order-in-original dated 11.02.2020 ordered re-export of the goods and imposed a redemption fine of

Rs.3,00,000/- and imposed a penalty of Rs.2,00,000/- under Section 112(a) of Customs Act on the importer. Appellant challenged the said order-in-original dated 11.02.2020 before learned Commissioner (Appeals) who upheld the said order-in-original through his impugned order dated 25.01.2022. Aggrieved by the said order dated 25.01.2022, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that the original authority has recorded in para 12 of the order-in-original that the appellant had submitted a letter dated 04.02.2020 issued by the supplier stating that the supplier was ready to take the goods back. She has submitted that the appellant had paid redemption fine and penalty and exported the goods under Shipping Bill No.6411824 dated 07.11.2020. Learned counsel has further submitted that it is settled law that once the re-export of the goods is ordered, redemption fine cannot be imposed. She has relied on final order of this Tribunal in the case of Skylark Office Machines vs. Commissioner of Customs, Chennai reported at 2020 (374) ELT 99 (Tri.-Chennai). She has submitted that there are large number of Tribunal decisions wherein it has been held that once the goods are ordered to be re-exported, redemption fine is not justified. She has further submitted that it was the mistake of the supplier of the goods that wrong consignment was sent and as a result, the supplier of the goods was ready to take back the goods and, therefore, penalty on the importer is not imposable.

3. Heard the learned AR who has submitted that the appellant had submitted before the original authority that they were ready to pay fine and penalty for allowing re-export of the goods.

4. I have carefully gone through the record of the case and submissions made. I note that the original authority has recorded in his order-in-original that the supplier of the goods had issued a letter informing that he was ready to take back the goods. Further, the goods were assessed through the said Bill of Entry and out of charge order was also passed by Customs authorities. I further note that the issue whether redemption fine can be imposed on the goods allowed to be re-exported is no more *res integra* and settled through various decisions and one such

decision of this Tribunal is relied upon by the learned counsel for the appellant. For the sake of ready reference, I reproduce some part of para 5 of the final order of this Tribunal in the case of Skylark Office Machines (supra) as follows:-

*"We further note that original authority has allowed the appellant to re-export the same. We note that on confiscation the goods becomes property of Government. The original authority has also given option to redeem the goods for exportation. Under the provisions of Section 125 of Customs Act, 1962 the option to redeem the same is provided. However, the said option cannot be compelled. Therefore, if the appellant does not choose to redeem the goods then the goods shall remain in India and cannot be re-exported. We therefore modify the impugned order and set aside confiscation of goods so as to facilitate re-export of impugned goods. Once the confiscation is set aside, the question of imposition of redemption fine does not arise. Further, on setting aside confiscation, imposition of penalty also does not arise. We therefore set aside confiscation of goods, imposition of redemption fine and imposition of penalty and direct the appellant to re-export the goods in above terms. Thus, the appeal is partially allowed."*

From the settled position of law, it is very clear that when the goods are allowed to be re-exported, there is no provision for imposition of redemption fine. I, therefore, set aside the redemption fine imposed in the present case. Further, I accept the contention of learned counsel for the appellant that the appellant was not at fault and it was the mistake of the supplier of the goods and, therefore, there is no justification in imposition of penalty on the appellant. I, therefore, set aside penalty of Rs.2,00,000/- imposed on the appellant.

5. By setting aside the said part of the impugned order, I allow the appeal.

(Pronounced in the court on 14.05.2025)

**(Anil G. Shakkarwar)**
**Member (Technical)**

*tvu*