CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 86827 of 2021

(Arising out of Order-in-Appeal No. 599 (Gr.II A-B)/2021 (JNCH)/Appeals dated 22.07.2021 passed by the Commissioner of Customs (NS-I), Nhava Sheva)

M/s Chemspark India Pvt Ltd. **.....Appellant**
506, 5th Floor, Skyline Wealthspace
Wing C-2, Millar Compound,
Premier Road, Vidyavihar (W), Mumbai

VERSUS

Commissioner of Customs, Nhava Sheva-I **.....Respondent**
JNCH, Nhava Sheva, Raigad

APPEARANCE:

Shri Sandip Batwal, Advocate for the appellant
Shri L B D'Costa, (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 86813/2025

DATE OF HEARING : 08.07.2025
DATE OF DECISION : 20.11.2025

Per: AJAY SHARMA

This appeal has been filed challenging the impugned Order-in-Appeal dated 22.7.2021 whereby the learned Commissioner allowed the appeal filed by Revenue and modified the Order-in-Original dated 16.9.2019 by holding that the impugned goods, being prohibited goods, are liable for absolute confiscation u/s. 111(d) of the Customs Act, 1962 and are not allowed to be redeemed by the importer (appellant herein).

2. The appellant had imported 1600 Kgs. of TC-2PT48(Zinc Pyrithione) and 5000 kgs. of TC-MAB40CD (Sodium Coco Ampho Diacetate) from China vide Bill of Entry dated 20.6.2018 declaring assessable value as Rs. 15,20,382/- and on which the applicable duty of Rs.3,03,773/- was paid. During assessment of the Bill of entry it was observed that Zinc Pyrithione is covered under the schedule to the Insecticide Act, 1968 which requires mandatory registration/permission u/s. 9 thereof from the Registration Committee and the appellant was directed to produce CIB permit for clearance of Zinc Pyrithione. Since the appellant did not possess the requisite permit they filed application with the concerned authority for CIB permit and, in the meantime, requested the assessing authority to warehouse the goods to avoid container detention ground rent. The said request was accepted. The Appellant failed to get the CIB permit within the permitted time and repeatedly sought extensions of warehousing period from time to time and nine (9) times such extension was granted. The last extension was granted on 29.5.2019 extending the period upto 30.6.2019. When, despite so many extensions, the appellant was unable to get the CIB permit, they, vide letter dated 17.6.2019, requested for permission to re-export the impugned goods to the overseas supplier enclosing the overseas supplier’s letter agreeing to accept the material at the same price.

3. The Adjudicating Authority vide Order-in-Original dated 16.9.2019 ordered confiscation of 1600 Kgs. of impugned goods i.e. Zinc Pyrithione u/s.111(m) of the Customs Act, 1962. However, on the request of the importer (appellant), he granted redemption of the goods for the limited purpose of re-export u/s. 125 ibid on payment of Redemption fine of Rs.1,00,000/- and also imposed penalty of Rs. 25,000/- on the appellant u/s. 112(a) ibid. The appellant accepted the order and duly deposited the fine and penalty.

4. The revenue challenged the said Order before the Commissioner (Appeals) who, vide order impugned herein dated 22.7.2021, held that the impugned goods were prohibited goods and, therefore, liable for absolute confiscation u/s. 111(d) ibid and are not allowed to be redeemed by the importer (appellant herein).

5. I have heard learned counsel for the appellant and learned Authorised Representative on behalf of revenue and perused the case records alongwith synopsis/written submissions and case laws placed on record. Alongwith the appeal herein, the appellant has placed on record 'Let Export Order' (LEO) dated 7.10.2019 evidencing that the impugned goods were, in fact, re-exported. Whereas the Review Order by the Commissioner of Customs was dated 17.12.2019 which resulted in filing of the appeal by revenue on 16.1.2020 before the Commissioner (Appeals). The appellant duly informed the department vide

letter dated 29.1.2020 about the re-export of the goods under shipping bill dated 7.10.2019. Despite this, the learned Commissioner passed the impugned order without taking into account that the re-export of the goods in issue had already taken place prior to the filing of the appeal by Revenue. Once the goods have been re-exported certainly they were not available for confiscation. As per settled position of law that where the goods are no longer available for confiscation, such confiscation cannot be ordered, except where they have been cleared under bond etc. which is not the case herein. This being so, the order for absolute confiscation of goods, is not sustainable in law and is accordingly set aside.

6. In view of the discussions made hereinabove, the impugned order passed by learned Commissioner for absolutely confiscating the goods is unwarranted and liable to be set aside.

7. Resultantly, the order passed by the Adjudicating Authority did not warrant any interference, therefore, the impugned order is set aside by allowing the appeal herein.

(Pronounced in open Court on 20.11.2025)

(Ajay Sharma)
Member (Judicial)

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