

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. 1

CUSTOMS APPEAL NO. 567 OF 2011

[Arising out of the Order-in-Appeal No. 12-13 (DKV) CUS/JPR-I/2011/1130 dated 27/06/2011 passed by Commissioner (Appeals), Customs, Jaipur.]

M/s Ayyan Energy Resources (P) Ltd.
301, Jai Uttam Apartments, Sehdev Marg, C-Scheme,
Jaipur.

...Appellant

Versus

Commissioner, Customs,
NCRB, C-Scheme,
Jaipur.

...Respondent

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant.
Shri Nagendra Yadav, Authorized Representative for the
Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51141 /2022

DATE OF HEARING : 01.11.2022
DATE OF DECISION: 06.12.2022

P.V. SUBBA RAO

This appeal has been filed by the appellant to assail order-in-appeal dated 27.06.2011¹ passed by the Commissioner of Central Excise (Appeals), Jaipur-I whereby the appellant's appeal was rejected.

¹ Impugned order

2. The appellant imported good described as "Low Sulphur Waxy Residue (fuel oil)" in three containers from Bahrain which, on examination and testing was found to be 'waste oil' which was included at S. No. 29 of Schedule VI of the Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008². Import of this good was prohibited under Rule 13(4). Accordingly, a show cause notice dated 29.09.2010 was issued alleging that the appellant had knowingly and willfully mis-declared the imported good and imported it in violation of paragraph 2.7 of Foreign Trade Policy 2009-2014 read with Rule 13 (4). The appellant was called upon to explain why the goods should not be confiscated and why a penalty should not be imposed under section 112 (a) of the Customs Act. The Additional Commissioner passed the order-in-original dated 28.02.2011 and the operative part is as follows :-

"(i) I confiscate the waste oil falling under Chapter sub-heading No. 27109900, weighing 78.200 MT and valued at Rs. 10,98,772/- imported by M/s Ayyan Energy Resources Pvt. Ltd., Jaipur vide Bill of Entry No. 950 dated 11.06.2010, under Section 111 (d) and 111 (m) of the Customs Act, 1962 ;

(ii) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s Ayyan Energy Resources Pvt. Ltd., Jaipur under Section 112 (a) of the Customs Act, 1962 ;

(iii) I also impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Shaikh Mohd. Khalil, Director of M/s Ayyan Energy Resources Pvt. Ltd., Jaipur under Section 114AA of the Customs Act, 1962"

3. On appeal, the Commissioner (Appeals) passed the impugned order upholding the order of the Additional Commissioner but setting aside the personal penalty on the

² Rules

Director of the appellant. Aggrieved, the appellant filed this appeal.

4. The appellant does not dispute the test report or that the imported good was prohibited and also does not dispute that it does not have the required permission or licence to import or handle the imported waste oil. However, the appellant had prayed to the Commissioner (Appeals) that if the imported 'waste oil' cannot be released to the appellant it may be released to M/s Indo Max Chemical Industries who had the necessary registration to handle it from the Rajasthan State Pollution Control Board. The appellant prays that this request may be accepted and the goods may be released.

5. The appellant also submits that as per Section 125 of the Customs Act it is mandatory for the authority to give an option to redeem the goods which was not given to the appellant. The appellant also prays that the penalty imposed on it may be set aside.

6. During hearing, learned Counsel for the appellant submitted that the appellant was willing to re-export the waste oil. On a specific query from the Bench, learned Counsel submitted that the appellant was not willing to redeem the goods on redemption fine but was willing to re-export the 'waste oil' only if it was released to it without any redemption fine.

7. Learned Authorized Representative appearing for the Department submits that the facts of the case are not in dispute. The appellant imported oil which, on testing, turned out to be waste oil, which was hazardous substance listed in Schedule VI of the Rules. It is also not in dispute that Rule 13 (4) of these Rules prohibited import of hazardous waste and that the appellant had no licence to import or process it under the Rules. The appellant's prayer to release it to someone else who had a licence to process waste oil or permit it to be re-exported cannot be accepted for the reason that the oil already stands confiscated and on confiscation, the property vests in the Central Government as per Section 126. The appellant cannot export the good to which it does not even have a title as they had been confiscated. He further submits that Import of hazardous waste is a serious environmental challenge to the country and such imports cannot be permitted and no laxity should be shown to such importers.

8. We have considered the submissions from both sides.

9. The facts are not in dispute. The imported good, declared as 'low sulphur wax residue fuel oil' was on testing, found to be 'waste oil'. Import of waste oil is prohibited under the Rules. The appellant had no licence or permission to import and process 'waste oil'. Therefore, the confiscation of the goods under section 111 (d) and 111 (m) must be upheld as there was not only mis-declaration of the goods but the import itself was in violation of the prohibition under the Rules.

10. The contention of the learned Counsel that it is mandatory for the adjudicating authority to give an option of redemption of the confiscated goods is not correct. Such an option may be given in case of goods whose import is prohibited either under the Customs Act or under any other law for the time being in force and shall be given in case of other goods. Relevant extract of section 125 of the Act is as follows :-

Section 125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it **may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:**

11. Since import of the disputed good was prohibited, the Adjudicating Authority had the discretion to either allow redemption or not. In our considered view, the Adjudicating Authority has correctly exercised its discretion not to allow redemption of hazardous waste to the appellant and the Commissioner (Appeals) has, in the impugned order, correctly upheld it.

12. The appellant's request to re-export the goods also cannot be accepted because, having been confiscated the imported goods vest with the Central Government as per section 126 which reads as follows:

Section 126. On confiscation, property to vest in Central Government. -

(1) When any goods are confiscated under this Act, **such goods shall thereupon vest in the Central Government.**

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

13. Section 112 (a) of the Customs Act provides for penalty for acts or omissions which render goods liable to confiscation under Section 111. The amount of penalty imposed is Rs. 1,00,000/- which, in our considered view, is fair and proper considering that the value of the confiscated goods is Rs. 10,98,772/-.

14. In view of the above, we uphold the impugned order and reject the appeal.

(Order pronounced on 06/12/2022.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK