

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 12566 of 2014-DB

[Arising out of Order-in-Original/Appeal No RJT-EXCUS-000-APP-32-14-15 dated 13.05.2014
passed by Commissioner of CUSTOMS-RAJKOT]

Jindal Saw Ltd

...Appellant

Village : Nanakapaya,
Taluka : Mundra,
Kutch,
Gujarat

VERSUS

C.C.E. & S.T.-Rajkot

...Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:

Shri R. Santhanam, Advocate for the Appellant
Smt. Bina D Jani, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA**

FINAL ORDER NO. A/10860 / 2023

DATE OF HEARING:10.04.2023

DATE OF DECISION: 10.04.2023

RAJU

This appeal has been filed by M/s. Jindal Saw Ltd., against demand of customs duty.

2. Learned Counsel for the appellant pointed out that they had warehoused the goods under Section 46 of Customs Act and later cleared the same from the warehouse for domestic consumption on payment of duty under Section 68 of Customs Act. The Department is seeking to demand the duty on value by applying exchange rate of the date on which ex-bond bill of entry was filed.

2.1 Learned Counsel pointed out that the law is very clear in this respect and the exchange rate applicable on the date of warehousing has to be applied for the purpose of valuation. He further pointed out that the Commissioner (Appeals) has allowed the benefit of limitation by treating the normal period of limitation as 1 Year. He pointed out that the imports pertain to the period 2007-08 to 2009-10, and the SCN was issued on 5th October, 2011. He pointed out that the limitation period was revised from 6 months to 1 year only by the Finance Act, 2011. Since the imports were made prior to the Finance Act, 2011, the benefit of extended period of limitation has to be granted as per the statute applicable at the time of import.

3. Learned AR relied on the impugned order.

4. We have considered the rival submissions. The sole issue is if currency exchange rate applicable to imports will be the rate prevalent at the time bill of entry is filed or the rate prevalent when Ex-bond bill of entry is filed. We find that the impugned order relies on para 12 and 13 of the order in original to hold that the demand is sustainable. A perusal of para 13 of the O-I-O reveals that the said order relies on the decision of Tribunal in the case of Shri Maharaja Industries, 2007 (207) ELT 270 (Tri.-Chennai.). The facts of the said decisions reads as follows:

*"The appellants imported RBD Palm oil and filed Warehousing Bill of Entry dated 22-1-04. The goods were cleared ex-bond under Bills of Entry No. 611676 and 611677 both dated 6-4-2004, paying duty on the basis of tariff value in force. The Commissioner of Customs, Chennai had issued a Public Notice No.20/2004, dated 3-2-2004 laying down, inter alia, that exchange rate applicable for ex-bond Bills of Entry where duty is paid on tariff value will be the rate as on the ex-bond Bill of Entry' i.e., as in force on the date of filing of ex-bond B/E. On 26- 7-04, by a corrigendum, **the above Public Notice was corrected to the effect that the relevant exchange rate for such ex- bond Bills of Entry will be the rate as on the Warehousing Bills of Entry, in line with the law.***

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4. *In this case, the Bill of Entry was filed by the assessee on 22-1-2004 for Warehousing. The proviso to Section 14 mandates that the rate of exchange applicable for valuation will be the rate prevailing on the date on which the Bill of Entry is presented under Section 46. The assessee had followed a wrong valuation in the ex-bond Bills of Entry following Public Notice No. 20/2004, dated 3-2-2004. This Public Notice at Sl. No. 6 under the heading 'Imports' had prescribed a procedure contrary to the statutory provision contained in the Act and laid down that the rate of exchange for ex-bond Bills of Entry where tariff duty was leviable would be the rate 'as on the ex-bond Bills of Entry'.*

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6. *On a careful consideration of the case, we find that the Commissioner of Customs is not competent to issue any public notice contrary to the provisions of the Act..."*

Relying on the aforesaid decision the Order In Original confirms the demand.

4.1 We find that the decision relied in the Order In Original does not support the case of the Revenue and is totally contrary to what Revenue has alleged. The aforesaid decision of Tribunal clearly holds that the exchange rate applicable will be the rate on the date the warehousing bill of entry was filed for putting goods in bond. In this circumstances, we find that the demand cannot be sustained. The appeal is consequently allowed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)