

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10357 of 2022 - DB

(Arising out of OIO-AHM-CUSTOM-000-COM-001-22-23 dated 08/04/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

P I INDUSTRIES LIMITED

Sterling Sez And Infrastructure Limited
Plot No 28 Saroda Jambusar
Bharuch, Gujarat

.....Appellant

VERSUS

Commissioner of C-AHMEDABAD

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri Ashok Dhingra Advocate & Ms. Sonia Gupta & Shri Samarth Katare Advocate
for the Appellant

Shri S S Vikal, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10905/2024

DATE OF HEARING: 19.12.2023
DATE OF DECISION: 19.04.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant are eligible for remission of duties in respect of duty free goods brought into SEZ and the same were destroyed in fire or otherwise.

2. Shri Ashok Dhingra Learned Counsel with Ms. Sonia Gupta Advocate and Shri Samarth Katare Advocate appearing on behalf of the appellant made a detailed submission in the form of synopsis filed on 19th December, 2023 wherein he placed reliance on the following judgments:-

- Supdt. of Taxes, Dhubri and Ors. Vs. Onkarmal Nathmal Trust and Ors [MANU/SC/0265/1975]

- UOI Vs. Cus. & C. Ex. Settlement Commission, Kolkata [2010 (254) ELT 647 (Bom HC))
- Laxai Avanti Life Sciences Pvt. Ltd. Vs. CCE [2017 (350) ELT 443 (Tr))
- Peckay International Pvt. Ltd. Vs. UOI (2022 (382) ELT 497 (Bom HC)]
- Satguru Polyfab Pvt. Ltd. Vs. CC [2011 (267) ELT 273 (Tr.))
- Sami Labs Ltd. Vs. CC (2007 (216) ELT 59 (Tri))
- Affirmed by Karnataka HC in [2012 (278) ELT 601)
- Jindal International Vs. CC Kandia [2013 (290) ELT 729 (1)
- Uniworth Textiles Ltd. Vs. CCE [2013 (288) ELT 161 (SC)
- UOI Vs. Hindustan Zine Limited [2009 (233) ELT 61 (Raj.)
- ONGC Petro Additions Ltd. Vs. CC [2023 (12) TMI 530-CESTAT Ahmedabad)
- CBIC Customs Manual 2023, Para 15 of Chap 24 Special Economic Zones

3. Shri S S Vikal Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that subsequent to the passing of impugned order by the Adjudicating authority, in number of cases, it has been held that if the goods are destroyed in SEZ the duty involved on such destroyed goods can be remitted under the Customs Act. In the case of ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530, this Tribunal on the

same legal issue that whether the goods destroyed in SEZ is eligible for remission of duty or otherwise, the following judgment has been passed:-

"4 We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute that the fire incident has taken place in the appellant's factory located in SEZ units. As per survey report, it is clear that there is no negligence on the part of the appellant as the fire broke out suddenly beyond the control of the appellant. Therefore, the allegation that the appellant have not taken the proper precaution to avoid fire incident is absolutely baseless and imaginary. Moreover, it is the appellant who has to be most careful about their goods as it is not only the duty but the huge stake of value of the goods is involved. Therefore, it cannot be imagined that the appellant was careless and negligent due to which fire incidence has taken place. It is also a fact that the extensive survey was conducted by the survey officer for the insurance purpose. However, there is no such inspection or analysis done by the Customs department to arrive at a conclusion that the appellant have not taken the proper precaution.

4.1 We find that once after carrying out thorough inspection and survey, the insurance company has satisfactorily granted the insurance claim that itself is evidence to establish that the fire incidence was beyond the control of the appellant. Therefore, the ground that the appellant was negligent in the matter of fire incident cannot be accepted.

4.2 As regard, the contention of the Learned Commissioner that the Section 23 shall not apply for remission of duty in the SEZ unit. We find that since the entire assessment of customs duty is done under the Customs Act. The provision for remission of custom duty shall automatically apply. We agree with the submission of the learned counsel that only those provisions of other Act shall not apply, which are inconsistent with the provision of the SEZ Act. In the present case the grant of remission in respect of customs duty in terms of Section 23 does not contradict any of the provision of the SEZ Act. Therefore, the contention of the Adjudicating Authority about non-applicability of the Section 23 of the Customs Act. is not sustainable.

4.3 As regard the contention that the appellant have not insured the customs duty along with the value of the goods, we find that it is obvious that only the value of the goods is liable to be insured, which is appearing in the invoices. If the invoice contains any taxes or duties, obviously the gross value inclusive of all these elements shall be taken for the purpose of insurance. However, in the case of SEZ, when the goods are imported and entered into SEZ, the value of goods remains the only principle value and since no duty was payable, question of inclusion of duty does not arise. However, this cannot be the reason for denying the remission of duty. The judgment relied upon by the learned counsel directly applies to the effect that in SEZ unit the remission of customs duty is applicable in terms of Section 23 of the Customs Act. Therefore, we are of the view that appellant has made out a very strong case of remission of customs duty in respect of the destroyed goods in fire.

5. Accordingly, we set aside the impugned order and allow the appeal with consequential relief."

In view of the above decision, the Tribunal has held that the goods destroyed in the SEZ is eligible for remission of duty in terms of Customs Act. However, the Adjudicating authority had no occasion to come across the aforesaid decision. Therefore, the matter needs to be remanded to decide a fresh.

5. Considering above judgment as well as the fact of the present case, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 19.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha