

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10028 of 2022-SM

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-176-21-22 dated 03.11.2021 passed by Commissioner of CUSTOMS-AHMEDABAD]

Ratnamani Metal and Tubes Limited

.... Appellant

The First A and B Wing 9 The Floor Behind
Keshavbaug Party Plot, Ahmedabad,
Gujarat-380015

VERSUS

Commissioner of Customs, Mundra

.... Respondent

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Kutch,
Gujarat-370421

APPEARANCE :

Shri Rahul Gajera, Advocate for the Appellant
Shri J. A Patel, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 23.06.2022
DATE OF DECISION : 23.09.2022

FINAL ORDER NO. A/11158 / 2022

RAMESH NAIR :

1. The appellant herein namely Ratnamani Metals and Tubes Limited preferred the present appeal against Order-In-Appeal No. MUN-CUSTM-000-APP-176-21-22 dated 03.11.2021 of the Commissioner of Customs (Appeals), Ahmedabad by which he has upheld the Order-In-Original dated 11.08.2020 holding that the second hand furniture/equipment do not qualify as capital goods and hence the import of such goods was restricted in terms of Sr. II of para. 2.31 of the Foreign Trade Policy 2015 – 2020 and that in absence of import authorization having been produced, the said goods are liable to confiscation under Section 111(d) of the Customs Act 1962 and

consequently he proceeded to impose redemption fine of Rs. 5,00,000 in lieu of confiscation under section 125 of the Customs Act, 1962 and a further penalty of Rs. 4,00,000/- under Section 112(a) of the Customs Act 1962.

2. Briefly, the facts of the case are that the appellant herein purchased a "Complete Used Stainless Steel Tube Manufacturing Plant" including parts, spares, accessories, tools & tackles and office related furniture/equipment, at a total purchase price of 31,00,000 Euros from SN Aussenhandel E.K. Germany in terms of purchase agreement dated 14.10.2019 and sought clearance of the said goods vide Bill of Entry No. 2351802 dated 02.08.2020. The proper officer of customs, in respect of all other parts of second-hand tube manufacturing plant, permitted clearance. However, in respect of office furniture/equipment he denied clearance on the premise that the said item cannot be construed as "capital goods" and accordingly the same falls under Sr. II of para. 2.31 of Foreign Trade Policy – 2015-2020 whereunder the second-hand goods that are not capital goods are restricted and is importable only against authorization. The appellant by its reply dated 10.08.2020 waived show cause notice and submitted that the office furniture/equipment being part of complete stainless steel tube manufacturing plant and that in view of inclusive definition of capital goods the said goods are required to be construed as "capital goods". However, the Additional Commissioner of Customs, Mundra vide his Order dated 11.08.2020 ordered confiscation of the said goods under Section 111(d) of the Act and gave an option to redeem the goods on payment of fine of Rs. 5,00,000.00 and further imposed penalty of Rs. 4,00,00.00 on the appellant holding that the second hand office furniture/equipment are not "capital goods" as the same are not required for manufacture or production either directly or indirectly, therefore not covered under definition of capital goods.

The said order has been upheld by Commissioner of Customs (Appeals) by Order dated 3.11.2021 against which the present appeal is preferred by the appellant.

3. Shri Rahul Gajera, Learned Counsel appearing for the appellant submitted that the impugned order is not tenable; that the authorities below erred in not appreciating that when the office furniture/equipment are part of the complete plant and its use in relation to the manufacturing activity is not disputed, it follows that the said goods qualify as "capital goods" in terms of para 2.31 Sr. I (c) and accordingly are freely importable. He submitted that the definition of "capital goods" is provided under para. 9.8 of the Foreign Trade Policy and the same is wide and inclusive; that term "plant" would include 'whatever apparatus is used by a businessman for carrying out his business' and hence the office furniture/equipment which are undisputedly used in relation to the manufacturing plant answers "user test" and accordingly qualify as "capital goods". In this behalf he placed reliance upon the following decisions of Tribunal:-

- (i) Warburg Pincus India P. Limited vs. Commr. Of Cus. (Imports), Mumbai – 2017 (358) ELT 1250 (Tri. Mumbai)
- (ii) Asia Power Projects Limited vs. Commissioner of Customs, Chennai – 2019 (370) ELT 477 (Tri. Chennai)
- (iii) GE India Technology Centre vs. Commissioner of Customs, Bangalore – 2009 (247) ELT 402 (Tri. Bang.)

4. Shri J. A Patel, learned Superintendent (AR) appearing for the revenue reiterates the findings given in the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute to the use of the subject second hand office furniture/equipment in relation to the

manufacturing of goods and hence the subject goods are part of complete stainless steel tube manufacturing plant. The authorities below have nevertheless taken a view that the said goods are not required for manufacture or production of goods and therefore not capital goods in terms of para. 09.08 of Foreign Trade Policy 2015-2020. The said view of the authorities below is bereft of any rational. If the said goods are part of the complete plant and its use in relation to the manufacturing of goods is not disputed, they are indeed required directly or indirectly in manufacturing of goods.

6. Upon perusal of the purchase agreement dated 14.10.2019 between the appellant and the seller namely SN Aussenhandel E.K. Germany "used office furniture/equipment" formed part of "Complete Used Stainless Steel Tube Manufacturing Plant". The scope of used tube manufacturing plant under the said agreement, in terms of para. V, included all equipment from its location and further the said office furniture/equipment is listed at sr. 17 of the chartered engineer's certificate dated 28.07.2020. In that view office related furniture/equipment indeed formed part of the said complete plant. Since the said goods formed part of the complete plant and since there is no dispute as to use of the said goods for manufacture or production of stainless steel tubes; it follows that such goods are definitely required directly or indirectly for or in relation to manufacture or production of goods.

7. In this regard, it would be useful to refer to the definition of capital goods as provided in para. 9.08 of Foreign Trade Policy which is reproduced as under:

"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-

gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.

Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector."

It is clear from the above definition of capital goods that any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods would fall within the scope of capital goods. The scope of word "for manufacture" and "indirectly" appearing in the definition of capital goods under the policy is wide and thus use of such goods having indirect nexus with the manufacture or production of goods also qualify as capital goods. This view is supported by the following decisions of Tribunal:

- (i) Asia Power Projects Limited vs. Commissioner of Customs, Chennai – 2019 (370) ELT 477 (Tri. Chennai)
- (ii) GE India Technology Centre vs. Commissioner of Customs - 2009 (247) ELT 402 (Tri. Bangalore)
- (iii) Warburg Pincus India Pvt. Limited vs. Commr. of Cus. (Imports), Mumbai – 2017 (358) ELT 1250 (Tri. Mumbai)

8. The ratio of the above decision is that the office furniture, tools etc which are used in relation to the manufacturing plant/services answers "user test" and in view of the wide and inclusive definition of "capital goods" under the Foreign Trade Policy; such goods qualify as "capital goods".

9. Since the subject goods qualify as capital goods in terms of para. 2.31 Sr. No. I (c) of the Policy as discussed herein above; the import was in accordance with the policy. In the circumstances, I am of the clear view that the said goods cannot be held to be liable for confiscation under Section 111(d) of the Customs Act 1962. Consequently, neither redemption fine

under section 125 of the Act was warranted nor penalty under Section 112 (a) of the Act was required to be imposed, hence the same cannot be sustained.

10. As per my above discussion and finding the impugned order is not sustainable, accordingly, the same is set aside. The appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 23.09.2022)

(Ramesh Nair)
Member (Judicial)

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