

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40339/2022

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 362/2022 dated 13.6.2022 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Shimla Fruit Agency

No. 11 (Old No. 51, New No. 67)
Rajaji Road, Ram Nagar
Coimbatore – 641 009.

Appellant

Vs.

Commissioner of Customs

Chennai II Commissionerate
Custom House
60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri G. Shanmugam, Advocate for the Appellant
Ms. G. Anandalakshmi, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial) Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Final Order No. **40292 / 2022**

Date of Hearing: 11.08.2022

Date of Decision: 12.08.2022

Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellant filed 3 bills of entry dated 24.8.2022 and 23.8.2021 declaring the goods as 'unflavoured supari' (betel nut product). The value of the goods declared was Rs.1,26,73,023.60 and applicable customs duty self-assessed by the appellant was Rs.85,29,342/-. The appellant declared the goods to be classified under CTH 21069030 claiming benefit of concessional rate of

duty under Sl. No. (i) of Notification No. 96/2008. The bills of entry were taken up for verification by faceless assessment group. After examination, it was found that the goods were areca nuts - split which are classifiable under CTH 08028000 and does not qualify to be betel nut product falling under Chapter 21 as declared by the appellant. The samples were drawn and sent for analysis to CRCL, Chennai and report dated 22.9.2021 was received. It was reported that the goods are in the form of cut pieces of betel nuts.

2. The appellant waived the right of Show Cause Notice and requested for early adjudication of the matter. After personal hearing, the adjudicating authority vide order impugned herein rejected the classification declared by the appellant and reclassified the goods under CTH 08028090. The declared value of the goods was also rejected and reassessed as Rs.4,31,34,619/-. The adjudicating authority ordered for confiscation of the goods with an option to the appellant to redeem the goods on payment of redemption fine of Rs.15 lakhs for the purpose of re-export only. A penalty of Rs. 20 lakhs was also imposed under sec. 112(a)(i) of the Customs Act, 1962 and directed for re-export of the goods within 60 days from the date of receipt of the order. Aggrieved, the appellant is now before the Tribunal.

3. The learned counsel Shri G. Shanmugam appeared for the appellant. He submitted that the appellant is not challenging the order of classification or the valuation passed by the adjudicating authority. The appellant had requested for permission to re-export the goods even prior to the passing of the impugned order. However, the adjudicating authority has imposed huge redemption fine to redeem

the goods for the purpose of re-export. He adverted to Section 125 of the Customs Act, 1962 to argue that as the goods are not cleared for home consumption, imposition of redemption fine is not sustainable.

To support his argument, he relied upon the following decisions:

- (a) 1999 (113) ELT 776 (SC) – Siemens Ltd. Vs. Collector of Customs
- (b) 2002 (141) ELT 635 (Mad.) – Sankar Pandi Vs. UOI affirmed by the Hon'ble Supreme Court as reported in 2018 (360) ELT A214 (SC)
- (c) Judgment of this Tribunal in the case of M/s. Selvam Industries Ltd. Vs. Commissioner of Customs reported in Final Order No.41381/2021 dated 2.3.2021
- (d) Judgment of this Tribunal in the case of M/s. Perfect Trading Company Vs. Commissioner of Customs reported in Final Order No. 40065/2022 dated 10.2.2022
- (e) Decision of the Tribunal in the case of Akshara & Co. Vs. Commissioner of Customs, Chennai vide Final Order No. 40121/2022 dated 17.3.2022

4. He further submitted that the appellant was under bonafide belief that the goods being split areca nuts would fall under Chapter 21 and would be eligible for the benefit of concessional rate of duty under Notification No. 96/2008. The appellant has suffered huge loss due to detention of the goods and the direction to re-export. He submitted that there was no intention to evade customs duty or to make any illegal gain. He prayed that a lenient view may be taken.
5. The learned AR Ms. G. Anandalakshmi appeared for the department. She supported the findings in the impugned order. She adverted to Notification No. 20/2015-2020 dated 25.7.2018. As per this notification, import of areca nuts-split are free only if

the CIF value is more than Rs.251/- per kilogram. The goods in the present case being below the said value is prohibited for import. She adverted to the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Raj Grow Impex LLP* reported in 2021 (377) ELT 145 (SC). In the said case, the issue was with regard to violation of Notification dated 5.8.2017 and 21.8.2017 which revised the policy for import of urad / moong and pigeon peas / toor dal. These are free for import but restricted with a stipulation as to annual quota and requirement of a prior license from DGFT. The Hon'ble Supreme Court in the said case held that the goods imported in violation of Notification have to be considered as prohibited goods. It was therefore held that the absolute confiscation of the goods was valid and allowed to be re-exported on payment of necessary redemption fine. She submitted that in the instant case also the goods have been imported violating the conditions of notification. The levy of redemption fine and penalty is therefore correct and proper. She prayed that the appeal may be dismissed.

6. Heard both sides.
7. At the outset, it has to be stated that the appellant is not contesting the classification or the valuation of the goods. It is also to be stated that even prior to passing of the impugned order, the appellant had requested for permission to re-export the goods. The adjudicating authority has allowed such request. However, redemption fine of Rs.15 lakhs has been imposed. The enhanced valuation of the goods has happened for the difference

in the classification adopted by the appellant. The appellant has adopted the classification under Chapter 21 on the view that the goods are in the nature of betel nut products. The learned counsel has relied upon various decisions to argue that redemption fine cannot be imposed when the goods are redeemed for the purpose of re-export only. However, we note that there is violation of the notification. Taking note of the fact that the goods are not cleared for home consumption and the appellant has also incurred huge detention-cum- demurrage charges, we are of the view that the redemption fine and the penalty imposed by the adjudicating authority is on the higher side, we hold that reducing the redemption fine to Rs.4,00,000/- and penalty to Rs.5,00,000/- would meet the ends of justice.

8. In the result, the impugned order is modified to the extent of reducing the redemption fine to Rs.4,00,000/- (Rupees four lakhs only) (for the purpose of re-export only) and also reducing the penalty imposed under sec. 112(a)(i) to Rs.5,00,000/- (Rupees five lakhs only) without disturbing other directions in the order.

9. The appeal is partly allowed in the above terms with consequential reliefs, if any.

(Pronounced in open court on 12.8.2022)

(SULEKHA BEEVI C.S.)
Member (Judicial)

(SANJIV SRIVASTAVA)
Member (Technical)

Rex