

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, CHENNAI
COURT NO. III**

Customs Appeal No. 40676 of 2018

**Arising out of Order-in-Appeal Sea C. Cus. II No.24/2018, Dated: 7.2.2018
Passed by the Commissioner of Customs (Appeals - II), Chennai**

Date of Hearing: 10.04.2019

Date of Decision: 10.04.2019

**M/s PREMIER ROTARY MILL
NO. 240/1, VALLAKULI THOTTAM PERIAPALAYAM
UTHUKULLI ROAD TIRUPUR - 641607**

Vs

**COMMISSIONER OF CUSTOMS
CHENNAI II COMMISSIONERATE CUSTOM HOUSE
CHENNAI-600001**

Appellant Rep by: Shri S Zakir Hussain, Adv.

Respondent Rep by: Shri L Nandakumar, AC AR

CORAM: Sulekha Beevi C S, Member (J)

Cus - The assessee is aggrieved by imposition of redemption fine and penalty by the authorities below - The allegation is that the assessee mis-declared the goods by attempting to claim benefit of SAD refund as per Notfn 21/2012 - The assessee has vehemently argued that the said error had occurred only due to oversight as they were carried away by the description of the goods in Sl. No. 394 of Notfn 12/2012 - On perusal of these notifications, Tribunal do not find that assessee is in any way eligible for SAD refund in respect of goods imported by them - Even in Sl. No. 394 of said Notfn, the goods which are eligible for exemption are goods imported by or on behalf of Security Printing and Minting Corporation of India Ltd. - Thus, if there was no examination conducted by department, the goods would have been cleared and assessee would have succeeded to claim the SAD refund - Therefore, the goods are liable for confiscation as held by authorities below and the same requires no interference - However, the redemption fine and penalty imposed are on the higher side - It is deemed fit to reduce the redemption from Rs.4,50,000/- to Rs.1,00,000/- and the penalty from Rs.50,000/- to Rs.25,000/-: CESTAT

Appeal partly allowed

FINAL ORDER NO. 40661/2019

Per: Sulekha Beevi:

Brief facts are that the appellants filed bill of entry dated 4.6.2016 for clearance of 'screen making machines and control box waste water tank' by

claiming the benefit under Notification No. 21/2012 Sl. No.82 for items under Sl.No. 1, 2 and 3 of the Bill of Entry. The said items declared in the Bill of Entry does not come within the purview of Sl. No. 82 of the notification. During examination, the impugned goods were referred back to the assessing group and it was noticed that the appellant has misclassified the goods and wrongly claimed exemption of 4% SAD. The appellant submitted that the claim was made inadvertently and requested for waiver of Show Cause Notice. After due process, the original authority held the goods liable for confiscation and ordered release of the goods on payment of redemption fine of Rs.4,50,000/- and imposed penalty of Rs.50,000/-. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, Id. counsel Shri S. Zakir Hussain appeared and argued the matter. He submitted that the appellant inadvertently claimed the benefit of as per Sl. No. 82 of Notification 21/2012. That as per Notification No. 12/2012-Cus. dated 17.3.2012, the goods specified in Sl. No. 394 of the Table annexed to the notification is eligible for SAD refund. The goods specified in Sl. No. 394 is goods falling under Tariff Heading 84 and in the nature of import by or on behalf of Security Printing and Minting Corporation of India Ltd. The appellant mistook the above serial number / Tariff Heading as the goods imported by them were 'screen making machines'. That the error was only by oversight and he requested to condone the same and set aside the redemption fine and penalty.

3. The Id. AR Shri L. Nandakumar supported the findings in the impugned order. He submitted that the appellant has claimed benefit of 4% SAD refund by declaring the goods to be falling under Sl. No. 82 of Notification 21/2012. The goods falling under sl. No. 82 is 'Geothermal ground source heat pumps' and such goods are in no way connected with the impugned goods imported by the appellant. The contention of the appellant that they were confused by the entry in Sl. No. 394 of Notification 12/2012 is also not acceptable. The goods mentioned in the said entry are goods that are to be imported by or on behalf of Security Printing and Minting Corporation of India Ltd. Thus the contention that they have claimed SAD refund by oversight is without any basis. The error would not have come to light but for the intervention of the department while making the assessment of the Bill of Entry. Further, that the assessable value of the goods imported is Rs.1,05,19,948/-, out of this, for those three items against which the appellant claimed SAD refund worked out to Rs.1,02,45,000/-. If the appellant had succeeded in claiming SAD refund, there would be a revenue loss of Rs.5,03,158/-. He therefore argued that there is no ground to interfere with the orders passed by the authorities below.

4. Heard both sides.

5. The appellant is aggrieved by the imposition of redemption fine of Rs.4,50,000/- and penalty of Rs.50,000/-by the authorities below. The allegation is that the appellant mis-declared the goods by attempting to

claim benefit of SAD refund as per Notification 21/2012. The ld. counsel for appellant has vehemently argued that the said error had occurred only due to oversight as they were carried away by the description of the goods in Sl. No. 394 of Notification 12/2012. On perusal of these notifications, I do not find that the appellant is in any way eligible for the SAD refund in respect of the goods imported by them. Even in Sl. No. 394 of Notification 12/2012, as rightly pointed out by ld. AR, the goods which are eligible for exemption are goods imported by or on behalf of Security Printing and Minting Corporation of India Ltd. Thus, if there was no examination conducted by the department, the goods would have been cleared and the appellant would have succeeded to claim the SAD refund. Therefore, I am of the view that the goods are liable for confiscation as held by the authorities below and the same requires no interference. However, the redemption fine and penalty imposed are on the higher side. It is deemed fit to reduce the redemption from Rs.4,50,000/- to Rs.1,00,000/- (Rupees one lakh only) and the penalty from Rs.50,000/- to Rs.25,000/- (Rupees twenty five thousand only) which would meet the ends of justice.

6. In the result, the impugned order is modified to the extent of reducing the redemption fine and penalty as above. The appeal is partly allowed with consequential benefit if any, as per law.

(Dictated and pronounced in open court)