

2020-TIOL-410-CESTAT-MUM

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI
REGIONAL BENCH
COURT NO. II**

Customs Appeal No. 88641 of 2013

Arising out of Order-in-Appeal No. 326 to 331/MCH/AC/Gr.IV/2013, Dated: 27.05.2013
Passed by Commissioner of Customs (Appeals), Mumbai-I

(i) Customs Appeal No. 88642 of 2013 (Manoj Turakhia)

Arising out of Order-in-Appeal No. 326 to 331/MCH/AC/Gr.IV/2013, Dated 27.05.2013
Passed by Commissioner of Customs (Appeals), Mumbai-I

(ii) Customs Appeal No. 88643 of 2013 (M/s Asis Logistics Ltd)

Arising out of Order-in-Appeal No. 326 to 331/MCH/AC/Gr.IV/2013, Dated 27.05.2013 Passed by Commissioner of Customs (Appeals),
Mumbai-I

(iii) Customs Appeal No. 88647 of 2013 (M/s C N Sanghavi and Company (Forwards) Pvt Ltd)

Arising out of Order-in-Appeal No. MUM-CUSTM-SMP-351 to 356-12-13, Dated: 05.06.2013
Passed by Commissioner of Customs (Appeals), Mumbai Zone-I)

(iv) Customs Appeal No. 88648 of 2013 (Shri Virendra Kakubhai Mehta)

Arising out of Order-in-Appeal No. MUM-CUSTM-SMP- 351 to 356-12-13, Dated: 05.06.2013
Passed by Commissioner of Customs (Appeals), Mumbai Zone-I)

Date of Hearing: 06.12.2019

Date of Decision: 06.12.2019

**M/s TURAKHIA FERROMET PVT LTD
2/3, ASHOK CHAMBERS
DEVJI RATANSY MARG (BROACH STREET), MUMBAI-400009**

Vs

**COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI-400001**

Appellant Rep by: Shri Prashant Patankar, Consultant

Respondent Rep by: Shri Manoj Kumar, AR

CORAM: S K Mohanty, Member (J)
P Anjani Kumar, Member (T)

Cus - Appellant had accepted the contentions of the department and voluntarily deposited the differential customs duty along with interest - however, show cause proceedings were initiated against the appellants and the demand was confirmed along with interest and penalties were imposed u/s 114A and 112(a) of the CA, 1962 - appellants are, therefore, before the CESTAT and submit that the benefit of sub-section (2) of Section 28 should be available to the appellants and penalty under Section 114A ibid cannot be imposed; that under identical situation, the Tribunal had in the case of V.K.Industrial Corporation Ltd. set aside the penalties imposed.

Held:

In the case of M/s V.K. Industrial Corporation Ltd., Tribunal vide order dated 11.12.2017 has set aside imposition of penalty on the ground that the duty amount along with interest was paid before issuance of the show cause notice - Since, the issue involved in the present case is identical to the case decided by the Tribunal, Bench finds that the ratio of the said order should be applicable to these cases for setting aside the penalties imposed in the adjudication orders dated 27.06.2012 and upheld in the impugned order dated 27.05.2013 - appeals are, therefore, allowed to the extent of setting aside the penalties imposed: CESTAT [para 5, 6]

Appeal partly allowed

FINAL ORDER NOS. A/87276-87280/2019

Per: S K Mohanty:

Brief facts of the case are that the appellant herein, M/s Turakhia Ferromet Pvt. Ltd. had imported a consignment of 1999.194 MTs of Hot Rolled Steel Plates and filed the Bill of Entry No. 867645 dated 24.10.2008 for assessment and clearance of the said goods. The appellant had claimed classification under CTH No. 7208 and the benefit of duty exemption provided under Notification No. 21/2002 dated 01.03.2002. Upon investigation, the department had observed that the said goods are classifiable under CTH No. 7225 and the benefit provided under the Notification dated 01.03.2002 (supra) should not be available. The appellant had accepted such contentions of the department and voluntarily deposited the differential duty along with interest. The department initiated show cause proceedings against the above appellant and others, which culminated into the adjudication order dated 27.06.2012, wherein differential duty demand was confirmed along with interest and penalties were imposed on the appellants under Section 114A and 112(a) of the Customs Act, 1962. On appeal against the said adjudication order, the learned Commissioner of Customs (Appeals), Mumbai has partially modified the said order and disposed of the appeals filed by the appellants. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal. Besides, the other appellants namely, Sh

ri Virendra Kakubhai Mehta, Director of M/s V.K. Industrial Corporation Ltd. (Appeal No. C/88648/2013) and M/s C.M. Sanghavi & Co. Pvt. Ltd., CHA of the said company (Appeal No. C/88647/2013)

have also preferred appeals before the Tribunal. Since the issues in all these appeals are identical, the same are taken up for hearing together and this common order is being passed.

2. The learned Consultant appearing for the appellants submits that since the adjudged amount of duty along with interest was deposited prior to issuance of show cause notice, the benefit of sub-section (2) of Section 28 should be available to the appellants and penalty under Section 114A ibid cannot be imposed. He has also relied upon the Final Order No. A/91475/2017 dated 11.12.2017 passed by the Tribunal in the case of **V.K. Industrial Corporation Ltd.**, to state that under identical situation, imposition of penalty was set aside.

3. On the other hand, the learned AR appearing for Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. We find that in the case of M/s V.K. Industrial Corporation Ltd., this Tribunal vide order dated 11.12.2017 has set aside imposition of penalty on the ground that the duty amount along with interest was paid before issuance of the show cause notice. Since, the issue involved in the present case is identical to the case decided by the Tribunal, we find that the ratio of the said order should be applicable to these cases for setting aside the penalties imposed in the adjudication orders dated 27.06.2012 and upheld in the impugned order dated 27.05.2013. Further, the appeals filed by the appellants in Appeal Nos. C/88648/2013 and C/88647/2013 are also allowed in setting aside the penalties imposed on them, on the ground that the appeal filed by the importer M/s V.K. Industrial Corporation Ltd. has also been allowed by the Tribunal vide order dated 11.12.2017.

6. In view of above, the impugned orders are modified and the appeals are allowed to the extent of setting aside the penalties confirmed therein.

(Operative part of the order pronounced in the open court)

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