

2020-TIOL-361-CESTAT-ALL

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

Customs Appeal No.70246 of 2019

Arising out of Order-in-Original No.20/Commr./Noida-CUS/2018, Dated: 23.08.2018
Passed by Commissioner, Customs House, Noida

WITH

Customs Appeal No.70350 of 2019

Arising out of Order-in-Original No.28/Commr./Noida-CUS/2018, Dated: 18.10.2018
Passed by Commissioner, Customs, Noida

Date of Hearing: 04.02.2020

Date of Decision: 04.02.2020

**M/s ZEROGRAVITY AESTHETICS LLP
PLOT NO.158/1, BRAHMPUTRA EAST STADIUM ROAD
BAREILLY, U.P.**

Vs

**COMMISSIONER, CUSTOMS HOUSE
NOIDA, DADRI, ICD DADRI, NOIDA**

Appellant Rep by: Shri Kapil Vaish, CA

Respondent Rep by: Shri B K Jain, AR

CORAM: Archana Wadhwa, Member (J)

Anil G Shakkarwar, Member (T)

Cus - The assessee filed self-assessed BoE on import, declaring the goods as Beauty and Make up preparations and classified the same under CTH 3304 9990 - The BoE was filed at ICD Dadri - The Revenue opined that ICD, Dadri was not the port authorized for importing the goods in question - Hence the goods were confiscated and penalty equivalent to their value, was imposed - Pursuant to the High Court's intervention, the adjudicating authority permitted redemption of the goods on payment of fine - Hence the present appeal contesting such findings.

Held: The Revenue nowhere established that the subject goods were banned for import into India - It need not be examined as to whether the goods were authorized to be cleared at ICD Dadri because the assessee opted to trans-ship the goods at its own cost to ICD Tughlakabad or ICD Patparganj - The Customs Act provided for trans-shipment of imported goods to the ports where import of such goods were allowed - Hence the goods imported by the assessee were not banned goods & so their confiscation merits being quashed - Consequently, no question of redemption fine or penalty arises - Hence these too are quashed - The Revenue is directed to permit trans-shipment of the goods from ICD Dadri to other ICD suitable to the Customs Department, the cost for which would be borne by the assessee - Thereafter, the Customs authorities shall examine the goods for clearance to home consumption: CESTAT

Case law cited:

Hindustan Steel Industries V/s Commissioner of C.EX., Kanpur - [2012-TIOL-131-CESTAT-DEL... Para 4](#)

FINAL ORDER NOS. 70130-70131/2020

Per: Anil G Shakkwarwar:

Above stated two appeals are taken together for decision since the goods involved in both the appeals are very goods and in respect of which two Orders-In-Original were passed. One Order-in-Original is dated 23 August, 2018 and the other Order-In-Original is dated 18 October, 2018.

2. Brief facts of the case are that the appellant on import filed self-assessed Bill-of-Entry on 19 February, 2018 and declared the goods as Beauty & Make-up preparations and classified the same under Customs Tariff Heading No.33049990 and declared the value of the goods to be around Rs.38 lakhs. The said Bill-of-Entry was filed at ICD, Dadri. It appeared to Revenue that ICD, Dadri was not the port authorized for import of the said goods. Therefore, proceedings were initiated and through Order dated 23 August, 2018 the goods were ordered to be absolutely confiscated and penalty equal to the value of the goods was imposed. The appellant approached Hon'ble Allahabad High Court. Hon'ble Allahabad High Court passed orders dated 10 September, 2018, 27 November, 2018 and 26 April, 2019 in **Writ Tax No.1217 of 2018, 1491 of 2018 and 1491 of 2018**

respectively. In view of the directions contained in the said orders of Hon'ble Allahabad High Court, the Original Authority passed Order-In-Original dated 18 October, 2018. The operative portion of the said order dated 18 October, 2018 is as follows:-

"Considering an amount to Rs.78,15,055.68/- to be a reasonable amount for redeeming the goods, I allow the importer noticee to redeem the goods on payment of redemption fine of Rs.12 lakhs to be re-exported out of India."

3. Aggrieved by the said order and the earlier order dated 23 August, 2018 appellant is before this Tribunal.

4. Heard the learned Chartered Accountant Shri Kapil Vaish on behalf of the appellant. He has submitted that earlier the Original Authority had held that the goods were valued at around Rs.38 lakhs and in the subsequent order he has enhanced the value of the goods to around Rs.78 lakhs and that the invoice along with the packing list which was enclosed to the self-assessed Bill-of-Entry indicated CIF Value of goods to be Rs.38,07,306.74/- and there was no ground for enhancing the value. He has further submitted that under similar circumstances this Tribunal had allowed shifting of the goods to another port through the procedure of trans-shipment to such a port where clearance of such goods on import was allowed. He further stated that the said decision was in the case of

M/s Hindustan Steel Industries V/s Commissioner of C.EX., Kanpur reported at 2011 (272) E.L.T. 428 (Tri.-Del.) = [2012-TIOL-131-CESTAT-DEL](#)

. He further submitted that they are prepared to transport the said goods to ICD Tughlakabad or ICD Patparganj whichever is convenient to Customs Authority. He has further prayed for setting aside the confiscation and setting aside the imposition of fine and penalty since the goods were allowed for import in India and were not banned goods. He also contested that the subject goods are authorized to be cleared at ICD, Dadri since they were not medicaments and that medicaments were not authorized to be cleared at ICD Dadri.

5. Heard Shri B.K. Jain, learned Assistant Commissioner on behalf of the Revenue. He has supported the impugned order.

6. Having considered submissions from both the sides and on perusal of record, we note that Revenue has nowhere established that the said goods were banned for import into India. We do not examine whether the subject goods were authorized to be cleared at ICD Dadri because the appellant has opted to transship the goods at their cost to ICD Tughlakabad or ICD Patparganj. We note that, Customs Act has provided for trans-shipment of imported goods to the ports where import of such goods were allowed. We, therefore, hold that goods imported by appellants were not banned goods and therefore, we set aside the confiscation of the same. Once the confiscation is set aside, question of redemption fine and penalty does not arise. We, therefore, set aside the imposition of redemption fine and penalty on the said goods. Further, we direct the Revenue to allow trans-shipment of the said goods from ICD, Dadri to ICD, Tughlakabad or ICD, Patparganj suitable to Customs organization at the cost born by the importer i.e. appellant. On trans-shipment, the Customs Authorities shall examine subject goods for clearance to home consumption.

7. In above terms, we set aside the impugned orders and allow both the appeals.

(Dictated and Pronounced in open Court)

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