

hvn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CUSTOMS APPEAL NO. 66 OF 2009

The Commissioner of Customs (Import)
New Custom House,
Ballard Estate, Mumbai 400 001 ... Appellants

Versus

M/s. Finesse Creation Inc.
333/334, Shah & Nahar Industrial
Estate, (A-1 Building),
Sun Mill Road,
Lower Parel, Mummbai 400 013 ... Respondents

Mr. Vijay Kantharia with Ms. Rituja Ambekar for the Appellants.

Mr. Vipinkumar Jain with Mr. P.K. Shetty for Respondents.

**CORAM : F.I. REBELLO &
D.G. KARNIK, JJ.
DATED : AUGUST 25, 2009**

ORAL JUDGMENT (Per F.I. Rebello,J):

Admit on the following questions :

(a) Whether the goods held to be improperly imported are liable for confiscation under Section 111 of the Customs Act, 1962, even though the same are cleared and not available for seizure?

(b) Whether on the facts and the circumstance of the case the Hon'ble CESTAT is correct in law in holding that since the imported goods were not available as being

already cleared, the same was not liable for confiscation?”

2. The premises of the respondents were searched on 28.9.2006 and incriminating documents were recovered. On scrutiny of the documents submitted by the respondents to the Customs Department, at the time of clearance of imported consignment of artificial flowers, it was revealed that there was substantial difference in the value declared by the Respondent to the Customs at the time of filing of Bill of entry. The value declared to the Customs was substantially lower than the value appearing on the seized documents. After investigation, show cause notice dated 31.8.2007 was issued to the Respondents. The Commissioner of Customs adjudicated the show cause notice and passed an order in original dated 19.3.2008. The Commissioner rejected the declared value of goods imported by the assessee in respect of 13 consignments over a period from 04.8.2003 to 20.09.2006 and ordered re-assessment of the goods imported. On the re-determined value of Rs.44,82,452/-. The differential duty of Rs.8,20,543/- was confirmed under Section 28(2) of the Customs Act, 1962 and recovery of interest under Section 28 AB of Customs Act, 1962 was also ordered. An amount of Rs.8,16,853/- deposited by the Assessee during investigation was appropriated against the demand confirmed. Penalty was also imposed. The imported goods were confiscated and a redemption fine of Rs. 13,45,000/- under Section 125 of Customs Act, 1962 was imposed in lieu of confiscation.

3. The Respondent aggrieved by the impugned order of the Commissioner, preferred an appeal before CESTAT. The CESTAT confirmed the differential duty as also consequent penalty and interest. In so far as appeal preferred is concerned, the

CESTAT held relying on the judgment of this court in the case of **Customs of Customs (EP) Vs. Jupiter Exports, 2007 (213) ELT 641 (Bombay)**, that if partnership is penalized, separate penalties cannot be imposed on the Partners and set aside the order to this extent. As regards redemption fine which was imposed on goods as they were not available for confiscation, the CESTAT quashed and set aside the order in original to the extent of the direction of imposition of redemption fine under section 125 of the Customs Act.

4. CESTAT in its order relied on the judgment of the Punjab & Haryana High Court in the case of **Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd. 2008 (229) ELT 185 (P & H)**. The learned Division Bench amongst others, was considering the substantial question of law, namely whether redemption fine under section 125 of the Customs Act, 1962 can be imposed even if the goods are neither available for confiscation nor cleared on undertaking/bond. After considering the various contentions and judgments relied upon, the learned Division Bench of the Punjab & Haryana High Court upheld the order of the tribunal that in the absence of the goods being available no fine can be imposed. Revenue had relied on the judgment of the Supreme Court in **Weston Components Ltd. Vs. Commissioner of Customs, New Delhi 2000 (115) E.L.T. 278 (S.C.)**. The Supreme Court there noted that the goods were released on the application by the appellant and appellant executed a bond. The court then observed that in these circumstances, if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine. The

contention therefore, of the appellants there that the redemption cannot be imposed because the goods were not available for custody of the respondent authorities was rejected.

5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed.

(D.G. KARNIK,J.)

(F.I. REBELLO,J.)