



2024:KER:84081

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

FRIDAY, THE 8<sup>TH</sup> DAY OF NOVEMBER 2024 / 17TH KARTHIKA, 1946

CUS.APPEAL NO. 27 OF 2018

AGAINST THE ORDER DATED 19.10.2017 IN C/22440/2014 OF  
CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL  
BENCH, BANGALORE

APPELLANT/RESPONDENT:

COMMISSIONER OF CUSTOMS  
CUSTOMS HOUSE, KOCHI-682009.

BY ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF  
CUSTOMS DEPARTMENT

RESPONDENT/APPELLANT:

M/S. HADEED STEELS PVT.LTD  
5/359, KADEEJA BUILDING, KANJIKODE(WEST),  
PALAKKAD-678623.

THIS CUSTOMS APPEAL HAVING COME UP FOR ADMISSION ON  
08.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **J U D G M E N T**

**Dr. A.K. Jayasankaran Nambiar, J.**

This appeal preferred at the instance of the revenue impugns the order dated 19.10.2017 of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Appeal No.C/22440/2014.

2. The brief facts necessary for disposal of this appeal are as follows:

The respondent assessee had filed a Bill of Entry dated 26.10.2010 for clearance of 84 metric tons of light melting scrap. The assessee also paid import duty of Rs.2,28,027/- without waiting for the 'out of customs charge' endorsement on the Bill of Entry filed by him. When the goods arrived at the port, an inspection by the customs authorities revealed that the consignment contained in all four containers was hazardous waste materials which were prohibited for import under the Hazardous Waste (Management, Handling and Trans boundary Movement) Rules, 2008. The customs authorities therefore found that it was a case of misdeclaration of the hazardous waste that was imported, as light melting scrap.



3. On being intimated of the inspection report, the assessee importer sought the permission of the Customs authorities to re-export the entire cargo. The department accordingly permitted him to re-export the cargo subject to payment of redemption fine of Rs.1,50,000/- and a penalty of Rs.75,000/-. It is not in dispute that the Redemption Fine and Penalty were paid by the assessee and the imported consignment was re-exported.

4. The importer thereafter filed a refund application claiming refund of Rs.2,28,027/- that he had remitted towards import duty. It is not in dispute that the goods were not cleared for home consumption and did not leave the customs area till they were eventually re-exported. It is also not in dispute that the application for refund filed by the importer was within the time permitted under the Customs Act. The refund application of the importer was however rejected by the original authority as also the First Appellate Authority, and this led the importer to approach the Appellate Tribunal through the appeal aforementioned.

5. The Appellate Tribunal on a consideration of the issue found that the provisions of Section 26A of the Customs Act, that deals with refund of import duty in certain cases, did not really get attracted on the facts of the instant case since the goods were never cleared for home consumption by the importer. The Tribunal



also found that the importer had already paid the redemption fine and penalty and hence, the duty amount paid, which became payable only in the event of actual clearance of the imported goods for home consumption, had to be returned to the importer. The Tribunal also found that the doctrine of unjust enrichment would not be attracted on the facts of the instant case since there was no possibility of the importer having absorbed the import duty into the cost of any product that he had sold within the domestic tariff area since the goods had not been cleared for home consumption in the first place. The Tribunal therefore allowed the appeal and directed the appellant herein to refund the duty amount together with interest under S.27A of the Customs Act.

6. In the appeal before us, the revenue raises the following questions of law:

I. Has not the Tribunal erred in holding that claim of refund of duty by Respondent come under Section 26A but Section 27 of the Customs Act, 1962?

II. Has not the Tribunal erred in not considering the correct position of Section 125 of Customs Act, 1962 which imposes duty in addition to redemption of fine?

III Has not the Tribunal erred in holding that goods ordered to be re-exported are not goods cleared for home consumption, since the order of re-export involves two acts first the goods are allowed to be cleared for home consumption and thereafter it is allowed to be exported.



7. We have heard Sri.Sreelal Warriar, learned Senior Standing Counsel for the Customs and Central Excise Department. There is no representation for the respondent assessee despite notice.

8. On a consideration of the submission made across the Bar, we find ourselves in agreement with the findings of the Appellate Tribunal in the impugned order. As rightly noticed by the Appellate Tribunal, this was a case where there was no clearance for home consumption, of goods that had been imported. In fact, the imported goods were re-exported immediately after their import and without being cleared for home consumption. Under such circumstances, the taxable event for the levy of import duty did not materialize, and on a re-export of the said goods, there remained no justification for the Customs Department to retain any amount paid towards import duty. This is all the more so when it is the admitted case that for the alleged offence with regard to import of hazardous waste, the importer had already paid the necessary penalty and redemption fine. The redemption fine paid was in lieu of confiscation and only to enable the importer to reclaim the goods imported for the purpose of re-export. Thus, the direction of the Appellate Tribunal to refund the import duty paid by the importer, under circumstances where the goods were never cleared for home consumption but were



re-exported in their entirety, cannot be found fault with. This Appeal therefore fails and we dismiss the same by answering the questions of law raised therein against the appellant and in favour of the respondent importer.

Sd/-

**DR.A. K. JAYASANKARAN NAMBIAR  
JUDGE**

Sd/-

**K. V. JAYAKUMAR  
JUDGE**



APPENDIX OF CUS.APPEAL 27/2018

PETITIONER ANNEXURES

Annexure A ORDER-IN-ORIGINAL NO. 234/2011 DATED 10.08.2011 ISSUED BY ADJUDICATION AUTHORITY.

Annexure B ORDER-IN-APPEAL NO. COC-CUMTM-000-APP-047-14-15 DATED 16.04.2014.

Annexure C FINAL ORDER NO. 22535/2017 DATED 19.10.2017 IN APPEAL NO. C/22440/2014 OF THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE.