

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.**

Customs Appeal No. 88336 of 2019

(Arising out of Order-in-Appeal No. 1359 to 1364 (Gr.III)/2019(JNCH)/Appeal-II dated 03.10.2019 passed by the Commissioner of Customs (Appeals), NS-III, Nhava Sheva)

M/s. Goyal Trading Co.

Shubham Centre No.2, B-Wing,
606, 6th Floor, C.G. Road,
Andheri (E), Mumbai 400 099

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

JNPT, Custom House,
Raigad 400 707, Maharashtra

WITH

Customs Appeal No. 88337 of 2019

(Arising out of Order-in-Appeal No. 1359 to 1364 (Gr.III)/2019(JNCH)/Appeal-II dated 03.10.2019 passed by the Commissioner of Customs (Appeals), NS-III, Nhava Sheva)

M/s. Gulab Fibres

Shubham Centre No.2, B-Wing,
606, 6th Floor, C.G. Road,
Andheri (E), Mumbai 400 099

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

JNPT, Custom House,
Raigad 400 707, Maharashtra

WITH

Customs Appeal No. 88339 of 2019

(Arising out of Order-in-Appeal No. 1359 to 1364 (Gr.III)/2019(JNCH)/Appeal-II dated 03.10.2019 passed by the Commissioner of Customs (Appeals), NS-III, Nhava Sheva)

M/s. Goyal Trading Co.

Shubham Centre No.2, B-Wing,
606, 6th Floor, C.G. Road,
Andheri (E), Mumbai 400 099

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

JNPT, Custom House,
Raigad 400 707, Maharashtra

WITH

Customs Appeal No. 88341 of 2019

(Arising out of Order-in-Appeal No. 1359 to 1364 (Gr.III)/2019(JNCH)/Appeal-II dated 03.10.2019 passed by the Commissioner of Customs (Appeals), NS-III, Nhava Sheva)

M/s. Unitec Inc.

Flat No.003, Bldg.No.8,
Oshiwara Mhada Complex,
Andheri (W), Mumbai 400 053.

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

JNPT, Custom House,
Raigad 400 707, Maharashtra

WITH

Customs Appeal No. 88343 of 2019

(Arising out of Order-in-Appeal No. 1359 to 1364 (Gr.III)/2019(JNCH)/Appeal-II dated 03.10.2019 passed by the Commissioner of Customs (Appeals), NS-III, Nhava Sheva)

M/s. Unitec Inc.

Flat No.003, Bldg.No.8,
Oshiwara Mhada Complex,
Andheri (W), Mumbai 400 053.

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

JNPT, Custom House,
Raigad 400 707, Maharashtra

AND

Customs Appeal No. 88345 of 2019

(Arising out of Order-in-Appeal No. 1359 to 1364 (Gr.III)/2019(JNCH)/Appeal-II dated 03.10.2019 passed by the Commissioner of Customs (Appeals), NS-III, Nhava Sheva)

M/s. Unitec Inc.

Flat No.003, Bldg.No.8,
Oshiwara Mhada Complex,
Andheri (W), Mumbai 400 053.

Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

JNPT, Custom House,
Raigad 400 707, Maharashtra

Appearance:

Shri Anil Balani with Ms. Priyasha Pawar, Advocates for the Appellants
Shri D.S. Mann, Deputy Commissioner, Authorised Representative for
the Respondent

CORAM:**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER
(TECHNICAL)**

Date of Hearing: 06.09.2023

Date of Decision: 06.09.2023

FINAL ORDER NO. 86357-86362/2023

Above stated six appeals are taken together for decision since they are arising out of common impugned order-in-appeal dated 30.10.2019. The said order-in-appeal dealt with six appeals filed before learned Commissioner (Appeals) which were arising out of two orders-in-original dated 28.06.2019 passed in respect of Unitec Inc., the appellant before this Tribunal, one order-in-original dated 01.07.2019 passed against Unitec Inc., one order-in-original dated 08.07.2019 passed against Goyal Trading Co., appellant before this Tribunal, another order-in-original dated 17.07.2019 passed against Gulab Fibres, an appellant before this Tribunal and one order-in-original dated 23.07.2019 passed against Goyal Trading Co.

2. Brief facts of the case are that above stated three appellants imported Viscose Soft Waste and filed Bills of Entry. It appeared to Revenue that appellants were required to produce permission for import of said goods from Ministry of Environment, Forest and Climate Change in terms of the provisions of sub-rule (4) of Rule 12 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. None of the importers could bring such permission and they approached the original authority by waiving show cause notice and personal hearing requesting permission to re-export the goods. Original authority through above stated orders-in-original confiscated the said goods and without imposing any redemption fine, directed the importers to re-export the goods. The original authority imposed penalties under Section 112(a) of Customs Act, 1962 on the appellants. Appellant, Unitec Inc. was imposed with a penalty of total amount of Rs.3,00,000/- in three orders-in-original put together. Appellant, Gulab Fibres, was imposed with a penalty of Rs.1,00,000/-. Appellant, Goyal Trading Co., was imposed with a penalty of Rs.3,50,000/- through two orders-in-original. Aggrieved by the said orders of

the original authority, appellants preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) disposed of six appeals through impugned order-in-appeal and rejected all the appeals and upheld orders passed by original authority. Aggrieved by the said order, appellants are before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that during earlier occasions, similar goods were imported and allowed clearance. He has submitted that in view of the past clearances, appellants imported the said goods and, therefore, there were no intention to contravene the provisions of any of the laws while importing the goods. He has submitted that after orders-in-original were passed, all the appellants have paid full amount of penalty and re-exported the goods. He has submitted that this Tribunal has time and again held that when the goods are re-exported, penalties under Customs Act are not imposable on the appellant. For that purpose, he has relied on final order passed by this Tribunal in the case of Siemens Public Communication Networks Ltd. reported at 2001 (137) ELT 623 (Tri.-Kolkata). He has submitted that this Tribunal has referred to earlier decisions of the Tribunal and also a ruling by Hon'ble Supreme Court and held that under the similar circumstances, penalty was not imposable.

4. Heard the learned AR for Revenue. Learned AR has submitted that penalty to the extent of 20% of the assessable value of the goods confiscated and ordered for re-export was imposed and the same is justifiable.

5. I have carefully gone through the record of the case and submissions made. I note that the contention of learned counsel for the appellant that earlier similar goods were allowed for clearance has not been contested by Revenue. I also note that the appellants have re-exported the goods. I also have gone through the final order in the above stated case of Siemens Public Communication Networks Ltd. For the sake of ready

reference, paragraphs 5 & 6 of the said final order are reproduced below:-

"5. *We have heard the submissions made from both the sides. During the course of the arguments the Id. adv. appearing for the appellant made it clear that the appellants have opted for re-export of the goods. Accordingly they have challenged the order of the Commissioner imposing a redemption fine and penalty for the said re-export, which according to the appellants is not permissible to be imposed in view of the various case laws relied upon by them. It is seen that in the case of Siemens Ltd. v. CC - [1999 \(113\) E.L.T. 776](#) (S.C.), their Lordships have held that since goods have been allowed to be re-exported, neither redemption fine nor duty was required to be paid. The Tribunal in the case of HCL Hewlett Packard Ltd. - [1997 \(92\) E.L.T. 367](#) (T) has held that no redemption fine is imposable when re-export of the goods is allowed. To the same effect is the decision of the Tribunal in the case of Padia Sales Corpn. v. CC - [1992 \(61\) E.L.T. 90](#) and in the case of Skantrons (P) Ltd. - [1994 \(70\) E.L.T. 635](#). We further find that the Tribunal in the case of G.V. International and Another - [2000 \(118\) E.L.T. 517](#) = 2000 (39) RLT 272, following the earlier decisions of the Tribunal, has set aside the orders passed by the lower authorities ordering confiscation of goods and their release on payment of redemption fine and penalty. Further in the case of Commissioner of Customs, Calcutta v. J.V. (P) Ltd. - 2000 (39) RLT 1074, the order of the lower authorities allowing re-export of the goods without fine and penalty was upheld.*

6. *As discussed above the issue is squarely covered in favour of the appellants by the various decisions of the Tribunal and the Hon'ble Supreme Court. Inasmuch as the Commissioner vide his impugned order has given an option to the appellants to re-ship the goods back to the supplier, we hold that the redemption fine and the penalty imposed by him was not justified. We accordingly set aside the same and allow re-export of the consignment in question without any redemption fine or penalty or duty. Appeal is thus allowed in above terms."*

As can be seen from the findings and order in the precedent decision of this Tribunal in the case of Siemens Public

Communication Networks Ltd. when the goods are allowed to be re-exported, neither redemption fine nor duty was required to be paid. At the same time, penalty is also not to be imposed on the importers. I, therefore, hold that penalties imposed in these six appeals are not justified. I, therefore, set aside all the penalties imposed under Section 112(a) of Customs Act, 1962.

6. Accordingly I set aside the impugned order and allow all the above stated six appeals.

(Order pronounced in the open court)

(Anil G. Shakkarwar)
Member (Technical)

tvu