

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH – COURT NO. II**

**Customs Appeal No.50601 of 2019 (SM)**

(Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ICD/242/2015 dated 9/11.03.2015 passed by the Commissioner of Customs (Appeals), New Customs House, I.G.I. Airport, New Delhi).

**M/s.Oriental Trimex Limited**

D-3, Site V, Surajpur Industrial Area,  
Greater Noida -201 306 (U.P.).

**Appellant**

Versus

**Commissioner of Customs (Import)**

ICD, Tughlakabad, New Delhi-110 020.

**Respondent**

**WITH**

**Customs Appeal No. 50602 of 2019 (SM)**

(Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ICD/244/2015 dated 09/11.03.2015 passed by the Commissioner of Customs (Appeals), New Customs House, I.G.I. Airport, New Delhi).

**M/s.Oriental Trimex Limited**

D-3, Site V, Surajpur Industrial Area,  
Greater Noida -201 306 (U.P.).

**Appellant**

Versus

**Commissioner of Customs (Import)**

ICD, Tughlakabad, New Delhi-110 020.

**Respondent**

**WITH**

**Customs Appeal No. 50603 of 2019 (SM)**

(Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ICD/243/2015 dated 9/11.03.2015 passed by the Commissioner of Customs (Appeals), New Customs House, I.G.I. Airport, New Delhi).

**M/s.Oriental Trimex Limited**

D-3, Site V, Surajpur Industrial Area,  
Greater Noida -201 306 (U.P.).

**Appellant**

Versus

**Commissioner of Customs (Import)**

ICD, Tughlakabad, New Delhi-110 020.

**Respondent**

**AND**

**Customs Appeal No. 50604 of 2019 (SM)**

(Arising out of Order-in-Appeal No.CC(A) CUS/D-II/ICD/245/2015 dated 9/11.03.2015 passed by the Commissioner of Customs (Appeals), New Customs House, I.G.I. Airport, New Delhi).

**M/s.Oriental Trimex Limited**

D-3, Site V, Surajpur Industrial Area,  
Greater Noida -201 306 (U.P.).

**Appellant**

Versus

**Commissioner of Customs (Import)**

ICD, Tughlakabad, New Delhi-110 020.

**Respondent**

**APPEARANCE:**

Shri R.S. Yadav, Advocate for the appellant.

Shri Vishwa Jeet Saharan, Authorised Representative for the respondent.

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDERS NOS. 50671-50674/2023**

**DATE OF HEARING:14.03.2023**

**DATE OF DECISION:18.05.2023**

**Anil Choudhary:**

The issue in these appeals is whether the Commissioner (Appeals) have rightly confirmed the order-in-original, by which the imported rough marble blocks were held liable to confiscation under Section 111(d) with option to redeem on payment of redemption fine and further penalty was also imposed under Section 112 of the Customs Act.

2. The details of the appeals are as follows:-

Sr.No.	Appeal No.before CESTAT	Order-in-Appeal No.	Order-in-Original No.	SCN No.	Bill of Entry No/Date/Value/RF/Penalty
1.	C/50601/2019	C-A-CUS-DII-245/2015 11.03.2015	03/2014/ADC/ICD/TKD dated 10.01.2014	22/2013 dt.20.11.2013	3356359 dt.24.09.2013 Value Rs.21,07,883/- RF Rs.6,00,000/- Penalty Rs.2,00,000/-
2.	C/50602/2019	C-A-Cus-DII-244/2015 dated 09.03.2015	02/2014/ADC/ICD/TKD dated 10.01.2014	23/2013 dt.20.11.2013	3365365 dt.25.09.2013 Value Rs.5,51,926/- RF Rs.1,50,000/- Penalty Rs.60,000/-
3.	C/50603/2019	C-A-Cus-DII-243/2015 dated 11.03.2015	04/2014/ADC/ICD/TKD dated 10.01.2014	21/2013 dt.20.11.2013	339301 dt.27.09.2013 Value Rs.14,32,311/- RF Rs.4,00,000/- Penalty Rs.1,50,000/-
4.	C/50604/2019	C-A-Cus-DII-242/2015 dated 11.03.2015	06/2014/ADC/ICD/TKD dated 10.01.2014	18/2013 dt.20.11.2013	4184613 dt.26.07.2011 Value Rs.21,84,783/- RF Rs.6,00,000/- Penalty Rs.2,00,000/-

3. The brief facts are that the appellants imported rough marble blocks and filed 4 bills of entry during 26.07.2011 to 24.09.2013 at ICD, TKD, new Delhi. The appellant had also filed three other bills of entries for import of rough marble blocks. Rough marble blocks were restricted goods and could be imported against specific licence. According to the appellant due to financial difficulty, they could not clear the goods from the Customs and the goods remained lying un-cleared. Accordingly, show cause notice was issued by the Customs Department in November, 2013 proposing to confiscate the goods under Section 111(d) of the Act and penalty was also proposed under Section 112. In response, the appellant responded by letter dated 27.11.2013 stating that although they are in trade for the last 10 years but they could not clear the imported consignment for home consumption, as they were facing acute financial crunch. Several purchase orders given by the builders/contractors were cancelled due to slow down in economy since 2009-2010. At the relevant time, more than 10 containers

were lying as such, pending clearance. Under these circumstances, due to demurrage and TSC charges etc. becomes higher than the cost of the goods, and until and unless the Shipping Lines and Concor provided them the adequate concession, it will be unviable for them to clear the goods. It was also stated that they have imported against 'Special Import Licence' issued by DGFT mentioning the licence number and the date of issue. The appellant also sent a supplementary reply mentioning the details of the import licence no., date of issue, quantity, value, validity period, etc and also prayed for a decision on merits. The Adjudicating Authority passed separate orders all dated 10.11.2014 confiscating the goods, with option to redeem on payment of redemption fine under Section 112 of the Act.

4. Being aggrieved, the appellant preferred appeals before the Commissioner (Appeals), who vide the impugned orders-in-appeal passed during March, 2015, was pleased to dismiss the appeals confirming the order-in-original observing that the appellant failed to produce the import licence and further they have violated the provisions of Section 48, as the goods were not cleared by completing the formalities within the stipulated period. Being aggrieved, the appellants are before this Tribunal.

5. Ld. Counsel for the appellant, *inter alia*, urges that the order of the Court below is in contravention of the legal provisions and settled judicial precedents. Further, the facts have not been rightly appreciated. The impugned order-in-appeal is cryptic and non-speaking. In spite of the details of licence, given before the Court below, it has been erroneously held that the goods were imported without the required import licence. That there was no malafide in not getting the goods cleared within the permitted

time under Section 48 of the Act, due to severe recession in the economy and there being lack of funds available with the appellant. Due to adverse business situation, the goods remained uncleared for about 25 to 30 months, thus the show cause notice was issued.

6. It was further urged that when the appellant received the auction notice from the Customs Department, they immediately replied vide letter dated 17.03.2015 that they have preferred appeal before the Commissioner of Customs (Appeals). However, the Department without waiting for the disposal of the appeals, proceeded to auction/sale the goods. Such action of Revenue to auction/sale the goods, pending disposal of appeals, is bad in law and against the principles of natural justice. Thus, the appellants were prevented from exercising their option for payment of redemption fine and trading the goods after the outcome of their appeal. Further urges as the Revenue already auctioned/sold the goods, as apparent in the appeal, the appellant be disbursed the sale proceeds as reduced by the amount of penalty. It is further urged that no redemption fine is payable or deductible from the sale proceeds, as the goods are not available for redemption. It is further urged that in response to the appellant's query under RTI, the appellant received reply dated 14.02.2019 from the Dy. Commissioner, ICD (Import), TKD, informing that the goods have been auctioned/sold mentioning their date of auction container-wise, date of final disposal and the amount fetched.

7. Ld. Counsel further urges that under the similar facts and circumstances, with respect to similar orders in respect of three other shipping bills, which were filed as mentioned herein above, a Larger Bench

of this Tribunal vide Final Order dated 31.03.2021 had ordered that the appellant shall be entitled to sale proceeds as reduced by redemption fine and the penalty. Against this order, the appellant had preferred appeal before the Hon'ble Delhi High Court being CUSAA No.45/2021 with CM Appl. No.37896/2021, wherein the Hon'ble High Court observed that the Tribunal had not disturbed the findings as regards confiscation of the goods. The Hon'ble High Court further observed that the action of Revenue to auction sale the goods during the pendency of the appeal before the Commissioner (Appeals), was clearly contrary to law. The Hon'ble High Court also noticed that the Commissioner (Appeals) had rightly concluded that the appellant is entitled to refund of the sale proceeds, as reduced only by the amount of penalty, and no adjustment of redemption fine can be made. The Hon'ble High Court further concluded that since the goods were not available, redemption fine cannot be adjusted as against the sale proceeds, since the appeal was pending at the relevant time. Accordingly, the High Court was pleased to set aside the decision of the Larger Bench of this Tribunal, by its order dated 12.09.2022, a copy of the aforementioned order has been placed in the appeal paper book.

8. Opposing the appeals, Id. Authorised Representative for Revenue submitted that in the facts of the present appeals, the orders-in-appeals are dated 09.03.2015 to 11.03.2015. The goods in 15 containers were disposed of during May/June, 2015 as is evident from the copy of the reply under RTI dated 25.01.2019, a copy of which has been filed by the appellant. Out of the 15 containers, two containers had been sold in Feb., 2015 during pendency of the appeal. Thus, evidently, 13 containers were disposed of

after disposal of the appeals by the Commissioner (Appeals) in March, 2015. Thus, the Revenue is entitled to adjust the redemption fine also.

9. Opposing the contentions of the Revenue, Id. Advocate for the appellant states that the impugned orders-in-appeals were never served upon the appellants and it was only when the appellants approached the Hon'ble High Court in Writ Petition No.WP (C)198/2019, the Hon'ble High Court vide order dated 11.01.2019 directed the Appellate Authority to finalize the hearing and passed the appellate orders and it was only then that the Revenue served copy of the impugned orders-in-appeal to the appellant on 01.02.2019. Hence, in the facts and circumstances, that the orders-in-appeal was admittedly not served on the appellant, Revenue cannot take a stand that some of the containers were auctioned/sold, after disposal of the appeal.

10. Having considered the rival contentions, I find that from the copy of the RTI reply dated 25.01.2019, that the Revenue in terms of its notice to auction sale issued during 2014, and in spite of the appellant having sent reply dated 28.04.2014 informing pendency of their appeals, proceeded to dispose of the goods. I further find no further opportunity was given by the Customs Department by giving a fresh notice to the appellant after disposal of the appeals by the Commissioner (Appeals). Under such facts and circumstances, following the ruling of the Hon'ble Delhi High Court in the appellant's own case, under similar facts and circumstances, being Appeal No.CUSAA 45/2021 with CM APPL. 37896/2021, Order dated 12.09.2022, I allow these appeals as follows:-

Revenue shall disburse the amount of sale proceeds pursuant to auction sales by only adjusting the amount of penalty. No redemption fine can be adjusted. Further, the appellant shall be entitled to interest on the auction sale proceeds from the date the amount has been received by the Customs Department, till the date of disbursal, rate of interest will be as per the Rules.

11. Appeals allowed.

[Order pronounced on 18.05.2023]

(Anil Choudhary)  
Member (Judicial)

Ckr.