

Revenue Department has the discretion to allow/disallow redemption of prohibited hazardous waste

The CESTAT, New Delhi in *M/s Ayyan Energy Resources (P) Ltd. v. Commissioner [Customs Appeal No. 567 of 2011 dated December 6, 2022]* upheld the order passed by the Revenue Department confiscating the waste oil and imposing the penalty on import of the same. Held that, the re-export of imported waste oil is not allowable as it is prohibited under the Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008 (“HWR”).

Facts:

M/s Ayyan Energy Resources (P) Ltd. (“**the Appellant**”) imported good described as “Low Sulphur Waxy Residue (fuel oil)” from Bahrain which on examination and testing was found to be “waste oil” which was included at S. No. 29 of Schedule VI of the HWR. Whereas, import of waste oil is prohibited under Rule 13(4) of HWR. Accordingly, a Show Cause Notice (“**SCN**”) was issued alleging that the Appellant had willfully mis-declared the imported goods and also imported it in violation of paragraph 2.7 of Foreign Trade Policy 2009-2014 read with Rule 13(4) of the HWR. The Appellant was called upon to explain why the imported goods should not be confiscated and why a penalty should not be imposed under Section 112(a) of the Customs Act, 1962 (“**the Customs Act**”).

Thereafter, not satisfied by the Appellant’s reply, the Additional Commissioner passed an order against the Appellant wherein, the imported goods i.e. the waste oil, were confiscated, penalty of INR 1,00,000 was imposed on the Appellant and the Appellant’s director each. This order was then challenged by the Appellant before the Commissioner (Appeals) (“**the Respondent**”) wherein the penalty on director was set aside and the remaining order was upheld.

Hence, this appeal has been filed.

The Appellant prayed that the goods be released and contended that, as per Section 125 of the Customs Act, it is mandatory for the authority to give an option to redeem the goods which was not given to the Appellant. Also, the Appellant submitted that it was not ready to redeem the goods on redemption fine but was willing to re-export the 'waste oil' only if it was released to it without any redemption fine.

The Respondent submitted that release or re-exporting of the goods would not be possible as the goods are already being confiscated and thus were then the property of Central Government as per Section 126 of the Customs Act.

Issue:

Whether the imported goods which were prohibited and thus confiscated are liable to be released or re-exported?

Held:

The CESTAT, New Delhi in ***Customs Appeal No. 567 of 2011*** held as under:

- Observed that, the confiscation of the goods under Section 111(d) and Section 111(m) of the Customs Act, was upheld as there was not only mis-declaration of the goods but the import itself was in violation of the prohibition under the HWR.
- Stated that, since, the imported goods were prohibited as per Rule 13(4) of the HWR, the Respondent under Section 125 of the Customs Act, 1962 had the discretion to either allow redemption of the goods or not and the Respondent has correctly exercised its discretion.
- Upheld the order passed by the Respondent.

- Opined that , the amount of penalty imposed is INR 1,00,000/- which, is fair and proper considering that the value of the confiscated goods is INR 10,98,772/-.
- Held that, the Appellant’s request to re-export the goods cannot be accepted because, having been confiscated the imported goods vest with the Central Government as per Section 126 of the Customs Act.

Relevant Provisions:

Section 111 of the Customs Act:

“Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation : -

.....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;.....”

Section 125 of the Customs Act:

“Option to pay fine in lieu of confiscation. –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received."

Section 126 of the Customs Act:

“On confiscation, property to vest in Central Government. –

(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.”

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