

2014 (4) ECS (265) (Tri.- Ahd.)

In the Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench, Ahmedabad

C.C., KANDLA

V/s.

M/s. AGRO CANNERS

Date of Hearing / Decision: 17/7/2014

Appeal No. C/559/2009

(Arising out of OIO No.KDL/Commr/09/09/10 dated 31.7.2009. Passed by The commissioner (A), CC, Kandla)

Appearance:

Shri Nagori (AR)

None

For the Appellant

For the Respondent

CORAM:

Mr. M.V. Ravindran, Hon'ble Member (Judicial)

Mr. H.K. Thakur, Hon'ble Member (Technical)

(Order No. A/11461/2014 dtd 17/7/2014)

"M/s Agro Canners never filed an appeal against the confirmation of demands of customs duty or against the amount of redemption fine imposed in the original proceedings. In our considered view, the adjudicating authority in this denevo proceedings in respect of other notices and appellants could not have set aside the redemption fine which was imposed on the goods in the original proceedings." (para 6)

Per: Mr. M.V. Ravindran:

This appeal is filed by the Revenue against OIO No. KDL/Commr/09/09/10 dated 31.7.2009.

2. Despite notices, respondent did not turn-up nor has filed any adjournment application.
3. Since the matter is of 2009, we take up the appeal for disposal in the absence of any representation from the respondents.
4. Heard Departmental representative.
5. On considering the submissions made by the Ld Dept Representative and perusal of records, we find that the Revenue in appeal before the Tribunal against the impugned order on the following ground:

The Order-in-original No.KDL/COMMR/09/09-10 dated 31.7.2009 passed by Commissioner of Customs, Kandla is not legal, proper

and correct in as much as the said order dated 31.07.2009 was passed in pursuance of the Hon'ble CESTAT Order No. A/915 o 987/WZB/2004/C-1 dated 7.5.2004 and CESTAT order No. A/195-211/WZB/2005/C-1 dated 11.3.2005. However on examination it is found that the said order dated 31.7.2009 is not in conformity to the orders passed by Hon'ble CESTAT as mentioned above under which the matter was remanded for limited purpose of passing order in the matter of seven appellants as shows herein below:-

| Sr No | Noticee-Appellant | Order No. of Hon'ble CESTAT, Mumbai | Appeal No. |
|-------|--------------------------------|--|------------|
| 1 | Kandla Clearing Agency Pvt Ltd | A/915 to 987/ WZB/2004/ C-1 dated 7.5.2004 | C/1039/03 |
| 2 | Shri Dev Kumar Kapta | A/915 to 987/ WZB/2004/ C-1 dated 7.5.2004 | C/1040/03 |
| 3 | Shri Shantilal Jain | A/915 to 987/ WZB/2004/ C-1 dated 7.5.2004 | C/1041/03 |
| 4 | Shri Rajkumar Mundhra | A/915 to 987/ WZB/2004/ C-1 dated 7.5.2004 | C/101103 |
| 5 | Shri S. S. Sharma | A/195 to 211/ WZB/2005/ C-1 dated 11.03.2005 | 12/04 |
| 6 | Shri Ajay Sharma | A/195 to 211/ WZB/2005/ C-1 dated 11.03.2005 | 27/04 |
| 7 | Shi Rajendra Kumar Mohta | A/195 to 211/ WZB/2005/ C-1 dated 11.03.2005 | 04/04 |

- (B) However, no appeal was filed by the main noticee M/s Agro Cannors, Shri Ashwini Kumar More, Shi Prakash Charia in the case. The CESTAT allowed the appeals filed by above '7' persons by way of remand to the Commissioner of Customs, Kandla for Denovo adjudication after extending a reasonable opportunity of hearing to the appellants. Thus Order-in-Original No KDL/COMMR/60/2003 dated 10.09.2003 becomes final in respect of the following commissioner in the Denovo proceedings:

- a. Confirmation of duty demand against M/s Agro Canners to the tune of Rs 1,94,70,583/- and imposition of penalty of Rs 1,94,70,583/- and imposition of redemption fine of Rs 70,00,000/-.
 - b. Imposition of penalty of Rs 15,00,000/- on Shri Ashwani Kumar More.
 - c. Imposition of penalty of Rs 6,00,000/- on Shri Prakash Charia.
- (C) However, the Commissioner readjudicated the case confirming duty of Rs 1,94,70,583/- and penalty of Rs 1,94,70,583/- on M/s Agro Canners, Kolkata and imposing penalty on the following M/s Kandla Clearing Agency Pvt Ltd., Shri Dev Kumar Kapta, Shri Shantilal Jain, Shri Rajkumar Mundhra, Shri S S Sharma and Shri Ajay sharma. He has dropped Redemption Fine of Rs 70,00,000/- (Rupees seventy lakhs) and omitted any mention of penalties on S/Shri Ashwini Kumar More and Shri Prakash Charia.
- (D) Consequently, the Commissioner has erred by readjudicating the points which had attained finality - particularly in respect of the above mentioned points/issued which had attained finality as no appeal had been filed.
6. On perusal of the records, we do notice that this Bench had remanded the matter aback in respect of the appellants as indicated in original proceedings to adjudicating authority to reconsider the issue. It is also noticed that M/s Agro Canners never filed an appeal against the confirmation of demands of customs duty or against the amount of redemption fine imposed in the original proceedings. In our considered view, the adjudicating authority in this denevo proceedings in respect of other notices and appellants could not have set aside the redemption fine which was imposed on the goods in the original proceedings.
 7. The impugned order is set aside which has set aside redemption fine on the respondent in original proceedings.
 8. We set aside the impugned order to the extent challenged before us i.e., redemption fine imposed in the original proceeding could not have set aside by the adjudicating authority and allow the appeal filed by the Revenue.

(Dictated and pronounced in the Court)