
(2015) 08 SC CK 0149

In the Supreme Court Of India

Case No : Civil Appeal No. 2894 of 2006

Commissioner of Cus. (Preventive)

APPELLANT

Vs

Essar Oil Ltd.

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Customs Act, 1962 — Section 112, 45

Citation : (2015) 325 ELT 5

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : P.S. Patwalia, ASG, Yashank Adhyaru, Sr. Advocate, Rupesh Kumar, B. Sunita Rao, Neelam Chand, Anurag, Jitin Singhal and B. Krishna Prasad, Advocates, for the Appellant; S.K. Bagaria, Senior Advocate, Mahesh Agarwal, Vivek Jain, Neha Nagpal, Rohit Jolly an

Final Decision : Allowed

Judgement

1. The Respondent herein had imported Crude Distillation Unit Column (CDU) as well as Vacuum Distillation Unit Column Vessels (VDU) for setting up oil refinery at Jamnagar of which the Respondent was made Custodian. The Respondent filed Bills of Entry. However, without paying the customs duty, the Respondent as a Custodian shifted the goods from jetty area to the project site which was about 20 kilometers away. When the place was inspected and the Revenue Authorities came to know about the aforesaid shifting, show cause notice was issued for confiscation, levy of duty and penalty etc. After hearing the Respondent, the Commissioner passed the order confiscating the goods and levying the redemption fine, imposing the import duty as well as levying the penalty on the Custodian as well as on the importer. EPCG benefit was also denied. The Respondent preferred appeal against the aforesaid order before the Tribunal. The Tribunal has confirmed the finding that there was violation of Section 45 of the Customs Act inasmuch as goods were shifted without payment of duty and without authorization of the proper officer. However, having regard to the circumstances under which the aforesaid steps were taken by the Respondent,

the Tribunal has reduced the redemption fine and set aside the penalty. The operative part of the order read as under:

"14. To sum up, we order as under:--

- (a) Liability of the imported goods to confiscation is upheld as it is not challenged.
- (b) Redemption fine in lieu of confiscation is reduced to Rs. 1,00,000/-
- (c) EPCG licence covering the goods in question is accepted.
- (d) Duty of Rs. 5,83,81,368/- already paid is the correct duty payable.
- (e) The duty demand in excess of the amount already paid is set aside.
- (f) Penalty equal to duty amount is set aside.
- (g) Penalty under Section 112 is also set aside."

2. We have heard Learned Counsel for both the parties at length. As already pointed out, there is a clear violation of the provisions of Section 45 of the Customs Act. In such circumstances, when the confiscation was held to be valid, we are of the view that reducing the redemption fine from Rs. 1.2 crores to merely Rs. 1 lac was not proper. We have considered this aspect. According to us the interest of justice would be subserved in fixing the redemption fine to the extent of 50% of the fine imposed by the Commissioner. Other directions contained in the order of the Tribunal are maintained. Ordered accordingly.

3. The aforesaid redemption fine shall be paid within four weeks. In view of the above, the appeal is disposed of.