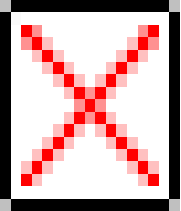


Imposition of Redemption Fine

MARCH 20, 2023

By Shvetal B. Parikh



1. THERE

are large numbers of cases where the imported goods were cleared after assessment, without any objection by Customs, but subsequently adjudicating authorities held that the imported goods are liable for confiscation due to mis-declaration of description, value etc. Such goods were neither seized by Customs nor released provisionally on execution of Bond. For such cases, the question arises as to whether redemption fine can be imposed under Section 125 of the Customs Act, 1962, or not.

2. Before starting discussion on this issue, let us have a look at the relevant statutory provisions of the Customs Act, 1962 (extracts):

SECTION 125. 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 â€! â€! â€!

*** (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. - â€! â€! â€!

[* Inserted w.e.f. 29.03.2018]

SECTION 126. 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.

3. In the case of **Weston Components Ltd. - [2002-TIOL-176-SC-CUS](#)**

, the goods were released on executing a bond and so, it was held by the Supreme Court that if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the Customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the Customs authorities to levy redemption fine.

4. In the case of **Shiv Kripa Ispat Pvt. Ltd.** - [2009-TIOL-388-CESTAT-MUMB-LB](#)

, the Larger Bench of CESTAT held to the effect that when the goods are allowed to be cleared without execution of Bond/Undertaking, redemption fine is not imposable. This Order of Larger Bench has been upheld by Bombay High Court in the case of Commissioner vs. Rishi Ship Breakers [2015 (318) ELT A259 (Bom.)].

5. In the case of **Finesse Creation Inc.** - [2009-TIOL-655-HC-MUM-CUS](#)

, the Bombay High Court has opined that the concept of redemption fine arises in the event the goods are available and are to be redeemed; that if the goods are not available, there is no question of redemption of the goods. The SLP (Civil) No. CC 7373 of 2010 filed by the Commissioner against this Judgment of Bombay High Court has been dismissed by the Supreme Court on 12.5.2010 [2010 (255) E.L.T. A120].

6. In the case of **Asia Motor Works** - [2019-TIOL-3268-CESTAT-AHM](#)

, the CESTAT, Ahmedabad, has observed and held as under (underlining supplied):

"8. The next issue relates to confiscation of the goods already cleared by the AMW. The impugned order does not order confiscation and does not impose any redemption fine. Revenue has filed appeal against the said order for failure to confiscation the goods, AMW has also filed cross objection. Both sides relied on the decision of Hon'ble Apex Court in case of Weston Components Ltd. - [2002-TIOL-176-SC-CUS](#) . In the said case the goods were released against a bond and therefore, the Hon'ble Apex Court held that confiscation can be ordered. In the instant case the goods have been cleared in regular course. The bond executed by the AMW is not for production of goods but for fulfilment of export obligation and to pay duty in case of failure to fulfill export obligation. Therefore, the ratio of decision in case of Weston Components Ltd. (supra) is not applicable to the instant case. The goods cannot be confiscated, even if, the same are liable for confiscation ."

7. However, the Madras High Court has taken different view vide Judgment dated 18.11.2017 in the case of

Visteon Automotive Systems India Ltd. [2018 (9) GSTL 142 (Mad.)]. Extracts from the said Judgment are as under:

"2. The Civil Miscellaneous Appeal was admitted by this Court on 22-9-2011 on the following substantial questions of law:

"(i) Whether the order of the Tribunal confirming the redemption fine in respect of goods which were not even available for confiscation, is contrary to the following decisions of the Tribunal, which are binding and thus bad for want of jurisdiction :

(iii) Whether the order of the Tribunal confirming the redemption fine in respect of goods which were not even available for confiscation, is contrary to the following decisions of the Tribunal, which are binding and thus bad for want of jurisdiction :

(a) 2009 (237) E.L.T. 87 (Tri.-Ahmd.) (Commissioner of C. Ex., Daman v. Ramji Board and Paper Mills) and

(b) 2009 (235) E.L.T. 623 (Tri.-LB-Mumbai) (Shiv Kripa Ispat Pvt. Ltd. v. Commissioner of C. Ex. & Cus., Nasik) = [2009-TIOL-388-CESTAT-MUM-LB](#).

Whether the order of the Tribunal confirming the redemption fine in respect of goods which were not even available for confiscation, is contrary to the following decisions of the Tribunal, which are binding and thus bad for want of jurisdiction :

23. "The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act . We accordingly answer question No. (iii)."

In the aforesaid Judgment of Madras High Court, the Order of Larger Bench of Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd. (supra) has been referred, but there is no discussion as to how the said Order of Tribunal was not legal and proper.

8. Though payment of redemption fine was always optional under Section 125, Sub-Section (3) has been inserted therein w.e.f. 29.03.2018, which provides specifically that if the fine is not paid within 120 days, such option becomes void unless an appeal is pending. This amendment fortifies the legal position that payment of redemption fine is optional and Customs Department cannot compel the importer or exporter to pay the redemption fine. If the importer or exporter does not pay the redemption fine and no appeal is pending, it would be open for the Customs Department to physically confiscate the goods.

9. It is pertinent to note that the aforesaid Judgment of Madras High Court in the case of Visteon Automotive was passed on **18.11.2017** i.e. before insertion of Sub-Section (3) in Section 125 prescribing 120 days' time limit w.e.f. **29.03.2018** . Therefore, applicability of the Visteon Judgment post insertion of Section 125(3) is yet to be tested.

10. By following the aforesaid Judgment of Madras High Court, in the case of **Synergy Fertichem Pvt. Ltd. - [2019-TIOL-2950-HC-AHM-GST](#)** , a case involving detention and seizure under **GST** law, the High Court of Gujarat has observed and held as under:

" 174.

The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

â€¦â€¦â€¦â€¦â€¦â€¦

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

11. It is pertinent to note that the case of Synergy Fertichem Pvt. Ltd. was regarding contravention of provisions of GST and in that case the goods were detained/seized by GST officer. Whereas, in the case of Visteon Automotive Systems India Ltd., there does not appear to be any seizure.

12. After referring to the above cases, now, I discuss the legal as well as practical aspects regarding imposing redemption fine under the following different situations:-

12.1. When the seized goods are available with Customs at the time of passing adjudication order for confiscation:

In this situation, if the goods are not prohibited goods, the adjudicating authority has to give an option to the owner to pay redemption fine in lieu of confiscation. If the owner does not pay the fine within 120 days and does not file any appeal, the option becomes void. Then, the Customs Department would be free to sell the confiscated goods by following the prescribed procedure.

12.2. When the seized goods were released provisionally on execution of Bond:

In this situation, redemption fine can be imposed and recovered by enforcing the Bond and encashing the security/bank guarantee submitted with the Bond. The Judgment of Supreme Court in the case of *Weston Components* (supra) is applicable here.

12.3. When the goods were neither seized nor released provisionally; and not available for confiscation:

Particularly in this situation, there are two types of proposals being found in Show Cause Notices, where there is little difference in wordings, but it is very significant.

12.3.1. SCNs proposing to hold the goods LIABLE FOR CONFISCATION:

Though provisions of Section 125(1) starts with the wordings, "**Whenever confiscation of any goods authorised by this Act, 'â€'â€'**" , it further prescribes to give the owner an option to pay fine in lieu of confiscation. If the adjudicating authority holds the goods "LIABLE FOR CONFISCATION", it does not mean that the adjudicating authority has CONFISCATED the goods. Thus, a proposal in the SCN and Order of adjudicating authority for "CONFISCATION" of goods is necessary before giving the option to pay redemption fine in lieu of confiscation.

If the SCN proposes to merely hold the goods liable for confiscation, the adjudicating authority can hold so. The adjudicating authority is required to hold that the goods were liable for confiscation before imposing penalty u/s 112 or 114 of the Customs Act, 1962. In the case of ***Asia Motor Works***

(supra), it has been held to the effect that such goods cannot be confiscated, even if the same are liable for confiscation. When there is a proposal and an order holding the goods liable for confiscation, not for actual confiscation, it is not proper to impose redemption fine inasmuch as the option to pay redemption fine is required to be given in lieu of confiscation (i.e. physical or actual confiscation), not in lieu of extinguishing the liability of confiscation.

12.3.2. SCNs proposing for CONFISCATION of goods

When the imported goods were already got cleared by an importer in normal course and sold in market, most probably the importer would not come forward to pay redemption fine in lieu of confiscation. If the importer does not pay redemption fine and does not file appeal, the order of adjudicating authority imposing redemption fine would be void after 120 days. As imposition of redemption fine is optional, it cannot be recovered as arrears, unless the importer has submitted Bond towards provisional release.

In the above case of ***Visteon Automotive Systems***

, the Madras High Court, on one hand, observed that payment of redemption fine saves the goods from getting confiscated; whereas, on other hand held that physical availability (of goods) does not have any significance for imposing redemption fine.

When the SCN proposes to confiscate the goods, even if they are not available with Department and also no Bond is available, what would be the fate of the adjudication Order, if an adjudicating authority orders for confiscation of goods and imposes redemption fine by relying upon the Judgment of Madras High Court in the case of **Visteon Automotive**

(supra). If such goods are identifiable and lying with the importer at the time of adjudication, it will be possible for Customs Department to take and hold possession of the confiscated goods as per Section 126(2) of the Customs Act, 1962. If the confiscated goods are identifiable, but sold by the importer and available with buyers at the time of adjudication, it would be highly debatable as to whether Customs Department can hold possession of the confiscated goods lying at buyer's premises. Suppose, the confiscated goods are raw materials or consumer goods and already reached the market and/or consumed by users, it would not be possible to hold possession of such confiscated goods as prescribed u/s 126(2). Under this situation, the order towards confiscation of goods can neither be executed nor can the redemption fine be recovered legally in absence of availability of goods or Bond.

13. In view of the above position, it is felt that the Judgment of Madras High Court in the case of Visteon Automotive (supra) should not be followed blindly by the adjudicating authorities but it may be followed only in such cases where the Customs Department is able to take and hold possession of the confiscated goods, as prescribed under Section 126 (2) of the Customs Act, 1962.

(The views expressed by the author are strictly his personal views.)

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)