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

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 491 of 2011

[Arising out of Order-in-Original No OIO-KDL/COMMR/10/2011-12 dated 13.10.2011 passed by Commissioner of Customs, Kandla]

Atlantic Shipping Pvt. Limited .... **Appellant**
Office No. 201, 2nd Floor, Golden
Arcade, Plot No. 141 & 142, Sector-08,
GANDHIDHAM, GUJARAT .

VERSUS

Commissioner of Customs, Kandla .... **Respondent**
Custom House,
Near Balaji Temple,
Kandala, Gujarat

WITH

Customs Appeal No. 8 of 2012
(C/Cross/13/2012)

[Arising out of Order-in-Original No OIO-KDL/COMMR/10/2011-12 dated 13.10.2011 passed by Commissioner of Customs, Kandla]

Commissioner of Customs, Kandla .... **Appellant**
Custom House,
Near Balaji Temple,
Kandala, Gujarat

VERSUS

Atlantic Shipping Pvt. Limited .... **Respondent**
Office No. 201, 2nd Floor, Golden Arcade, Plot
No. 141 & 142, Sector-08, GANDHIDHAM,
GUJARAT .

AND

Customs Appeal No. 3 of 2012

[Arising out of Order-in-Original No OIO-KDL/COMMR/10/2011-12 dated 13.10.2011 passed by Commissioner of Customs, Kandla]

General Gas Carrier Corporation Xi Limited .... **Appellant**
C/o, Adv Ms. Paurami Sheth, C/7, Ushma Flats,
Opp. Muncipal School, Navrangpura Bus Stand,
AHMEDABAD, GUJARAT

VERSUS

Commissioner of Customs, Kandla .... **Respondent**
Custom House,
Near Balaji Temple,
Kandala, Gujarat

APPEARANCE :

Ms. Priyanka Patil, Advocate for the Appellant- Assessee
Shri K.J. Kinariwala, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11853-11855/2019

DATE OF HEARING : 11.09.2019
DATE OF DECISION : 30.09.2019

RAJU :

These appeals have been filed by M/s. Atlantic Shipping Pvt. Limited (hereinafter referred to as Atlantic for short) and M/s. General Gas Carrier Corporation Xi Limited against confiscation of goods, imposition of redemption fine and penalties. Revenue is also in appeal against dropping of penalty against Shri T.A. Akbarali, Master of the vessel.

2. Ld. Counsel for the appellants pointed out that in respect of Vessel MT LPG/C Earnest berthed in Kandla Port on 14.09.2010 and was boarded by Customs officers. It was found that the ship was carrying Propane Gas approximately 509MT which was not declared either in the arrival report or in the Form –III Cargo declaration. The shipping agent as well the Master of vessel could not produce the supporting documents in respect of the undeclared cargo. On failure to produce the supporting documents, the cargo was detained under Panchanama dated 16.09.2010. The notice was issued to the appellants alleging that the import made was made in contravention to Section 30 of the Customs Act, 1962 read with regulation 5 of the Import Manifest (Vessel) Regulation, 1971 and the said goods were placed under seizure. The details of the seized goods are as under:-

Sr. No.	Description of undeclared cargo	Tank No.	Weight (MT)	Value (Approx.)
1	Propane Gas	2	288.96	3,76,217US$ Rs. 1.73 Cr. approx.)
		4	220.00	
	Total		**508.96**	

3. Statement of Shri TA Akbarali, Master of vessel was also recorded. In his statement, Shri TA Akbarali clarified that Propane Gas was got on board for the purpose of cooling the cargo carried by vessel. He had not declared the said cargo under the impression that it is a ship item. Statement of Shri Sabu Kuttan, representative of the Shipping Company was recorded wherein he stated that the vessel was carrying 14282.430MT of Butane LPG to discharge at Kandla. He admitted that Master of vessel had sent email regarding carrying propane gas in addition to LPG. He also submitted that his Company has filed IGM No. 2000582 dated 07.09.2010 for the said vessel by declaring the bottom cargo as Nil and the entry of Propane Gas was not made in Form-III (Cargo declaration) because the said goods i.e. Propane Gas was ships property and not to be discharged at Port. He stated that the said Propane Gas was required for cooling of cargo tanks meant for loading LPG. M/s. Alantic also communicated vide letter dated 20.09.2010 that 509MT of seized propane gas is a store and is required as coolant on board the vessel for loading the cargo LPG. On the request, the provisional release of said 509MT propane gas was allowed after furnishing the necessary bond and other security for the purpose. Show cause notice was issued to the appellant for confiscation of 509 MT of propane gas under Section 111 (f) of Customs Act 1962 and for imposition of penalty under Section 112(a) of the Customs Act. The said proceedings were confirmed by the lower authorities however, penalty on Shri TA Akbarali was set-aside.

4. Ld. Counsel argued that said propane gas carried on in the vessel was not cargo and hence was not required to be declared in cargo declaration. She argued that it was meant to be used in the ship for cooling the vessel as the same was the requirement as per Ship Information questionnaire for Gas Carriers. She produced document relating to the vessel and on page 5 of the said document, the details mentioned are as follows:-

PRINCIPAL SHIP PARTICULARS

Date Questionnaire Completed - **10-May-2016**
Name of vessel - **ERNEST N**
LR/IMO Number - **9377236**
Last Previous Name - NA
Date of Name change - NA
Second Last Name Change - NA
Date of Name change - NA
Third Last Name Change - NA
Date of Name change - NA
Fourth Last Name Change - NA
Date of Name change - NA
Flag - LIBERIA
Port Of Registry –**MONRO VIA**
Official Number - **13815**
Call Sign - **A8PQ6**

Inmarsat F Number
Vessel's Telephone Number - **764900069/070**
Vessel's Fax Number - **764900071**
Vessel's Telex Number - **463704530 / 463704531**

Vessel's e-mail Address - **A8PQ6@globeemail.com**
Inmarst C Number - **(1)463704530 (2) 463704531**
Vessel's MMSI Number - **636013815**

Type of Vessel	**Max Tank Pressure**	**Min Tank Temp.**
(1) Pressurized	**NA**	**NA**
(2) Semi-Pressurized	**NA**	**NA**
(3) Refrigerated	**0.275 barg(S)/ 0.4 barg(H)**	**-50 deg C**

At page 19 of the said document, it was mentioned that the said vessel is certified to carry following items:-

CARGO - GENERAL INFORMATION

List of products which the Ship is Certified to Carry	**Anhydrous Ammonia, 1,3-Butadiene, Butane (iso and normal), Butylene, Propane (pure), Commercial Propane (maximum 3.5 mole % ethane in liquid phase), propylene, VCM (maximum filling limit all cargo tanks = 70 %).**

On page 27 of the said document prescribed the pre-loading conditions of the ship as follow:-

B17 PRE-LOADING CONDITIONS

In the table below, show time and quality of coolant required to cool down cargo tanks from ambient temperature and fully gassed up state sufficient to allow loading to commence.

Product	**Quantity of Coolant Required (Tonnes)**	**Time (hours)**

		With Vapour Return Line	Without Vapour Return Line
Propane	**41.4**	**25**	**25**
Iso-Butane	**25.2**	**12**	**12**
Ammonia	**12.4**	**22**	**22**

She pointed out that propane gas was necessary in the vessel for cooling the cargo. She further pointed out that vide later on dated 12.10.2010 they had filed the revised cargo declaration declaring that only Butane is cargo. From the above document, she asserted that propane was not required to be declared as Cargo. She pointed out that in such circumstances Section 111(f) of the Customs Act cannot be invoked for confiscation of the said goods.

5. Ld. AR relied on the impugned order. He argued that no penalty has been imposed on Shri TA Akbarali. He argued that there was clear act of omission and commission in not declaring 508.96MT of propane gas on board. He pointed out that in terms of Section 30 of the Customs Act, 1962 and Regulation 3 of Import Manifest (Vessels) Regulations, 1971, the said goods should have been declared by the appellant. It was argued that Section 111 does not differentiate between bonafide act of non-declaration and malafide non-declaration. He argued that it is a fact that there was misdeclaration, hence penalty should be imposed and mens-rea is not a necessary ingredient for imposition of penalty. He relied on the decision of Hon'ble Apex Court in the case of *Chairman, SEBI vs. Shriram Mutual Fund – (2006) 5 SCC 361.* He also relied on the decision of the Hon'ble High Court in the case of *Bansal Industries – 2007 (207) ELT 346 (Mad.)* wherein it has been held that *mens rea* is not necessary for imposition of penalty.

6. We have gone through the rival submissions. The facts admitted by both sides are that the ship carried on board propane gas was not declared.

After the same was noticed by the Customs Officers on board, the master of vessel vide letter dated 14.09.2010, declared as follows:-

> **"Dated : 14/09/2010 @ Kandla**
> To
> The Boarding Officer,
> Customs Kandla
>
> Sir,
>
> Subject : PROPANE GAS IN THE CARGO TANKS/DECK TANKS
>
> On being asked, this is to put on record that the vessel prior to loading cargo of Butane for Kandla was carrying Propane in her tank, which was later transferred to Cargo tanks 2 and 4. This said cargo of Propane is to the total amount of 288.96MT. In addition to this Pls also note that the vessel also has a Cargo of Propane in her tanks P&S), which is of total amount – 220MT. Thus the grand total of Propane which is Owner's cargo is 508.96MT.
>
> The said cargo is generally not declared by us as it is Owners cargo for ship use and is nothing to do with current characters (IOC or IGC)"

Later, on 12.10.2010, the Atlantic sought to withdraw from the declaration made by the Master of vessel by declaring as follows:

> **"Dated : 12.10.10**
> To
> The Asst. Commissioner of Customs (Import),
> Customs House
> Kandla
>
> Dear Sir,
>
> Subject : LPG/C. ERNEST N at Kandla. Ref no. 1379/06.09.2010/IGM/R&I Dated 15.09.2020
>
> In reference to the subject vessel called at Port Kandla we would like to forward this application along with attached corrected IMO CARGO and IMO STORES DECLARATION of subject vessel, as due to oversight the Master has declared Propane coolant in IMO CARGO DELCARATION SHEET.
>
> Therefore please find attached herewith the same for your records and kind consideration.
>
> Thanking you,
> Your's sincerely,
>
> Sd/-xxx
> For Atlantic Shipping Pvt. Limited

In the revised declaration, Propane Gas 509MT was declared as ship store.

7. From the above it is apparent that propane was not declared at all in the original declaration. The presence of propane gas was noticed on the vessel first declared as Cargo however, Atlantic later on declared that it was not cargo but ship store. In this context, it is observed that the propane gas was ship store. Ld. Counsel produced the documents relating to said vessel C ERNEST N. In the said documents, it has been mentioned that it is a certified cargo to carry the following:-

CARGO - GENERAL INFORMATION

List of products which the Ship is Certified to Carry	**Anhydrous Ammonia, 1,3-Butadiene, Butane (iso and normal), Butylene, Propane (pure), Commercial Propane (maximum 3.5 mole % ethane in liquid phase), propylene, VCM (maximum filling limit all cargo tanks = 70 %).**

The said document also certifies that it needs propane gas as coolant to cool down cargo tanks from ambient temperature and fully gassed up state sufficient to allow loading to commence.

B17 PRE-LOADING CONDITIONS

In the table below, show time and quality of coolant required to cool down cargo tanks from ambient temperature and fully gassed up state sufficient to allow loading to commence.

Product	**Quantity of Coolant Required (Tonnes)**	**Time (hours)**	
		With Vapour Return Line	**Without Vapour Return Line**
Propane	**41.4**	**25**	**25**
Iso-Butane	**25.2**	**12**	**12**
Ammonia	**12.4**	**22**	**22**

It is apparent that the quantity of coolant required for the purpose is 41.4MT to make the vessel ready for loading. In the aforesaid set of facts it cannot be denied that propane gas is for use as ship store and for the purpose of making the ship fit for carrying the said cargo of Butane.

8. In view of the above, we found force in the appellant's claim that propane gas is necessary for cooling the tanks in which the cargo is loaded. The Regulation 3 of the Import Manifest (Vessel) Regulation, 1971 requires declaration of cargo in Form-III and vessel stores listed in Form-IV. In the instant case, the allegation is that the propane gas was not declared in the cargo declaration in the Form-III. From the discussion above, it is apparent that propane carried on was not cargo but ship store. In these circumstances, there was no requirement to include the propane gas in the cargo declaration in Form-III. This primary objection in the show cause notice is therefore, fails. In these peculiar circumstances of the case, the confiscation of the goods cannot be sustained and is set-aside. Consequently, the order setting aside the penalty on Shri TA Akbarali, Master of the vessel is sustained. Therefore, the Revenue's appeal is dismissed and appeals of M/s. Atlantic Shipping Pvt. Limited and M/s. General Gas Carrier Corporation Xi Limited are allowed. Cross objection also disposed of.

(Order pronounced in the open court on 30.09.2019*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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