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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 14163 of 2013-DB

(Arising out of OIA-345-346/COMMR-A-/JMN/2013 Dated-25/09/2013 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

Shree Cement Ltd ....**Appellant**
21, Strand Road, Kolkata
West Bangal

VERSUS

C.C.-Jamnagar(prev) ....**Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

APPEARANCE:
Shri. P D Rachchh, Advocate for the Appellant
Shri. G. Kirupanandan , Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 10949 /2023

DATE OF HEARING: 20.04.2023
DATE OF DECISION:20.04.2023

Raju

This appeal has been filed by Shree Cement Ltd against denial of refund claim by them.

2. Learned Counsel pointed out that they are imported MT Steam Non-coking coal at Navlakhi Port and the said cargo was imported by numerous Bills of Lading. They are cleared goods in respect of some Bills of Lading at Navlakhi Port. They could not unload the goods in respect of other Bills of Lading due to bad weather and rough sea. They applied to the Assistant Commissioner of Customs Division, Jamnagar for amendment to the Bills of Lading and IGM and shifting of the cargo to Pipavav Port. Permission was granted by the Assistant Commissioner of Customs Division, Jamnagar however whole granting permission, certain condition were imposed. The appellant took the balance cargo to the Pipavav Port. They unloaded the

same at Pipavav Port. They paid duty as per assessment at the Pipavav Port. The assessment at the Navlakhi port was done after loading the value by certain amount by the Assessing Officer. The assessment at Pipavav port was done without loading at the declared value. The exchange rate at the time of unloading at Pipavav Port and Navlakhi port was also different.

3. Since the appellant had paid duty of entire case so that Navlakhi Port they filed a refund claim in respect of quantity not unloaded at Navlakhi Port as the said quantity was cleared at Pipavav Port on payment of duty. The said refund was granted to the appellant. However certain amount of refund was rejected. This amount rejected was equal to the difference between the duty paid at Navlakhi Port on transferred cargo and duty paid on the same at Pipavav Port. This difference was on account of loading as well as exchange it.

4. Aggrieved by the said order denying part of the refund claim the appellant filed the present appeal before Tribunal.

5. Learned AR argued that one of the conditions for permitting the amendment to bill of lading and IGM was that there should be any revenue loss. The assessable value of assessment at Pipavav Port was lower as compare to the assessable value for assessment at Navlakhi Port on two counts. Firstly, on account of loading done at Navlakhi Port and secondly, on account of change in exchange rate. Consequently, there was a reduction in total Customs Duty paid. The refund was denied only to the extent of the reduction in total duty paid as a consequence at this shipping of cargo.

6. We have considered the rival submissions. We find that the appellant had expressed their inability to unload the cargo at Navalkhi Port on account of bad weather and rough sea. They could unload cargo with respect of part of the consignment. In respect of rest of the cargo the same was shifted to Pipavav Port.

7. The conditions imposed by the Assistant Commissioner of Customs, Division for permitting the shifting of cargo are reproduced below:-

सहायक आयुक्त, सीमाशुल्क, मंडल कार्यालय, प्रताप विलास पेलेस के सामने,
'विजय भुवन', जामनगर-361008,
OFFICE OF THE ASSISTANT COMMISSIONER, CUSTOMS DIVISION,
OPP. PRATAP VILAS PALACE, "VIJAYA BHUVAN" JAMANAGAR-361 008,
दूरभाष / PHONE NO. 0288-2550331 फैक्स / FAX NO. 0288-2661931

फा.क्रमांक:-	VIII/48-02/Cus/T/2005-Pt.I	दिनांक:-	01 .07. 2011

To,
The Superintendent,
Custom House,
Navlakhi.

Sub :- Amendment in IGM No. F-28 / 2011-12 dated 9.6.2011 for MV Peppino Bottiglieri—matter regarding

Please refer to your letter F.No. IGM No. F-28 / 2011-12 dated 1.7.2011 on the subject cited above.

In this regard, it is to inform that the as proposed by you permission to amend the IGM and split up of Bill of Lading is granted subject to fulfillment of following condition.

1. Amendment in IGM is allowed subject to recovery of necessary amendment fees.
2. Same bottom cargo should be tallied with the cargo manifest at Navlakhi Customs as well as Pipavav Port.
3. Permission as requested by the Shipping Agent for splitting up of B/L is allowed subject to execution of bond for proper accountal of import cargo i.e. no short landing or revenue loss shall be occurred etc..
4. Fresh bill of entry be filed at Pipavav port and accordingly duty payment on the same bottom cargo quantity be paid by the importer at Pipavav Custom House.
5. All formalities such as boarding / rummaging / MOT charges etc. be fulfilled at Pipavav port.

1/7/11

(M. S. Das)
Assistant Commissioner
Customs Division,
Jamnagar.

Copy to :- The Deputy / Assistant Commissioner, Custom House, Pipavav for information and necessary action immediately.

For SHREE CEMENT LTD.

K. C. GANDHI
Sr. Vice-President

8. The revenue is relying on the condition 3 of the said permission letter. Examination of condition 3 would show that the said condition relates to proper accountal of imports cargo. It does not really relate to the revenue on account of different of assessable value or difference of exchange rate.

9. It is also seen that when the IGM was permitted to the amended at Navlakhi port it amounted to modification quantity of import at Navlakhi port. This meant that the quantity imported in Navlakhi port was not the entire quantity of the ship but only a small part of the total quantity on the ship. In these circumstances the duty was paid on excess quantity of cargo at Navlakhi Port and the same has to be refunded. No adjustment on account of a different assessable value adopted at Pipavav Port cannot be made in the refund amount as the import and clearance made at Pipavav Port is an independent clearance made by different Assessing Officers.

10. Consequently, we do not find any merit in this order. The impugned order is set aside, appeal is allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI