CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 02

CUSTOMS Appeal No. 11920 of 2019-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-COM-01-19-20 dated 08.05.2019 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA]

Ashutosh Container Services Pvt Ltd **...Appellant**

Continer Freight Station, Survey No. 169/42, Opp. Adani Wilmar,
Village Dhrub, Mundra
Kutch
Gujarat-370421

VERSUS

C.C.-Mundra **...Respondent**

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra,
Mundra
Kutch,
Gujarat-370421

APPEARANCE:
Shri Vikas Mehta, Consultant appeared for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), C.L MAHAR

FINAL ORDER NO. A/ 12081 /2023

DATE OF HEARING:11.09.2023
DATE OF DECISION: 21.09.2023

SOMESH ARORA

The present appeal has been preferred by the appellant, who has a CFS which has been declared as customs area under Section 8(b) of the Customs Act, 1962, and have been approved as a custodian of the said premises under Section 45 of the Customs Act, 1962, vide Customs Notification No. 9/2007-dated 25.04.2007.

1.1 On the basis of an intelligence gathered by Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra that two Containers No. IALU 4562327 & IALU 44561001 stuffed with cosmetics items were mis-declared as Baby diapers in IGM, were removed clandestinely from Ashutosh Container Services Private Limited (Ashutosh CFS) Mundra, by way of generating & producing bogus Customs documents viz. Bills of Entry, Invoice, Packing list on 16.09.2015. by certain importers for smuggling, action was taken for interception. Taking cognizance of the same, both 40 feet containers Nos. IALU 4562327 & IALU 44561001 laden on trailer no. GJ-12 BT 0492 & GJ-12 AY 8910 respectively, were further, intercepted by the officers of SIIB, Custom House, Mundra at Palsana Chokdi, Surat, Gujarat on 18.09.2015.

1.2 The investigation of SIIB revealed that both the containers have been imported in the name of M/s Season International Pvt. Ltd, having address at Venkatesh Chambers, Prescot Road, P. B. No. 714, Fort, Mumbai - 400 001, (IEC No. 0494026693) through Vessel CHICAGO, Voyage No. 002 vide IGM 2119446 (Line No. 76) dated 11.09.2015 & M/s Intec Poly Pvt. Ltd. having address at 48, Mangaldas Road, Lohar Chawl, Mumbai, (IEC 0409001851) through Vessel Inter Mumbai, Voyage No. 041 vide IGM no. 2119407 (Line No. 14) dtd. 10.09.2015. The details of the goods as per the Import General Manifest (IGM) were declared as Baby Diapers.

1.3 On being enquired with the drivers, the above mentioned intercepted containers found laden on trailer no. GJ-12 BT 0492 & GJ-12 AY 8910, it was learnt that both the containers were taken out of Ashutosh CFS, at around 19:05 hours & 20:00 hours on 16.09.2015. On being asked to produce the Customs clearance papers covering both the containers, both the drivers produced the Consignment Note, copies of Bills of Entry No. 2564071 dated 11.09.2015 & 2569697 dated 12.09.2015, Commercial Invoice pertinent to both Bills of Entry, Transport builty & Form 402 etc. On further enquiry, both the drivers informed that containers were to be delivered in Mumbai.

1.4 Bills of Entry numbers were then immediately forwarded to SIIB Section, Custom House, Mundra for further verification of genuineness of documents and after verification from ICES EDI V 1.5 system, it was found that the status for both the Bills of Entry in system showed invalid/inactive i.e. such Bills of Entry did not exist in system or had not been filed. It was also learnt that no Bill of Entry was filed in respect of both the containers.

1.5 Further, detailed examination of goods for both the containers was conducted under Panchnama dated 18.09.2015. During the course of examination of goods it was noticed that the alleged bogus/ fake Bills of Entry No. 2564071 dated 11.09.2015 & 2569697 dated 12.09.2015 inscribed the name of M/s Season International Pvt. Ltd., Mumbai (IEC 0494026693) an M/s Intee Poly Pvt. Ltd., Mumbai (IEC 0409001851) as importers name, Custom Broker as M/s Briano Marine, PAN based CB (AETPR2783QCH001) respectively for import of goods as declared "Baby Diapers". The Seal No. 012050 in Container No. 1ALU4561001 and Seal No. 012017 in Container IALU4562327 were found in intact condition as per the Seal No mentioned in respective Bill of Lading. The Seals of containers were then cut and goods were de-stuffed in the warehouse located at ICD, Sachin, Surat. During the examination of goods, it was found that cartons stacked in front rows were only containing Diapers, while the cartons stacked behind the front rows were noticed containing Cosmetics of reputed brands viz. Nivea Body Lotion, Lomani Brand Deo Spray, Dove Brand Beauty Cream, Revlon Brand Colour Silk Beautiful Colour, Eskinol Natural Lemon Facial Cleanser. For further detailed examination of goods by Customs, Mundra, both the containers were re-sealed with Customs Bottle Seal No. 2996 and 2997 respectively at ICD, Sachin, Surat. The entire proceedings were recorded under Panchnama dated 18.09.2015.

1.6 Thereafter, both the containers were escorted from ICD Sachin, Surat by the officers of SIIB on 19.09.2015 brought back to All Cargo Global Logistics Ltd. CFS, Mundra on 20.09.2015 for further detailed investigation. Meanwhile, on inquiry with the staff of M/s Ashutosh, CFS, they furnished copies of Bills of Entry No. 2564071 dated 11.09.2015 & 2569697 dated 12.09.2015 and copies of Out of Charge (OOC) Order No. 2016421340 & 2016432420 in respect of both the containers. Further it came to know that no Bills of Entry have been filed electronically and copies of Bills of Entry and Out of Charge order furnished by the CFS staff appeared to have been fabricated and the signature of Custom Officer were also forged.

1.7 Further, both the containers were found in seal intact condition with Custom bottle seal no. 2996 and 2997. The seals were further cut and 100% examination of good was carried out by the officers of SIIB, Custom House, Mundra under Panchnama dated 20.09.2015 drawn at AllCargo CFS, Mundra. On opening the container no. IALU 4561001, cartoons stacked in the front rows only were found as baby diapers, while the rest of the cartoons stacked/ stuffed-in, except of front row of the container, were found containing Cosmetics & Cigarettes and detailed inventory is as per Annexure-I of SCN bearing F. No. S/43-26/SIIB/INV/CHM/2015-16 dated 11.03.2016. Approximately 43 lakhs of sticks of Gudang Garam Brand Cigarettes found stuffed in 298 cartoons in this container. Further on opening of Container No. IALU 4562327 only a few cartoons stacked in the front row were containing baby diaper while the rest of cartoons were having cosmetics of reputed brand. The detailed inventory of goods is per Annexure-II of SCN bearing F. No. S/43-26/SIIB/INV/CHM/2015-16 date 11.03.2016. Further, the said containers along with trailer no. GJ-12 BT 0492 & GJ 12 AY 8910 were handed over to All Cargo CFS, for safe custody & pending detailed investigation. The goods containing in both the containers were seized under Section 110 of the

Customs Act, 1962 under the reasonable belief that same are liable for confiscation under the provisions of Section 111 (e), (0, (i) of the Customs Act, 1962, vide seizure memo dated 21.09.2015.

1.8 As stated above, two Containers nos. IALU 4562327 & IALU 4561001 having cosmetics items, were mis-declared as Baby diapers in IGM, were removed clandestinely from Ashutosh Container Services Private Limited (Ashutosh CFS) Mundra, by way of generating & producing bogus Custom documents viz. Bills of Entry, Invoice, Packing list on 16.09.2015. The dealing staff of Ashutosh CFS has failed to follow the prescribed procedure as per Public Notice No. 24/2007 dated 31.05.2007 & regulations of HCCAR, 2009. Resultantly, due to their careless attitude, the smugglers had cleared goods clandestinely.

1.9 While proceeding against various parties involved, it was noticed that the Custom Cargo Service Provider (Ashutosh CFS) had failed to fulfil/ comply the provisions of Regulation 6 of HCCAR, 2009 and accordingly appointment of Customs Service Provider of Ashutosh CFS was placed under suspension under Sub-regulation (2) of Regulation 12 of HCCAR, 2009, which was revoked by the Principal Commissioner of Customs, Mundra vide Order-in-Original No. MCH/PR COMMR/PVR/28/2015-16 dated 03.11.2015 on the basis of the report of the Deputy Commissioner (SIIB) vide report issued vide F. No. S/43-26/SIIB/INV/CHM/2015-16 dated 09.10.2015.

1.10 The Deputy Commissioner, SIIB, Custom House, Mundra vide their letter dated 09.10.2015 reported that there was gross negligence of staff of CFS while the Ashutosh CFS is bound to follow the procedure laid down in HCCAR, 2007 as well as the conditions of Public Notice No. 24/2007 dated 31.05.2007 issued by the Kandla Custom House (when Mundra port was also a part of

Kandla Customs). Later on after the incident another public notice was issued prescribing further procedure vide P.N 27/2015 dated 28.09.2019 requiring verification from ICEGATE.

1.11 During the investigation, statement of Shri Hemanshu Madeva, Executive (Documents) at Ashutosh CFS and statement of Shri Zaru Madeva, Account Officer at Ashutosh CFS was recorded under Section 108 of the Customs Act, 1962 on 28.09.2015, they have stated that, during the verification of document pertinent to the Bill of Entry under which clearance was taken, they noticed the name of custom broker for the first time and they has some doubts & on verification of the genuineness of the bill of entry through ICEGATE, it displayed "NO RECORD FOUND", but they allowed the clearance as the document produced appeared to be genuine and many times ICEGATE show such type of error due to slow server.

1.12 Further, in their statement, they stated that they had verified the dated signature of Superintendent of Customs and his stamps who had given Out of Charge (OOC) on the face of Bill of Entry but in same statement, they admitted that they did not have any specimen signature of the Superintendent of Customs posted at CFS. In absence of specimen signature of the Superintendent, how they can verify the authenticity of signature. Further, it is also pertinent to mention here that all the documents like Bills of Entry, OOC Copy were forged by the smugglers and the same were produced before the CFS staff for clearance of their containers. They have failed to check the identity of the Custom brokers while delivering the goods and dealt with the unauthorized persons which resulted into huge loss to govt. Exchequer.

1.13 Further, from the investigation conducted, evidences collected and statements of the accused persons recorded by the SIIB, it came to the notice that on the basis of such forged faked documents, clearances have happened from their CFS on 14 occasions earlier apart from aforesaid 02 clearances which resulting into huge loss of revenue to Government. The details of the bogus Bills of Entry and fraudulently cleared containers are given mentioned in the Show-Cause-Notice bearing F. No. S/43- 26/SIIB/INV/CHM/2015-16 dated 11.03.2016 which has already been served to the noticee. Therefore, it appeared that the staff of the CFS has failed to discharge their duties appropriately and their careless attitude resulted in continuous illegal activities carried out effortlessly by the gang of smugglers and therefore, it appears that Custodian have failed to fulfil/ comply the provisions of Regulation 6(1) of the HCCAR, 2009.

1.14 The Show Cause Notice F. No. S/43-26/SIIB/INV/CHM/2015-16 dated 11.03.2016 was issued to M/s Ashutosh Container Services Pvt Ltd., under Customs Act, 1962 which culminated into Order-In-Original No. MCH- CUSTM-000-COM-15-17-18 dated 07.02.2018 issued under Customs Act, 1962 vide F. No. VIII/48-53/Adj/Pr. Commr/MPSEZ/2015-16. However, no Show Cause Notice was issued under HCCAR, 2009.

1.15 Thereafter, Show Cause Notice F.No. S/20-37/2007-Appg(G) Part-I dated 04.05.2018 was issued to M/s Ashutosh Container Services Pvt. Ltd., Survey No. 169/42 & 169, Opp. Adani Wilmar, Vill. Dharab, Mundra - 370421 under Regulation 6 of HCCAR, 2009 calling them as to why penalty should not be imposed on them under Sub-regulation 8 of Regulation 12 of HCCAR, 2009.

1.16 Learned Commissioner while dealing with the disciplinary proceedings against the policy under sub-Regulation (8) of Regulation 12 handling cargo in customs area Regulation 2009, imposed penalty of Rs. Fifty thousand against the appellant (CFS). Aggrieved by the order of Commissioner, the appellant has filed the present appeal. Learned Commissioner (Appeals) during course of his finding as follows:

"19.1 I have carefully gone through the records of the case, submissions made by the noticee and record of personal hearing held before me.

19.2 As per the facts of the case, the clearances of the containers were taken on 14 occasions earlier from M/s Ashutosh CFS by producing forged/fake documents resulting into huge loss of revenue to government. The main defence of the CFS is that they complied with all the requirements prescribed in para (5) of Public Notice no. 24/2007 dated 31.05.2007 issued by the Kandla Custom House (when Mundra port was also a part of Kandla Customs). As per para (5) of the Public Notice, the importer/CHA has to submit the duly signed copy of out of charge bill of entry to the custodian for the delivery of the goods. In the instant case, forged/faked copy of out of charge bills of entry were produced before the concerned persons of these CFSS for taking the delivery. In normal course if the custodians complied with the procedure as mandated by the Public Notice, they cannot be charged with allegation of making the goods liable for confiscation under provision of section 111) of the Customs Act, 1962. Only after detection of the instant case, it was mandated by Public Notice No.27/2015 dated 28.09.2015 that CFSS shall check status of the Bill of Entry on ICEGATE website before issuing the gate pass for exit of any import cargo.

19.3 However, in the case of M/s Ashutosh CFS, I find that in addition to the procedure prescribed under Public Notice 24/2007 of Customs Act, the employee issuing gate pass was also verifying the status of the bill of entry on ICEGATE website. From the investigation conducted, evidences collected and statements of the accused persons recorded by the SIIB, it was found that during the verification of document pertinent to the bills of entry under which clearance was taken, the employee of M/s Ashutosh CFS noticed the name of custom broker for the first time and he has some doubts & on verification of the genuineness of the bill of entry through ICEGATE, it displayed "No record Found", but he allowed the clearance as the document produced appeared to be genuine and many times ICEGATE show such type of error due to slow server. The reason given by the employee in allowing the exit of import cargo even after noticing on verification of genuineness of bill of entry from ICEGATE that "NO RECORD FOUND" is not at all convincing, as in a situation of slowness of server, sites display error but never display the wrong message as "NO RECORD FOUND". Such a message will be *displayed only if wrong bill of entry number is entered or bill of entry is not filed. Therefore, if he had noticed such message on the screen, it was his duty to ask customs officer concerned and get the documents verified. But in their submissions, the said CFS, silently ignoring all such aspects, has disowned the responsibility by simply stating that, as the SCN admits the bill of entry were fabricated and signatures of officers were forged, the employees of CFS before whom these forged papers were tendered took them for real and, acting as per Public Notice as well as verbal instructions of customs officers posted at the Custom House from time to time. They have also ensured that after completion of delivery of imported goods, the duplicate copy of all the bills of entry was in variably sent to the Custom House for post clearance verification. But they have no explanation about the callous attitude adopted by their employees in spite of doubting the authenticity of the documents as not available on site of ICEGATE and allowed the containers to be moved out by the unauthorized persons. Hence, their submission that they are careful in discharging their duties is completely wrong. Being the custodian of import consignment, they are legally bound to ensure that standard operating procedure followed at their CFS is followed meticulously which included verification from ICEGATE even before issue of PN No. 27/2015 of 28.09.2019.*

20. In light of the discussions on above, I hold that M/s Ashutosh CFS by their acts of omissions have not adhere to the conditions as prescribed in Regulation 6(1) of the Handling of Cargo in Customs Area Regulations, 2009 and thus are liable for penalty under the provisions of Sub-Regulation 8 of Regulation 12 Handling of Cargo in Customs Area Regulations, 2009."

2. Learned Consultant for the appellant takes us to the order and pleads that to attract Regulation (6) the sub clauses under which allegation has been made is required mentioned. He seeks to place reliance on 2001 (136) ELT 974 (Tri.-Beng.) in the matter of M/s. International Shipping Agencies specially para 3b is reproduced below:

"3(b) We do not find any reason to concur with the impugned findings of the learned Commissioner that merely because the CHA took instructions from an alleged third party, that also without a notice to the CHA, and not the person in whose names the Bills of Entry documents were filed for clearance, would ipso facto lead to the conclusion that the CHA was aware of the fact

that the documents were false/fabricated/or did not reveal the correct facts. The documents in question are Registration books for the subject cars, which have been said to be fabricated and not to depict the true position of the registration of the cars outside India in U.A.E. These documents (registration books etc.) are records of a Government Department of U.A.E. being maintained in a foreign country, only after detailed examination of the documents and enquiries conducted by the Indian authorities in U.A.E. the charges could be made. The present order impugned before us does not bring out any special and specific material or reasons as how the CHA was aware of the actual facts in U.A.E. documents and about the cars being not registered therein, on documents showing the dates of registration. The CHA has produced the documents which were given to him on behalf of the importers. The CHA, cannot be held responsible for the violations for such an act, under Regulation 21 of the CHALR, 1984. Regulation 21 of the CHALR-84 reads as follows:-

"Suspension or revocation of licence:- 1. The Commissioner may, subject to the provisions of Regulation 23, suspend or revoke the licence of a Custom House Agent so far as the jurisdiction of the Commissioner is concerned and also order for forfeiture of security on any of the following grounds:- (a) failure of the Custom House Agent to comply with any of the conditions of the bond executed by him under
(b) failure of the Custom House Agent to comply with any of the provisions of these regulations, whether within the of the said Commissioner or anywhere else:
(c) any misconduct on his part whether within the jurisdiction of the said Commissioner or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Custorns Station.

2. Notwithstan
ding anything contained in sub-regulation (1), the Commissioner may, in appropriate cases, where immediate action is necessary, suspend the licence of a Custom House Agent where an enquiry against such agent is pending or contemplated."

<u>The suspension/revocation of licences under this regulation could be made on any of or all of the grounds given under Regulation 21(1). The Commissioner has not come to a specific finding as to under which ground of Regulation 21(1) he is considering that there was a failure or misconduct on part of the CHA.</u> A perusal of this CHALR, 1984 does not indicate that taking alleged instructions from a third party, would be in contravention cast as regards the obligations on a CHA under

Regulation 14 of CHALR, 1984. The obligations on a CHA have been listed under regulation 14. They do not cast any such obligation on him, restricting/banning the CHA from taking instructions from third party. The misconduct on part of a CHA. cannot be beyond the obligations cast on them under Regulation 14 of the CHALR, 1984. The Commissioner before coming to a conclusion that there has been a misconduct on part of CHA has to establish as to which obligation out of the detailed obligations referred to under CHALR, 1984 Regulation 14 have been expressively violated. In absence of the same we cannot uphold the order of the Commissioner suspending the licence for a period of six months as arrived at in the impugned order."

(emphasis supplied)

2.1 He stated similarly the in the given SCN sub clause of Regulation 6 of handling of cargo in Customs Regulation, 2009, should have been specially mentioned. He further seeks there is nothing in the language of Regulation 6 of cargo in Customs area regulation 2009, which makes CFS licensee responsible for any lack of diligence on the part of employee, though he hastened to add that there was not even negligence on the part of the employee. Further he adds that all requirements of P.N of 2007 were being followed by them and requirement of referring to ICEGATE came into existence only in public notice 27/2015 after the incident. And that even in two other C.F.S, Shri Ritesh Devda, Executive of Mundra C.F.S in his statement dated 26.11.2015 and Shri Mukesh Sharma in statement dated 26.11.2015 for APSEZ C.F.S had similarly checked status from ICEGATE but such action on their part were not considered as lack of diligence.

3. Learned AR on the other hand places reliance upon findings in order-in-original and reiterates the findings. He emphasizes that the fact of 14 containers have passed out makes the omission serious and also the fact of having overlooking even when computer system flashed that "record did not exist." In other cases, where actions has not been taken the concerned employees in one case each, number of such lapse were one time only.

4. Considered. In the instant case in 16 transactions 14 bills of Entries were found to be processed at appellant's CFS, while two pertains to others Container Freight Station against which the department has decided to neither proceed for penal proceeding under Customs Act, 1962, nor for disciplinary action as per Handling of Cargo in Customs Area Regulation, 2009. The procedural conduct of all CFS at the relevant time was dictated by public notice 24/2007 of Kandla Custom House at Mundra and later on by a public notice 27/2015 dated 28.09.2015, wherein an additional safeguard was provided the CFS shall check status of the bill of entry on ICEGATE website before issuing the gate pass or exit of any import cargo. The substance on the basis of which the department has given differential treatment to other CFS and their employees is the number of transactions as all employees of the freight Station made similar lapse of checking at ICEGATE and still ignoring. The employee in the case of present appellant checked bill of entries, it appears even when not required by Public Notice of 2007 on the ICEGATE website and despite show of no record found on the screen and under stated belief that the system was slow or not operating overlooked the same as in case of other CFS's. And on the basis of public notice of 2007 in vogue, allowed the gate pass to be issued and therefore against the CFS of the employee the present penalty of Rs. Fifty thousand under HCCAR, 2009 has been imposed. We find that Learned Commissioner has held that the requirement of verification from ICEGATE was existing even before issue of Public Notice No. 27/2015 also in the public notice in the year 2007. The relevant imports portion of Public Notice No. 24/2007, dated 31.05.2007 is reproduced below:

PUBLIC NOTICE NO. - 24/2007

Date: 31-05-2007

Sub.: Procedure for Customs Clearance at CFS - M/s Ashutosh Container Services Pvt. Ltd. located at Revenue Survey

No.169/42 & 169 paiki, Village: Dhrub, Taluka: Mundra Distt: Kachchh - 370 421.

Importers, Exporters, Custom House Agents and all concerned are hereby informed that in view of liberalized economy and the present trend of containerization of cargo so that the full benefits of such containerization can be derived with the availability of state of the art infrastructure facility for de-stuffing and clearance of Import Cargo and aggregation and stuffing of Export Cargo into containers, the premises located at Revenue Survey No.169/42 & 169 paiki, Village: Dhrub, Taluka Mundra Distt: Kachchh - 370 421developed by M/s. Ashutosh Container Services Pvt. Ltd. has been declared as the Container Freight Station and the 'Customs Area' under Section 8(b) of the Customs Act, 1962 (hereinafter referred to as the said CFS) and M/s. Ashutosh Container Services Pvt. Ltd. have been approved as the Custodian of the said premises under Section 45 of the Customs Act, 1962 (hereinafter referred to as the Custodian), vide Customs Notification No.09/2007,Dated-25.04.2007.

1.2 The said CFS shall operate on all week days in two shifts between 9.00 Hrs. to 23.00 Hrs except on Sundays, Second Saturdays of every month and all Gazetted holidays. The Importers / Exporters or their agents can avail the services of the available staff on Merchant Overtime (MOT) basis on such holidays and off days and beyond the aforesaid prescribed Office Time, on account of any Imports / Exports of urgent nature, with the permission of the Deputy Commissioner/Assistant Commissioner of Customs in-charge of the said CFS.

1.3 The facility for movement of the containers between the said CFS and the Customs Area of Gate way ports will be available, on round the clock basis under overall preventive supervision of Customs Staff of Customs Division, Bhuj through the road connecting the CFS Gate and container gate of MP & SEZ, MUNDRA

1.4 M/s. Ashutosh Container Services Pvt. Ltd. will act as custodian of the goods at the said CFS. The movement of containers by road vehicles between the said CFS and the Customs area inside Gateway ports will be undertaken by M/s. Ashutosh Container Services Pvt. Ltd.

IMPORT

2. The following procedure is prescribed for clearance of Import Cargo at the said CFS:

2.1 The Importers/Exporters/CHA will submit copies of respective IGM & OBLS to the Custodian at the said CFS along *with a request for movement of Import (Loaded) Containers from CY-MP & SEZ, MUNDRA to the said CFS in advance.*

2.2 The Custodian will arrange transportation of the Import Loaded Containers from the Customs area in MP & SEZ, MUNDRA to the said CFS after taking over the same from the Port Authorities concerned on the strength of an Equipment Interchange Report (EIR) to be prepared jointly by the Custodian & MP & SEZ, MUNDRA officials duly authorized by gate Proper Officer of Customs. In case seal of any Import Container is found to be tampered, the same will be removed from the Customs Area of MP & SEZ, MUNDRA to the said CFS only after obtaining Permission of the Asstt./ Dy. Commissioner of Customs Bhuj who is in charge of the CFS and under Customs escort.

2.3 All Customs formalities including physical examination of goods will be carried out at the said CFS. This will help in expeditious clearance of goods as well as permit co- ordination between documentary assessment including through EDI and the physical Examination of goods.

2.4 The CFS will have facility for Import manifest and Bill of Entry, appraisal of goods, concurrent Audit, license debiting, payment of duty, physical examination of goods and clearance.

2.5 The procedure for Import examination, appraisal and other formalities at the said CFS would be as follows.

2.5.1 The de-stuffing of the containers will be carried out in presence of the Customs Officer, representative of the Custodian, the Importer/CHA after verification of the Seal Number as per documents. After de-stuffing, the representative of the Custodian shall prepare a de-stuffing sheet which will be signed by him along with the Customs Officer, Importer/CHA and representative of the shipping lines in respect of LCL cargo. This sheet shall mention that the seal was found intact and also regarding the contents in the containers viz packages, chests, pellets, boxes etc. shall be tallied and the numbers compared with reference to the IGM/OBL. Shortage/excess, if any, noticed at the time of de-stuffing, shall be recorded and got certified by the Customs Officer on the de-stuffing sheet

2.5.2 The clearance of goods for home consumption/warehousing from the said CFS-shall be on the basis of the Bill of Entry in the prescribed form to be filled by the Importers/their authorized agents before the Customs Authorities at the said CFS Each Bill of Entry shall be noted against the copy of the IGM. The Bill of Entry as filled shall be *accompanied by all necessary documents including invoice, packing list, bill of lading, import license, declaration under Rule 10 of the Customs Valuation Rules, 1988, OGL Declaration, chartered engineer's certificate (wherever applicable) etc. One separate set of essential documents like invoice, packing list, bill of lading, importer declaration under Rule 10 of Customs Valuation Rule, 1988 etc. shall be pasted on the reverse of original Bill of Entry.*

2.5.3 The Imported cargo after de-stuffing will be stacked in the import warehouse or container yard, properly segregated, under stock cards giving clear indication of the lot to which the same belongs. The Custodian shall be wholly responsible for proper stacking and safety of the cargo and for any shortages / damages that may occur during the period when the goods are under their custody.

3 IGM verification and noting of Bill of Entry.

The importer/CHA shall present the Bill of Entry along with the relevant documents at the counter of IGM clerk who will carry out the IGM verification and enter the particulars of IGM in the IGM register. Thereafter the importer/CHA will hand over the Bill of Entry to the noting clerk for making entries in the Noting Register.

4.Alert and licensing check.

After receiving the Bill of Entry from the noting clerk, the Alert Notice Inspector shall immediately do the alert notice check and after satisfying himself that the goods/imports license are not in the suspected category shall hand over the Bill of Entry to the Appraiser or Superintendent for appraisement. Generally the assessment shall be through second appraisement procedure. However, in certain cases the Dy Commissioner/Assistant Commissioner in charge may decide to order first appraisement.

4.1 Procedure for assessment.

In case of First Appraisal ordered by the Dy. Commissioner/ Asst. Commissioner of Customs, Bhuj, the examination of the goods shall precede the assessment of Bill of Entry. The appraiser shall endorse the examination order on the reverse of the original copy of the Bill of Entry after taking approval from the Dy. Commissioner/Asst Commissioner of Customs in charge of the CFS. Thereafter, the importer/CHA shall get the goods examined.

4.2 Examination.

The Bill of Entry shall be presented to the Shed Appraiser/ Superintendent by the Importer/CHA for physical examination of the goods. The examination shall be conducted by the *examining staff after inspection of the lot and identification of the same with the description given in import documents. He will endorse examination report on the original and duplicate copy of the Bill of Entry The importer/CHA shall then present the Bill of Entry to the Appraiser/Superintendent of Customs for assessment.*

4.3 After assessment of the Bill of Entry by the Appraiser / Superintendent, the Importer/CHA shall present the Bill of Entry to the Inspector of Customs to check the exchange rate. After this, the Bill of Entry shall be put up to the Dy Commissioner/Asst. Commissioner of Customs, who is in charge of the CFS for his signature.

4.4 Detachment of Bill of Entry.

The detach clerk having received the finalized Bill of Entry will hand it over to the Importer/CHA for payment of duty. However, before handing over the Bill of Entry, he will ensure to put his signature in the Bill of Entry Monitoring Register. He will also ensure that the original Bond/Bank guarantee and note sheet etc. if any, are detached and kept in the official records of the department. Any formality regarding licensing etc., if required, will also be completed before handing over of the Bill of Entry to the importer/CHA.

4.5 Duty payment.

The importer/CHA, after receiving the Bill of Entry from the detach clerk, shall pay the duty in the designated bank after getting TR-6 challan signed by the said dealing assistant (detach clerk). The duty is to be paid within 7 days period as prescribed under section 47 of the Customs Act 1962. If the Importer/CHA fails to pay the duty within 7 days period (from the date of return of Bill of Entry to him as provided under section 47 of the Customs Act 1962), the Importer/CHA shall obtain fresh challan of payment of duty along with interest accrued there on. After payment of duty and interest, the duty paid Challan and Bill of Entry shall be deposited at the counter of the detach clerk and the said detach clerk will enter the particulars of payment in the relevant register. Original Bill of Entry shall be retained by the detach clerk and remaining copies will be returned to importer/CHA who shall produce them to the import shed.

5. Out of Charge

The Appraiser/Superintendent of the shed shall endorse 'out of charge' on the duplicate copy of Bill of Entry after ensuring that all formalities have been completed The duplicate copy of Bill of Entry shall be detached by the examining officer at the shed and he will give one copy of the gate pass to the importer/CHA who will submit the same duly signed by the said

Appraiser/Superintendent to the Custodian for delivery of the goods on their gate pass. After giving full delivery of goods, the shed Appraiser/Superintendent shall send the duplicate copy of B/E to the dispatch clerk The dispatch clerk shall, then, match the original and duplicate copies of the Bill of Entry and forward the same to the manifest clearance section within two days.

5.1 Second appraisal.

In case of second appraisal, all the procedure will remain the same except the procedure regarding prior examination of the goods before assessment. In case of second appraisal, the assessment shall be completed on the basis of invoice etc., and duty shall be paid and the goods would be got examined exactly in the same manner as prescribed for the first appraisal procedure. If everything is found in order, 'out of charge' order would be given in the manner stipulated above, following all other procedure till the forwarding of the copies of Bill of Entry to the manifest clearance section.

6. Movement of empty containers out of the said CFS

As regards empty containers arising out of de-stuffing, the monitoring will be done by the container cell. Container leasing companies, shippers/steamer agents will be responsible for producing proof of export of containers at the gateway port or the cancellation of the bonds executed in respect of empty containers. As per the requirement of the Shipping Lines, the empty containers will be transported from the CFS to gate way ports or other CFS/ICD under EIR.

7. Closure of IGM.

After all the goods received and delivered at the said CFS under an IGM/ Sub- manifest IGM, are lawfully cleared, the IGM will be closed on the basis of duplicate copy of the Bill of Entry.

8. Uncleared Goods.

Attention of importer/CHA and others concerned is invited to, the provisions of the Section 48 of the Customs Act, 1982. The Custodian will bring it to the notice of the Asstt./Dy. Commissioner of Customs Bhuj, in charge of the CFS, all such consignments that are not cleared by the Importer/CHA for home consumption/warehousing within 30 days from the date of unloading thereof or within any extended period. In respect of such goods and also goods in respect of which, the importer relinquishes title before an order for clearance under the Customs Act, the Custodian shall, after giving due notice to the importer and ascertaining the status of the goods from the concerned Assistant / Deputy Commissioner of Customs, Bhuj who is in charge of the CFS in terms of the provisions of Section

48 of Customs Act, 1962 and after complying with the guidelines laid down thereon, auction the said goods."

4.1 It is clear from the foregoing, that there is nothing in the public notice, which required the employees of the ICD/custodian to refer to ICEGATE prior to public notice of 2015. We find that the findings of lower authority to that extent is erroneous and not sustainable. We are further supported in this from the conduct of the department which has not issued either a penal or disciplinary SCN to the employees or CFS involved in other two transactions. Even if the committed omission in their case was for one bill of entry, each. The slandered of diligence cannot be different. The number of transactions can be basis for deciding quantum of punishment, if punishment for a lapse is required. Department cannot pick and choose to decide the lack of diligence by number of transactions even when the employee involved in extra diligence believed that "documents not found" was due to some system error or failure. If is version has to be taken in account it has to be in totality and not piecemeal. Further we also find force in the argument supported by cited decision of M/s. International Shipping Agencies (supra) by the Counsel for the appellants that there was nothing specifically given out to them to defend as to which sub clause of regulation 6 (1) was violated by them.

4.2 In view of the foregoing, we find no merits in the impugned order and are inclined to set aside penalty imposed under Sub-Regulation 8 of Regulation 12, and we find that the additional condition imposed by public notice of 2015, itself was procedural improvement under taken by the department through which requirement of referring to the ICEGATE was brought in. We are not inclined to punish the employer for such facts of discretion or extra diligence than prescribed, on the part of employee specially when department did not find anything wrong, when compared to employees of other CFS.

5. Accordingly, we accept the appeal and set aside the impugned order with consequential relief of setting aside penalty imposed of Rs. 50,000/-.

6. Appeal is allowed.

(Pronounced in the open Court on 21.09.2023)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C.L MAHAR)
MEMBER (TECHNICAL)

PALAK