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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10965 of 2022

[Arising out of OIA/OIO-S-20-01-MISC-EXTERNAL-AGENCIES-SIIB-CHM-21-22 dated 04/02/2022 passed by Commissioner of CUSTOMS-MUNDRA]

HAPAG LLOYD INDIA PVT LTD **.....Appellant**
2nd Floor, Above Cargo Honda Showroom,
Kutch,
Gujarat

VERSUS

C.C.-MUNDRA **.....Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra
Kutch
Gujarat-370421

APPEARANCE:
Shri Gnanesh G Bhatt & Shri Neel Vasant, Advocate for Intervener for the Appellant
Shri Ashok Thanvi, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 10144/2024

DATE OF HEARING:20.12.2023
DATE OF DECISION:11.01.2024

RAMESH NAIR

This appeal is directed against the order-in-original No. OIA/OIO-S-20-01-MISC-EXTERNAL-AGENCIES-SIIB-CHM-21-22 dated 04/02/2022 passed by Commissioner of Customs-Mundra, addressing to the appellant, whereby it was ordered that the appellant shall not demand any detention charges for the containers laded with the goods. Hence, directed that the appellant not to charge any detention charges till clearance of the goods. Being aggrieved by this order, the appellant M/s. Hapag Lloyd India Pvt Ltd has filed the present appeal. Since, the appellant have filed appeal challenging the decision of the customs for not charging the detention charges to their client, the client of Hapag who is importer of the goods also have grievance. Accordingly, M/s. Rugs Rural also filed an application as intervener in the present appeal.

2. On behalf of the appellant M/s. Hapag Lloyd India Pvt Ltd Shri Gnanesh G Bhatt Advocate appeared and submits that firstly while deciding that not to charge detention charges from the appellant by the customs no notice was served to the appellant and the order came as surprise to the appellant taking a unilateral and ex-parte decision, which is clearly in violation of principles of natural justice. Therefore, the order for waiver of detention charges is not sustainable on the ground of principles of natural justice itself. He further submits that the waiver of detention charges was ordered under Regulation 10 (l) of the Sea Cargo Manifest Transport Regulations, 2018. He submits that as per the said Section, the detention charges can be waived only for 60 days, and not beyond that. Therefore, the waiver of detention charges for the entire period is *ab initio* illegal. He further submits that as per the provision of Clause (l) of Regulation 10, the detention charges cannot be demanded only in a case when the goods detained by customs is for the period of the verifying the entries made under Section 46 or 50 of the Customs Act and if the entries are found to be incorrect. It is his submission that the goods detained by the custom was not subject matter for assessment under Section 46 or 50 Customs Act, and no entries thereof were found to be incorrect. Therefore, the provision of Section 10 (l) of Regulation is not applicable in the fact of the present case. Therefore, for this reason also the order passed for directing the appellant not to demand the detention charges is without authority of law. In support he placed reliance on the following judgments:

- Usha B. Agarwal -2009 (243) ELT 492 (Bom.)
- Abdul Hassan Mohmed Khan-2010 (250) ELT 51

2.1 On behalf of the intervener0 M/s. Rugs Rural Shri Neel Vasant Leaned Advocate for intervener submits that the goods were detained by the custom however the same was not seized. The detention of the goods was made with reference to some other case therefore the goods under question was not liable to either detention of seizure, considering these facts the Hon'ble High Court of Gujarat has ordered for release of goods with liberty to apply for waiver of detention charges therefore the act of the custom authority directing the appellant not to charge detention charges is correct and legal.

3. Shri Ashok Thanvi, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the decision taken in the impugned order.

We have considered the submissions, we find force in the submission of the Counsel for the appellant M/s. Hapag Lloyd India Pvt Ltd that the case involved serious interpretation of Regulation 10(l) whether under this regulation the custom authority has powered to waive the detention charges beyond 60 days and moreover in a case which is not covered under Section 46 or 50 of Customs Act whether the regulation 10(l) can be invoked. We find that the authority who passed the impugned order has not issued any notice to the appellant who is the major affected party in the decision taken by the customs and no opportunity was given to the appellant to defend their case. Therefore, we are of the view that the principle of natural justice was not followed while deciding the waiver of detention charges which was due to the appellant. In these circumstances, we cannot make any comment on the merit of the case. Therefore, in the interest of justice we direct the order issuing authority that notice may be issued to the appellant, the intervener in the present case and both the parties shall be given opportunity to make their submissions and appearance for hearing and thereafter a reasoned order maybe passed.

3.1 With the above direction, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority. The Miscellaneous application filed by the intervener is also disposed of accordingly.

(Pronounced in the open Court on 11.01.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK