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

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10873 of 2022

[Arising out of OIO-AHM-CUSTM-000-COM-011-22-23 dated 12/08/2022passed by Commissioner of CUSTOMS-AHMEDABAD]

HINDALCO INDUSTRIES LTD **.....Appellant**
Unit Birla Copper Village-Lakhigam
Bharuch
Gujarat

VERSUS

C.C.-AHMEDABAD **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

WITH

CUSTOMS Appeal No. 10874 of 2022

[Arising out of OIO-AHM-CUSTM-000-COM-011-22-23 dated 12/08/2022passed by Commissioner of CUSTOMS-AHMEDABAD]

ANAND MOHAN MEHTA **.....Appellant**
Genral Manager M/S Hindalco Industries Ltd
Bharuch
Gujarat

VERSUS

C.C.-AHMEDABAD **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

AND

CUSTOMS Appeal No. 10875 of 2022

[Arising out of OIO-AHM-CUSTM-000-COM-011-22-23 dated 12/08/2022 Commissioner of CUSTOMS-AHMEDABAD]

DAHEJ HARBOUR AND INFRASTRUCTURE LTD **.....Appellant**
Village Lakhigam, Taluka Vagra,
Bharuch
Gujarat

VERSUS

C.C.-AHMEDABAD **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

APPEARANCE:
Shri T. Vishwanathan & Ms. Shruti Khanna, Advocate for the Appellant
Shri. R. K. Agarwal, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 10264-10266/2024

DATE OF HEARING:08.12.2023
DATE OF DECISION:30.01.2024

RAJU

This appeal has been filed by M/s. Hindalco Industries Ltd., against confiscation of goods, demand of IGST, interest and imposition of penalty. Appeals have also been filed by Shri Anand Mohan Mehta and M/s. Dahej-Harbour & Infrastructure Ltd., against imposition of penalty.

2. Learned Counsel for the appellant pointed out that the impugned order confirms demand of IGST in terms of Section 28(4) of the Customs Act, 1962. Learned Counsel pointed out that the appellant had filed prior Bills of Entry No. 2218283 dated 23.06.2017 for import of copper concentrate and claimed exemption under Advance Authorization Scheme in terms of Notification No. 18/2015-Cus. The said exemption is from payment of all duties of customs, including CVD and SAD. The appellant had submitted the Advanced Authorization for debit along with bill of entry along with other import documents. As the value of goods was provisional at the time of import the assessment was made provisionally. The vessel was scheduled to arrive on 30.06.2017, but got delayed and arrived on 01.07.2017. GST was introduced on 01.07.2017. Consequently, IGST became payable in imported goods w.e.f 01.07.2017 and CVD or SAD were subsumed in IGST. On 01.07.2017 entry inward was granted and the vessel M V TAO was anchored at the anchored point of Dahej Port. Since, the Dahej port does not have a place of unloading and keeping the cargo on the jetty (port), the copper concentrate was directly

unloaded on the conveyer belt, and transferred and stored within the premises of importer, which is adjacent to the jetty. The discharge of cargo commenced on 06.07.2017 with the permission from customs officer and was completed on 08.07.2017.

2.1 The appellant realized that IGST was not exempted at the time of import. On request made by the appellant. Vide letter dated 21 August, 2017,24 August, 2017, 29 August, 2017 on 24.08.2017 the proper officer recalled and re-assessed the bill of entry allowing payment of IGST. The IGST was paid by the appellant along with interest. Learned Counsel argued that the said action was done in terms of press release of the Government. On 28.08.2017 and 04.04.2018, the appellant paid applicable IGST and the interest thereon. On 30 January, 2020, the department granted out of charge. On 05.02.2020, final assessment of provisionally assessed bill of entry was done. As IGST and interest was already paid, no further payment of any duties was required at the time of finalization. The IGST paid was adjusted against the finalization and no demand was made under the 18 of the Customs Act, 1962.

2.2 On 29.06.2017 a SCN was issued to the Custodian (DHIL) Dahej Harbour & Infrastructure Ltd., for allowing clearance of goods without getting out of charge order under Section 47 of the Customs Act, 1962 read with Regulation 6(f) and Regulation 6(q) of Handling of Cargo in Customs Area Regulation, 2009. The said SCN was adjudicated and penalty of Rs. 50,000/- was imposed on DHIL. In appeal, the Tribunal vide order dated A/10814/2019 dated 09.05.2019 reduced the penalty to Rs. 10 Thousand and held that there was no intentional act on the part of the custodian, and it was a transitional period of switch over to new tax regime. No appeal was filed against this order of Tribunal.

2.3 Another SCN dated 18.08.2021 was issued demanding IGST along with interest and seeking to impose penalties and confiscation of imported goods. The SCN invoked extended period to demand the IGST, which was already paid and appropriated at the time of finalization of provisional assessment. On 12.08.2022, the impugned order was passed confirming the proposals made in the SCN. Aggrieved by this order the appellants are in appeal before Tribunal.

2.4 Learned Counsel pointed out that there is no short payment as entire IGST was paid along with interest much before finalization of provisional assessment and therefore there is no short payment and no ground to issue SCN in the impugned proceedings. He pointed out that the entire IGST has been paid prior to finalization of bill of entry and the said bill of entries stand finalized by revenue. In these circumstances no further demand under Section 18 could have been raised. He argued that since no duty is demanded at the time of entire proceedings are without any basis. He argued that in these circumstances Section 28(4) is not invocable and consequently no penalty under Section 114A can be imposed.

2.5 Learned Counsel pointed out that the ship was scheduled to arrive on 30.06.2017, however due to bad weather, it was delayed on 01.07.2017. He pointed out that on 01.07.2017 IGST was levied, CVD and SAD which were hitherto earlier exempted under Advance Authorization Scheme were subsumed in IGST which was not exempted.

2.6 Learned Counsel further argued that IGST exemption applies to import made after 01.07.2017 if the advanced authorization was issued prior to 01.07.2017. He relied on the following decisions:

- Jindal Dyechem Industries (p) Ltd Vs. Union of India-2018 (8) GSTL 23 (Del.)

- JTL Infra Ltd Vs. Union of India (29) GSTL 303 (Del)

2.7 He argued that these decisions have been ignored by the Adjudicating Authority solely on the ground that appellants have not given evidence or fulfilling the pre-import condition of advance authorization. Learned Counsel pointed out that the advanced authorization has since being redeemed by the DGFT, which implies that they have fulfilled all the conditions of advanced authorization.

2.8 Learned Counsel further pointed out that they were entitled to the input credit of the entire IGST paid and therefore there could not have been any reason for evade payment of IGST. He relied on the following decisions for this purpose:

- Nuevera Wellness Ventures P Ltd Vs. C.C Mundra-2023 (10) TMI 964-CESTAT Ahmedabad

2.9 Learned Counsel further argued that the provisions of interest and penalty have not been imported for the purpose of levy of IGST under Section 3(12) of the Customs Tariff Act. He relied on the following decision for this purpose:

- Mahindra and Mahindra Ltd Vs. Union of India-2022 (10) TMI 212 Bombay High Court, affirmed by Supreme Court in 2023 (8) TMI 135-SC
- Bajaj Health & Nutrition P Ltd Vs. CC, Chennai-2004 (166) ELT 189

2.10 Learned Counsel further argued that provisions of Section 111(J) are not applicable in the present case. He pointed out that the goods imported by appellants are neither dutiable (as duty has already been paid) nor prohibited.

2.11 It was argued that IGST is leviable under Customs Tariff Act and not under Customs Act. Therefore, it was argued that the term dutiable goods in Section 111(j) would refer to only non-payment of basic custom duty i.e the duty leviable under the Customs Act and not under the Customs Tariff Act. Reliance was placed on the decision of Hon'ble Apex Court in the case of M/s. Indian Organic Chemicals Ltd-2000 (118) ELT 3 (SC). It was also argued that Section 111(j) of Customs Act would apply only when out of charge was not granted. It was argued that in the instant case out of charge was granted on 30 January, 2020.

3. Learned AR relied on the impugned order.

4. We find that the appellant had filed prior bill of entry on 23.06.2017 for import of copper concentrate under Advance Authorization Scheme. The cargo was scheduled to arrive on 30.06.2017. The appellant had claimed benefit of Notification No. 18/2015-Cus, which granted exemption from duty of customs including CVD or SAD. For some reasons, the ship got delayed and arrived on 01.07.2017, by when the new GST regime was introduced. With effect from 01.07.2017, IGST became payable on imports. It seems both the importer as well as revenue were un-aware of these changes. The discharge of cargo commenced on 06.07.2017, after obtaining permission of the Customs Officer and was completed on 08.07.2017. As there is no space in the customs area, the goods were directly transferred to appellant's premises as was the regular practice. The assessment of bill of entry was make on provisional basis on account of the valuation issued which was to be finalized after testing of goods. The appellants *suo moto* made a request vide letter dated 21 August, 2017, 24 August, 2017, 29 August, 2017 for recall and re-assessment of bill of entry and allowing the appellant to pay IGST. The appellant paid IGST as well as interest thereof immediately thereafter. On 30 January, 2020, the department

granted out of charge and on 05 February 2020 final assessment of provisionally assessed bill of entry was done.

From the above facts, it is apparent that there was no *mala fide* involved in the instant case from the appellants. The entire procedure happened in supervision of the Customs Authorities. As soon as the appellant got to know about the changes in legislation they paid the duty and subsequently also paid the interest. The discharge of cargo commenced on 06.07.2017 with the permission of customs officer.

4.2 Independent proceedings initiated against Dahej Harbour and infrastructure Ltd for allowing clearance of cargo without getting out of charge order under Section 47 of the Customs Act 1962 read with Regulation 6(f) and 6(k) of handling of cargo in Customs Area Regulation, 2009, culminated vide Final Order No. A/10814/2019 dated 09.05.2019, in the said order following has been observed:

> *"4. Heard both the sides and perused the records. I find that the limited issue is involved that whether the appellant has violated their regulation 6(f) and 6(q) of Handling of Cargo in Custom Area Regulation 2009 and consequently whether they are liable for penalty in terms of regulation 12(8) of HCCAR 2009. For ease of reference, the Regulation 6(f) and 6(q) of HCCAR 2009 is reproduced below:*
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> > *"(f) not permit goods to be removed from the customs area, or otherwise dealt with except under and in accordance with the permission in writing of the proper officer; (q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder."*
>
> *From the plain reading of the above Regulation, I find that the goods from the custom area cannot be allowed to be removed without the permission in writing of the proper office. It is also a fact that at the time of removal of goods M/s Hindalco did not pay the applicable IGST which was effective from 01.07.2017 however the same was paid on 28.08.2017. Therefore, the appellant being a custodian has contravened the provisions of Regulation 6(f) and 6(q) of HCCAR, 2009 for this offence the*

> *penalty is provided under Regulation 12(8) of HCCAR 2009 reproduced below:*
>
> > *'(8) If any Customs Cargo Service provider contravenes any of the provisions of these regulation, or abets such contravention or who fails to comply with any provision of the regulation with which it was his duty to comply, then, he shall be liable to a penalty which may extend to fifty thousand rupees."*
>
> *From the above Regulation 12(8) it is seen that the penalty of 50,000/- is maximum one which was imposed by the adjudicating authority. However, considering the overall facts and circumstances of the case, I am of the view that the appellant though violated the Regulation but it was not intentional, particularly when the levy of IGST came into effect on the same day i.e. 01.07.2017. Considering this position, I am of the view that a lenient view has to be taken, hence, I reduce the penalty from Rs. 50,000/- to Rs. 10,000/-. Accordingly, the appeal is partly allowed in above terms."*

4.3 Years after of culmination of proceedings against DHIL the impugned proceedings were initiated against the appellant by issue of SCN dated 18.08.2021. It is noticed that the appellant in the appeal memorandum stated that, it was general practice for 13 years that out charge was issued on the same day of arrival of vessel and unloading of cargo of cargo was done immediately. It has been stated that even on holidays, the officer boarded the vessel and granted orders for entry inwards and requisite out of charge order was passed the very next day. From the facts of the case it is apparent that what happened in the instant case was a matter of regular practice. It was not as if the revenue was not aware that goods cannot be stored in jetty and have to be directly transferred to the factory premises. It all happened with the concurrence of the revenue and under close supervision. The entire IGST and interest thereon stands paid by appellant. The process of payment of IGST and interest was initiated by appellants themselves. In these circumstances initiating penal proceeding and invocation of extended period against the appellant is totally un-warranted.

4.4 In the instant case, the goods have been confiscated though the same was not available for confiscation. The goods were cleared in 2017 and the same must then consumed immediately thereafter in the factory of the appellant. The notice was issued in the year 202 seeking confiscation. The impugned order confiscates the goods and imposes redemption fine of Rs. 15 crore. The issue is very clear larger Bench of Tribunal in the case of M/s. Bhagyanagar Metals Ltd- 2016 (333) ELT 395 has held as follows:

> *"47. Further, learned Counsel pleaded that the fine is payable, if at all, only on redemption of goods. Here there is neither a seizure nor provisional release under bond and, hence, the question of payment of redemption fine either to release the goods or in terms of the bond does not arise. We find that there can be no redemption fine in the absence of any seizure or provisional release of such seizure goods under proper bond. In the present case in the absence of such events, redemption fine imposed is not sustainable."*

4.5 In the instant case also there is no seizure or provisional release of goods. In these circumstances, confiscation and imposition of redemption fine cannot be sustained. Consequently, the order against co-noticee also cannot succeed.

5. In view of above, we do not find any merit in the impugned order. The same is set aside, and appeals are allowed.

(Pronounced in the open Court on 30.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK