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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10375 OF 2013-DB

[Arising out of Order-in-Original/Appeal No KDL-COMMR-39-2012-13 dated 21.11.2012 passed by Commissioner of CUSTOMS-KANDLA]

Blue Ocean Sea Transport **.... Appellant**
Manali Chambers, Sector 1A, Plot No 306,
GANDHIDHAM, GUJARAT

VERSUS

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

WITH

(i) CUSTOMS Appeal No. 10393 of 2013 (Zee Shipping Services)
(ii) CUSTOMS Appeal No. 10430 of 2013 (Adani Enterprises Limited)
(iii) CUSTOMS Appeal No. 10431 of 2013 (Chandan Prasad Samaiyar)
(iv) CUSTOMS Appeal No. 10432 of 2013 (Jaisu Shipping Company Pvt. Limited)
(v) CUSTOMS Appeal No. 10468 of 2013 (M/s. Link Enterprises)
(vi) CUSTOMS Appeal No. 10143 of 2016 (Blue Ocean Sea Transport)
(vii) CUSTOMS Appeal No. 10144 of 2016 (Dushyant Patel)
(viiii) CUSTOMS Appeal No. 10145 of 2016 (World Link Tc Bond Store)
(ix) CUSTOMS Appeal No. 10351 of 2016 (Zee Shipping Services)

APPEARANCE :

Shri JC Patel, Shri Sudhanshu Bissa, Advocates, Shri Vikas Mehta, Consultant, Shri Amit Laddha, Shri Rahul Gajera, Shri PD Rachchh, Advocates for the Appellant
Shri Rajesh Nathan, Assistant Commissioner, (AR) and Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 29.11.2023/ 22.12.2023
DATE OF DECISION: 09.04.2024

FINAL ORDER NO. 10788-10797/2024

RAMESH NAIR :

These appeals are filed against the Order-in-Original No. KDL/COMMR/39/2012-13 dated 21.11.2012 and KDL/COMMR/PVRR/12/2015-16 dated 30.09.2015. Being involved common issue, all the appeals are taken up together for disposal. The table below gives details of appeals.

Sl. No.	Appeal No.	Name of Appellant	O-I-O No. & date	Custom duty Demand	Penalty
1.	C/10430/ 2013	M/s Adani Enterprises Ltd.	KDL/COMMR/39/ 2012-13 dated 21.11.20212	Rs. 4,89,86,290/-	1. Rs. 1,75,00,000/- [u/s 112(a) of the Customs Act, 1962] 2. Rs. 1,75,00,000/- [u/s 114(ii) of the Customs Act, 1962] 3. Rs. 1,50,00,000/- [u/s 114AA of the Customs Act, 1962]
2.	C/10431/ 2013	Shri Chandan Prasad Samaiyar	KDL/COMMR/39/ 2012-13 dated 21.11.20212	-	. Rs. 10,00,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs. 10,00,000/- [u/s 114(ii) of the Customs Act, 1962] 3. Rs. 10,00,000/- [u/s 114AA of the Customs Act, 1962]
3.	C/10432/ 2013	M/s Jaisu Shipping Company Pvt. Ltd.	KDL/COMMR/39/ 2012-13 dated 21.11.20212	-	1. Rs. 50,00,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs. 50,00,000/- [u/s 114(ii) of the Customs Act, 1962] 3. Rs. 50,00,000/- [u/s 114AA of the Customs Act, 1962]
4.	C/10468/ 2013	M/s. Link Enterprises	KDL/COMMR/39/ 2012-13 dated 21.11.20212	-	1. Rs. 25,00,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs. 25,00,000/- [u/s 114(ii) of the Customs Act, 1962] 3. Rs. 25,00,000/- [u/s 114AA of the Customs Act, 1962]
5.	C/10375/ 2013	Blue Ocean Sea Transport	KDL/COMMR/39/ 2012-13 dated 21.11.20212	-	1. Rs. 25,00,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs. 25,00,000/- [u/s 114(ii) of the Customs

					Act, 1962] 3. Rs. 25,00,000/- [u/s 114AA of the Customs Act, 1962]
6.	C/10393/ 2013	Zee Shipping Services	KDL/COMMR/39/ 2012-13 dated 21.11.20212	-	1. Rs. 1,00,00,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs.1,00,00,000/- [u/s 114(ii) of the Customs Act, 1962] 3. Rs. 50,00,000/- [u/s 114AA of the Customs Act, 1962]
7.	C/10145/ 2016	World Link Te Bond Store	KDL/COMMR/PV RR/12/2015-16 dated 30.09.2015	Rs. 99,23,292/-	Rs.99,23,292/- [u/s 114AA of the Customs Act, 1962]
8.	C/10143/ 2016	Blue Ocean Sea Transport Ltd.	KDL/COMMR/PV RR/12/2015-16 dated 30.09.2015	-	1. Rs. 12,50,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs.12,50,000/- [u/s 114(ii) of the Customs Act, 1962]
9.	C/10144/ 2016	Dushyant Patel	KDL/COMMR/PV RR/12/2015-16 dated 30.09.2015	-	1. Rs. 5,00,000/- [u/s 112(a) of the Customs Act, 1962] 2. Rs.5,00,000/- [u/s 114(ii) of the Customs Act, 1962] 3. Rs. 10,00,000/- [u/s 114AA of the Customs Act, 1962]
10	C/10351/ 2015	Zee Shipping Services	KDL/COMMR/PV RR/12/2015-16 dated 30.09.2015	-	1. Rs. 12,50,000/- [u/s 112(b) of the Customs Act, 1962] 2. Rs.12,50,000/- [u/s 114(ii) of the Customs Act, 1962]

2. Briefly, the facts of the present case are that M/s Adani Enterprise Ltd. (M/s AEL) and M/s World Link TC Bond Store (M/s World Link) were engaged

in the activities of import of High Speed Diesel, Furnace Oil etc. M/s AEL and M/s World Link were importing the HSD, Furnace Oil and getting the same Warehoused in terms of Section 58 and Section 85 of the Customs Act, 1962 for re-export thereof including for supply to the foreign going vessels in respect of which they used to file undertaking in terms of Section 59 of the Customs Act, 1962. The warehousing of imported bunker fuel was done in the registered Warehousing Tanks, duly authorized in terms of the Section 58 of the Customs Act. M/s AEL and M/s World Link was regularly showing supply/export of the Furnace Oil and HSD as bonded bunker to the foreign going vessels at various ports of Gujarat under the various shipping bills filed at the Customs House, Kandla and Mundra port and SEZ, such supplies were made under the procedure of Bond to Bond transfer under the supervisions of the Customs Officers. On receipts of the intelligence that M/s AEL and M/s World Link were engaged in the diversion of the Bonded Bunkers in the guise of supply to the foreign going vessels at various ports such as Sikka, Bedi, Vadinar, Pipavav etc. Intelligence also indicated that M/s Zee Shipping Services had arranged supply of bunkers. The office premises of the appellants were visited and searched by the DRI officers and relevant records relating to supply of bunkers were withdrawn therefrom. Office premises of M/s. Zee Shipping Services, were also searched and records relating to supplies of bunkers were resumed under Panchanama. Statements of various persons like Shri Rakesh Barai and Shri Manoj Khona, Partner of M/s Zee Shipping Services, Shri Dushyant Patel, partner of the M/s World Link, Shri Chandan Prasad Samaiyar, Head of Bunkering of M/s AEL, Shri Rajesh Tarachandani, Senior Manager, Operation M/s AEL, crew members of the barge Hope Island & Hope Island –II owned by M/s Blue Ocean Sea Transport Ltd., employee of shipping agents who had filed Export General Manifest after departure of vessels to which stores was supplied by the appellants and customs officers recorded. After the detailed investigation it appeared that M/s World Link, 1467.710 MT. furnace Oil and 239.940 MT. HSD and M/s AEL 7160.433 MT. of Fuel Oil and 1278.56 MT. of HSD covered by various shipping bills filed by the them have not supplied/ exported to the declared vessel but were diverted / illegally supplied.

3. Accordingly detailShow cause notices were issued to the appellants proposing confiscation of goods; recovery of Customs duty and imposition of penalties. After due process of law, the said show cause notices were

adjudicated vide above impugned orders wherein the demands were confirmed and penalties were imposed on appellants. In the matter of M/s World Link we also noticed that, Appellants approached the Tribunal and vide order No. A/11395-11397/2013 dated 24.10.2023 the matter was remanded by the Tribunal to the adjudicating authority. Subsequent to the remand, the Ld. Adjudicating authority in *denovo* adjudication vide impugned order again confirmed custom duty demand and imposed penalties on the Appellants. Hence the all the appellants are once again before the Tribunal.

4. Shri Shri Vikas Mehta, learned Consultant appeared for the appellant M/s World Link and submits that export of goods covered by the shipping bills were duly certified by the Customs Officers at the port of export. Further during the investigation, statements of all officers of Customs at port of exports were recorded by DRI and none of them have stated that they had erroneously certified the delivery (export) of the goods to the Master of the vessels named in the Shipping Bills. Hence, demand is not sustainable. He placed reliance on following judgments:

(i) Marvel Apparels Vs. Commissioner of Customs, Trichy - 2008(227)ELT 243 (Tri. Chennai)

(ii) Reliance Industries Ltd. Vs. Commissioner of Central Excise, Bombay 2006(199) ELT 681 (Tri. Del.)

5. He also submits that in the present matter there is no positive evidence in the form of statement or documents to show that the goods covered by the shipping bills were diverted to any place/person/vessel instead of being supplied to the vessel declared in the Shipping Bills filed by the Appellant.

6. He further submits that Ld. Adjudicating authority has completely erred in failing to appreciate that the appellant were not acting as the shipping agent for the vessel and therefore, they were not under statutory obligation to file the Export General Manifest under the Export Manifest (Vessels) Regulations, 1976. Therefore, it cannot be held that the goods were not supplied to the vessel declared in the Shipping Bills on the ground that respective Export General Manifest Filed by the Shipping Agent did not contain the copy of the aforesaid Shipping Bill.

7. He also submits that Shri Dushyant Patel has nowhere admitted in his statement dated 01.04.2009 that goods covered by Shipping Bill No. 2314 dated 19.12.2009 were not supplied to the vessel MT Marilee but were diverted. Further Shri ManojKhona has also nowhere admitted in his statement dated 26.05.2011 that goods covered by the said shipping bills were diverted.

8. He also argued that Shri Dushyant Patel has nowhere admitted in his statement dated 10.09.2008 that the quantity of the stores supplied was not tallying with the Oil Record Book of the barge, as observed by the Ld. Adjudicating authority. Further, Shri ManojKhona has also nowhere admitted in his statement dated 26.05.2011 that the subject supplies were under shadow, as observed by the Ld. Adjudicating authority.

9. He further submits that Ld. Adjudicating authority has completely erred in placing reliance on the statement of Shri Amit Dingwani, an employee of M/s Blue Ocean Sea Transport Ltd., to the effect that he had put the signatures as “Chief Engineer/ Master” of the recipient vessel inasmuch as the same has not been corroborated by the Chief Engineer or Master of any vessel. The signatures of Customs officers on the shipping bills certifying the fact of supply to the designated vessel have not been held as false or forged. Therefore, reliance placed by the Ld. Adjudicating authority on the alleged act of Shri Amit Dingwani is completely misplaced.

10. He also submits that Ld. Adjudicating authority has erred in failing to consider that the warehouse bonds executed by the appellant under Section 59 of the Customs Act, 1962 at the time of import i.e at the time of warehousing the goods and the transit bonds executed by the appellant at the time of export i.e filing of Shipping Bills have also been cancelled by the competent authority on the basis of documentary evidences submitted by the appellant at the material time. The impugned order does not cite any positive evidence in the form of statement or document to prove that the goods under consideration were diverted to any other place/ person/ vessel instead of being supplied the vessel declared in the Shipping bills filed by the appellant. In absence of this, the demand of import duty on the said goods on the ground that the same were not supplied to the foreign going vessels,

is not sustainable. Further, no verification has been caused with the owners of the vessels who had ultimately borne the expenses of bunkers supplied to their vessels.

11. He further submits that Appellant was permitted to import HSD under Customs bond without an import licence. At the material time, the appellant had declared that HSD was to be supplied as stores to vessels without payment of import duty. In keeping with the declaration made at the time of import, the appellant never marketed the HSD for sale in India or for any other purpose but supply as stores to the vessels. In respect of HSD covered by the 5 shipping bills, the appellant received the order for supply of HSD to the foreign going vessel from M/s. Zee Shipping Service, who provided all the details that were required for supply of the goods to the concerned vessels. Accordingly, the appellant filed the shipping bills with Customs House, Kandla clearly declaring the name of the destined foreign vessels. The goods were never handed over to M/s. Zee Shipping Service but were supplied by the Appellant directly to the foreign going vessel by filing shipping bill and executing warehousing bond and transit bond with custom House, Kandla , where the goods were permitted to be imported. Appellant also submitted the documentary evidence in the form of shipping bills bearing the signatures of the customs officers of Kandla (Port of loading) and Sikka (Port of supply) in testimony of the fact that goods were duly supplied to the foreign going vessels and were never marketed or sold or diverted to any purpose other than the purpose declared under Section 85 of the Customs Act, 1962. Therefore, once stores were duly supplied to the foreign going vessels, demand of import duty on the same is not sustainable in the eyes of the law. Further, neither show cause notice nor the impugned order cite any express prohibition laid down in the extant Foreign Trade Policy where imported stores cannot be exported through a merchant exporter.

12. He also argued that Ld. Adjudicating authority has neither cited any specific entry in the Oil record books of supply barge nor cited any specific evidence gathered from the author of such record to hold that goods were diverted to any other vessel and not the one declared in the Shipping Bill filed by the Appellant.

13. Shri Shri JC Patel learned Counsel along with Shri Amit Laddha, Shri Sudhanshu Bissa, Shri Path Rachchh advocates appearing on behalf of the Appellant M/s Adani Exports Ltd. submits that clearance of the Bunkers from Bonded tanks at Kandla/Mundra Ports/ Mundra SEZ, their transportation to and receipt at the ports of Sikka, Bedi, Pippavav or Vadinar, where the foreign going vessels were stationed and taking of the bunkers on board the foreign going vessels stand duly established by the shipping bills assessed by the customs officers at Kandla and Mundra, the endorsements on the reverse of shipping bills, issuance of landing certificates and discharge of transit bonds. Accordingly, the shipping bills duly assessed by customs officers at Kandla and Mundra, the endorsement "allowed for shipment" on the reverse of the shipping bills by the Customs officer at the ports where the foreign going vessels are stationed, endorsement of received on board the vessel by the customs inspector and master of the vessel, Landing certificate signed by the customs inspector and master of the vessel and discharge and cancellation of the Transit Bonds duly establish that the Bunkers after clearance from Bonded Tanks have been taken on board the foreign going vessels in accordance with Section 88 read with Section 69 of the Customs Act 1962 and are therefore no duty is payable.

14. He argued that the impugned show cause notice proposed to demand duty on the Bunkers supplied to the Foreign Going Vessels on the ground that there was no "Let Export Order" under Section 51 of the Customs Act 1962 in respect of the said Bunkers. However the said contention is totally misconceived inasmuch as the supply of Bunkers (Stores) to foreign going vessels is governed by the provision of Section 88 read with Section 69 of the Customs Act 1962 and not by Section 51 of the said Act. Section 88 provides that the provisions of Section 69 and Chapter X shall apply to store as they apply to other goods, subject to the modification that for the words "exported to any place outside India" or the word "exported", wherever they occur, the words "taken on board any foreign going vessel or aircraft as store" shall be substituted. The effect of the said Section read with Section 69 is that Bunker (Store) which are warehoused in Bonded Tanks, may be taken on board by any foreign going vessel without payment of import of duty if shipping bill is filed and order for clearance for taking the same on board such vessel is assessed. Accordingly, the order contemplated by

section 88 read with Section 69 is not order for export, but is order for taking the bunkers on board of the foreign going vessel. There is therefore no question of "Let Export Order" under Section 51, but what is contemplated is permission to take the bunkers on board the vessel. Such permission has been duly endorsed by the proper officer on the reverse of the shipping bill with the words "Allowed for shipment" and upon receipt of the Bunkers on board and vessel, the same is also endorsed by the Customs Officer.

15. He also submits that the Ld. Adjudicating authority in impugned order proceeded on the basis that in case of some shipping bills, the bunker supplied were not reflected in the EGM filed by the vessels and on that basis he has concluded that the bunkers were not supplied to the vessels. The said approach and finding of the Ld. Commissioner is totally misconceived and untenable in law. It is an admitted and undisputed fact that the shipping bills on the reverse carried the endorsement of the Customs Inspector and Master of the vessel that the bunkers were received on Board the vessel and the Landing Certificate also certify the same and the transit bonds are also discharged and cancelled. That being so, it stands established that the Bunkers were taken on Boards the foreign going vessels. If thereafter, there was any lapse on the part of the Master of the vessel in not mentioning the said Bunkers in the EGM, that cannot result in any duty liability on the appellant. The Appellant's liability ends once the Bunkers are received on board the foreign going vessel and the Appellant is in no way responsible if thereafter the Master of the vessel does not mention the same in the EGM filed for the vessel. The department has not recorded a single statement of any master of the vessel and not sought the master's explanation for not mentioning the bunker in the EGM of the vessel despite the master having endorsed receipt of the bunker on the vessel on the reverse of the shipping bill and in the Landing Certificate.

16. He further argued that the contention in the show cause notice which is relied upon by the Commissioner that the Master of the Barge which carried the Bunkers has stated that there were mistake in the Oil record book of the Barge, this cannot be a ground for holding against the Appellant that the Bunkers were not supplied to the foreign going vessels and were diverted. Once the receipts of the Bunkers on board the foreign going

vessels is confirmed and endorsed on the shipping bills and certified by the landing certificate duly signed by the Customs Officers and the Master of the Vessel, any alleged discrepancy/ mistake in the Oil record books maintained by the Barge is irrelevant as far as the Appellant is concerned. Such Oil record books maintained by a third party cannot override and dislodge the Shipping Bills and Landing Certificates duly signed by the Customs Officer and the Master of the vessel. It is settled law that such third party record or the mistakes therein cannot be relied upon to make out a case for duty demand against the assessee. He placed reliance on following judgments.

(i) CCE Vs. Garg Industries Pvt. Ltd. – 2023 (385)ELT 541

(ii) Bajrangbali Ingots & Steel P. Ltd. Vs. CC -2019(1) TMI 966

(iii)CCE Vs. Vishnu and Co. -2016(332)ELT 793 (Del.)

(iv)Taksus Steels Pvt. Ltd. Vs. CCE -2015(329)ELT 859

(v) Rama Shyama Papers Ltd. Vs. CCE -2004(168) ELT 494

(vi) Rutvi Steel and Alloys Vs. CCE – 2009 (243)ELT 154

(vii) Sunhill Ceramics Pvt. Ltd. – 2007(217)ELT 353

17. He also submits that there is absolutely no evidence whatsoever that the Bunkers were diverted elsewhere and were not taken on board the foreign going vessels. There is not a single statement of any person to the effect that the Bunkers were diverted elsewhere and were not taken on board the foreign going vessels. There is not a single buyer who is identified as recipient of the alleged diversion of the bunkers or any evidence of any payment received by the Appellant from such buyer. There is not a single statement of any of the owners of the Tanker-Truck or the barges in which the bunkers were transported from Kandla and Mundra about any diversion on the way. In the absence of any such evidence and when the receipt of the bunkers on board the foreign going vessels is duly endorsed by the Customs Officers and the masters of the vessels on the shipping bills and in the landing certificate, no case is made out for demanding duty or for holding the bunkers liable to confiscation or for imposition of penalty. He placed reliance on following judgments.

(i) Siddhnath Shipping & Shakti Forwarders Pvt. Ltd. Vs. CCE -2023 (2) TMI 1039

(ii) Sainath Industries Vs. CCE -2003(9)TMI 1189

(iii) CCE Vs. Garg Industries Pvt. Ltd. -2023(385)ELT 541.

18. Shri Shri Rajesh Nathan, Assistant Commissioner, (AR) and Shri Sanjay Kumar, Superintendent (AR) appearing on behalf of revenue reiterates the findings of impugned orders.

19. We have carefully considered the submissions made by both the sides and perused the records of the case. We find that the case of the department is that M/s AEL and M/s World Link in connivance with M/s Zee Shipping Services, M/s Blue Ocean Sea Transport Ltd, Jaisu Shipping Company Pvt. Ltd. and Messrs Link Enterprise, imported duty free Furnace Oil & HSD Fuel Oil under warehouse procedure and same was illegally supplied under the guise of "Export" to "Stores" on Foreign Going Vessel". The case of the revenue is that although the goods were taken out of charge "Ex-Bond" successfully yet the same was not supplied to any "Foreign Going Vessel" and diverted elsewhere.

20. Before going to decide the present matter it is important to discuss the procedure to be followed for duty free import of bunker, its warehousing and subsequent supply on ship store. We find that for the purpose of causing import and subsequent warehousing of Furnace Oil and HSD, importers are filing warehousing bond/undertaking in terms of Section 59 of the Customs Act, 1962 subscribing the declaration that the imported bunker fuel would be exported in the form of supply to vessels under foreign run. Hence on execution of the Warehousing Bond by the importers, such Furnace Oil and HSD are allowed to be warehoused in terms of Section 85 of the Customs Act, 1962 without payment of duty subject to compliance of the undertaking filed by them under Section 59 of the Customs Act, 1962. Because of the reason the imported stores may be consumed on board a foreign going vessel or aircraft, under Section 87 of the Customs Act, 1962 the export/supply of Bonded Bunker is shown to be made by importers, on strength of the Shipping Bill meant for "Export of Duty Free Goods Ex-Bond", under Section 69 of the Customs Act, 1962 applied for ship store supply to foreign going vessels, in terms of provisions of Section 88 of the Customs Act, 1962. The export/supply of the bonded bunkers to the foreign going vessels is also made by the importers by employing the tanker trucks as well as the Bunker Barges. On Custom's clearance of the Shipping Bills filed

by importer for supply of Bonded Bunker, the examination of the bunker is carried out and then Let Export permission is granted by the concerned Superintendent of Customs in terms of Section 51 of the Customs Act, 1962 and then loading into the Tanker Trucks or Bunker Barges is made in presence of the Customs and then supply to intended vessels at the port of supply is also to be made in presence of the Customs officer of the local customs house at the port of supply in terms of Section 34 of the Customs Act, 1962. The endorsements to the effect of the examination of bunker, Let Export, loading of bunker and then supervision of supply to intended vessels are made by the concerned Customs officers respectively, at the reverse of the Shipping Bills. After supply of bunker to the vessels is complete, the Master or the Chief Engineer of the recipient vessel would endorse the shipping bill at the reverse side to the effect of 'shipped in full' in the column meant for 'Content Received on Board', and the supervising Customs officer would endorse the S/B at the reverse side in the column 'Date of Shipment'. Thereafter once the recipient vessel sailed from the port, the duplicate Shipping bill (in original) showing receipt of bunker is filed/incorporated in the EGM, and such bunker receipt is shown/entered in the prescribed column of EGM in terms of Regulation 3 of the Export Manifest (Vessels) Regulation, 1976. The Original Shipping Bill is retained by the Customs House, where the same is filed and the triplicate retained and maintained by the bunker supplier. We find that the above procedure for supply of bonded bunker to any foreign going vessels are legally and statutorily mandatory as provided by the relevant Sections of the Customs Act, 1962.

21. In the present disputed matter department alleged that the Bunkers so cleared by the Appellants during the impugned period under cover of various shipping bills were diverted and illegally supplied in contravention of the provisions of the Customs Act. 1962. We find that revenue during the investigation Bunker Supply documents consisting of the photocopies of Shipping Bills, Short Shipment Notices, Sale contract and Warehousing Bonds/ undertaking etc. were called and recovered from the Appellants. Besides the documents like Shipping Bills, related to bunker supplies and EGM of the recipient vessels were also called for from the Customs Houses of the Ports of Supply where the supplies were shown having been made to the vessels by the Appellants. The documents like Log Book (LB) and the Oil Records Books of Bunker Barges shown having used in the transportation

were also called for from the Barge owners/ Operators and details of all bunkers supplies made through barge Zee-II were called for from M/s Zee Shipping Services and others. Further the details regarding schedules and bunker status of the recipient vessels, at the port were also called from the Shipping Agent during their respective statements by the revenue. All the documents and details later examined and verified to ascertain the supplies whether actually made by Appellants or not.

22. We find that the Shipping Bills filed at the Ports, wherein the Consignee is shown as the Master of the Foreign Going Vessels to whom the supply is to be made, were duly assessed by the proper officers of Customs at Kandla, Mundra and others ports where the Bonded tanks is located. This is evident from the fact that on Shipping Bills, bear the signatures of the Customs Officers, who assessed the Shipping Bills. Documentary evidences like acknowledgment by the Master of the vessel, acknowledgment by the Customs officers who escorted bunkers and supervised delivery to the Ships etc. produced by the Appellants clearly established that Bunkers covered under each of the Shipping Bills were supplied to the Foreign going vessels. During the investigation the Customs officers also in their respective statements recorded under Section 108 of the Act nowhere stated that the Appellants have not supplied the disputed goods to the Foreign going vessels. Customs officers whose statements were recorded by the investigating officers have also confirmed the fact of the concerned bunkers having been supplied to foreign going vessels under their supervision and they have singed/counter singed/endorsed the documents.

23. We find that if bunkers were diverted i.e they were not supplied to the forging going vessels then it was a case of clandestine removal of bunkers which had to be proved by the department by adducing cogent and reliable evidences for establishing actual clandestine removal and delivery of such disputed bunkers to other persons. But there is no such case nor any evidence by the department for actual diversion of the bunkers were produced on records. We agree with the arguments of the appellant that diversion of duty free goods in clandestine manner being a serious charge which has to be proved by the department by adducing cogent and reliable evidence of independent nature. The case made out by Revenue cannot be

sustained in the absence of evidence showing diversion of the duty free imported goods to other persons or in the local markets. In the entire investigation no persons of the appellant admitted that the disputed goods were not supplied to the foreign going vessels, further department nowhere recovered any documents from the business premises of the appellants by which it can be established that the Appellants have diverted the goods. Not a single customer is brought on records who received the diverted goods. No documentary evidence is produced in the form of transport receipts, delivery challans or any other documents relating to alleged clandestine removal of disputed goods. No evidence was produced regarding the receipts of payment against the alleged diverted goods. No transporter or any person are brought on records who has transported the disputed goods elsewhere. Admittedly, no such evidence has been produced by Revenue. However, the case of diversion of Bunkers in the present matter is confirmed by the Ld. Adjudicating authorities without any such evidences which are legally not correct in the eyes of the law.

24. We find that in the present matter the demand is confirmed by the Ld. Adjudicating authorities in respect of the Shipping Bills on the ground that the EGM's filed by the vessels do not reflect the receipts of the Bunkers as supplied by the Appellants by virtue of the said Shipping Bills. In this regard we find that EGM is a document that is prepared by the Master of the Vessel or the Shipping agent and filed with the proper officers at the time of departure or within 7 days from the date of departure. However on this basis only duty liability cannot be confirmed against the Appellant. In the present disputed matter we find that in respect of the all the shipping bills appellants have duly recovered the consideration for the bunker supplied to recipient vessels. Despite the EGM not mentioning the receipt of bunkers, the owner of the recipient vessels has duly made payment for the said bunkers. The Appellants had submitted other documentary evidences to substantiate the supply of the bunkers. Shipping Bills on the reverse carried the endorsement of the Customs officers and master of vessel that the Bunkers were received on Board the vessel and the Landing Certificate also certify the same and the transit bonds are also discharged and cancelled. We also noticed that Appellants do not exercise an iota of control in the preparation and filing of the EGM. The said EGM was document which was prepared and submitted by the Chief Engineer of the vessel. Appellant's liability ends once the

Bunkers are received on board the foreign going vessels. We notice in support of the above allegation department has not recorded the single statement of any Master of the vessel who could explain not mentioning the bunker detail in the EGM of the vessel despite having endorsed receipt of the bunker on the vessel on the reverse of the shipping bill and in the landing certificate. For any such lapse in the practice followed by the vessel and the customs, the Appellants cannot be held liable. We find that the goods involved in all cases were examined and cleared for 'Foreign Going Vessel' in terms of the Section 88 read with Section 69 of the Customs Act 1962. Goods were loaded on the vessel and the concerned officers who examined the goods and issued let export order confirmed in cross examination that they had made the report/order on the dates appearing in the Shipping Bill(s). In such circumstance, we cannot support a finding contrary to the official records of the Custom Department. It is not established that the officers had predated their signatures on the Shipping Bills. Moreover, it is on record that sale proceeds against the supply of goods were received. Under these circumstances the finding of the Ld. Adjudicating authorities that the impugned goods had not been supplied to "Foreign going vessels' and diverted elsewhere cannot be sustained. The entire case was based on the error and mistake in some documents but no physical movement or diversion could be established by the department. In this fact, the demand of customs duty is not sustainable.

25. Since we have decided the matter on merit, we are not going into other grounds raised by the Appellants.

26. As regards penalties imposed upon other co-appellants, we find that the evidences on record clearly point out that M/s AEL and M/s World Link supplied the goods to foreign going vessels and there is no diversion of the disputed goods elsewhere as alleged by the department. In such circumstances we do not find any merit in the impugned orders imposing the penalties on the co-appellants.

27. As per the our above discussion and findings, we are of the considered view that the impugned orders are liable to be set aside and accordingly the

impugned orders are set aside. Appeals filed by the appellants are allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 09.04.2024)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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