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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10825 of 2021- DB

(Arising out of OIO-AHM-CUSTM-000-COM-001-21-22 dated 30.06.2021 passed by Principal Commissioner of Customs, Ahmedabad)

Central Warehousing Corporation **........Appellant**
A Govt. Of India undertaking,
Regional Office-Ahmedabad
Mahalaxmi Char Rasta, Paldi,
Ahmedabad-Gujarat-380007

VERSUS

C.C. – Ahmedabad **......Respondent**
Custom House,
Ahemedabad-Gujarat

APPEARANCE:
Shri Dhaval Shah, Advocate for the Appellant
Shri R.R. Kurup, Authorised Representative for the Respondent

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

FINAL ORDER NO. 12232 /2024

DATE OF HEARING: 25.06.2024
DATE OF DECISION: 27.09.2024

RAJU

This appeal has been filed by Central Warehousing against demand of Customs duty in respect of goods destroyed while there were warehoused.

2. Learned counsel for the appellant pointed out that the appellants are engaged in providing warehousing facilities to importers and exporters. He pointed out that there was a fire in the warehouse and certain goods were lost. The appellant paid the duty involved in respect of such goods. However a show cause notice was issued seeking to demand interest and penalty in terms of the Warehousing (Custody and Handling of Goods) Regulation 2016. He pointed out that the appellant had voluntarily paid the duty involved in the goods lost while they were being warehoused.

2.1 Learned counsel pointed out that the impugned order is illegally as the same has been passed without any jurisdiction and any authority of law. He pointed out that section 28(1) of Customs Act, 1962 empowers the officers to issue a notice for duty and interest within a period of two years provided the proper officer provides pre-notice consultations to the person chargeable with duty and interest. He pointed out that there were no pre notice consultations with the appellant which is a statutory pre-condition for issuing demand show cause notice and therefore the said notice is void ab-initio. Learned counsel further pointed out that the show cause notice is issued beyond the limitation period of two years under Section 28(1) of the said Act. He further argued that in terms of Section 28(1), the notice can only be issued to the person chargeable with duty or interest. He argued that the appellant is not the importer and therefore, he cannot be held to be the person chargeable with duty or interest as provided under Section 28(1) of the Customs Act. Learned counsel further argued that section 73(A) is not applicable to the instant case. He pointed out that only when warehoused goods are removed in contravention of Section 71 the licensee becomes liable to pay duty interest, fine and penalties. He pointed out that in the instant case, the warehoused goods were not removed at all but were lost in fire and therefore, section 73(A) cannot be invoked to impose any duty, interest, fine or penalty. He pointed out that Revenue has failed to give any evidence that the goods were removed from the warehouse in contravention of section 71 of the Act.

2.2 Learned counsel further argued that the impugned order wrongly invokes deeming provision by treating the goods lost in fire as deemed removal. Learned counsel argued that word removal or removed has great significance in the context of goods stored in a warehouse. He pointed out that removal of goods in contravention of section 71 is a serious offence under Customs Act, 1962 while the burning of goods due to accident cannot be treated as any offence or deemed removal unless there are specific provisions in law.

2.3 Learned counsel further argued that impugned order has erred in holding that since the title of goods was relinquished by the importer and the application for remission of duty under Section 23 was not allowed as the appellant did not request the competent authority for the said remission. Learned counsel pointed out that there is no relinquishment to the title of the goods as no documents showing any relinquishment to the title of the goods has ever brought to the notice of the appellant. There is no mention of any relinquishment in the show cause notice and the mention of said relinquishment of title to the goods is an error on the part of the adjudicating authority. He argued that in terms of Section 23(2) of the Customs Act, the relinquishment of title could happen only before the goods are warehoused. The customs authority could not have been allowed relinquishment of the title after the goods have been warehoused.

2.4 Learned counsel argued that the adjudicating authority has erred in confirming the levy of interest under Section 73A read with Section 28(1) of the Customs Act, 1962 as there is no demand of duty sustainable under Section 73A read with Section 28(1) of the Customs Act, 1962. Learned counsel further argued that in terms of regulation 4(a) and 4(c), the appellant has already paid an amount of 2,76,52,609/-. The regulation 4 of the Public Warehouse License Regulation 2016 read as under:

> "4. Conditions to be fulfilled by applicant. Where, after inspection of the premises, evaluation of compliance to the conditions under regulation 3 and conducting such enquiries as may be necessary, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that licence may be granted, he shall require the applicant to,-
>
> (a) provide an all risk insurance policy, that includes natural calamities, riots, fire, theft, skillful pilferage and commercial crime, in favour of the President of India, for a sum equivalent to the amount of duty involved on the dutiable goods proposed o be stored in the public warehouse at any point of time;
>
> (b) provide an undertaking binding himself to pay any duties, interest, fine and penalties payable in respect of warehoused goods under sub-section (3) of section 73A or under the Warehouse (Custody and Handling of Goods) Regulations, 2016;
>
> (c) provide an undertaking indemnifying the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, from any liability arising on account of loss suffered in respect of warehoused goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, delivery, storage, despatch or handling; and
>
> (d) appoint a person who has sufficient experience in warehousing operations and customs procedures as warehouse keeper"

Learned counsel argued that the impugned order has misinterpreted the provisions of regulation 4(c) in the present case. He pointed out that they had submitted undertaking as per conditions of the regulation to indemnify the Commissioner against any liability arising on account of loss suffered in respect of warehoused goods due to accident, damage, deterioration, destruction or any other natural cause. Learned counsel pointed out that no such liability arising on account of loss suffered against the Commissioner of Customs has been pointed out in the order. Mere fact that the appellant had paid the custom duty does not put obligation on the appellant to pay interest. He argued that there was no liability or interest on the part of the appellant.

2.5 Learned counsel further argued that there was no allegation that the appellant did not have adequate and sufficient provisions for safety and security of the storage facility in the show cause notice, however the Commissioner has travelled beyond the scope of the show cause notice by holding that the appellant did not have the proper facility for storage of goods. Learned counsel further argued that what has been paid by the appellant is not in the nature of custom duty but was a compensation/ insurance claim by the appellants towards the Custom duty. He argued that demand of interest and imposition of penalties under Regulation 12 is contrary to law.

3. Learned authorized representative relies on the impugned order.

4. We have considered the rival submissions. We find that the facts are not in dispute. The appellants are a custom warehousing station where goods are stored by importers/ exporter before they are exported or cleared from the bonded warehouse. There was a fire in the warehouse resulting in loss of certain goods. The custom duty amount on the goods lost came to Rs. 2,76,52,609/- which was paid by the appellants. The proceedings in the instant case are for recovery of interest on the said amount amounting to Rs. 93,43,881/-. The case for the revenue is based on regulation 4 of the Public Warehouse License Regulations 2016 which reads as follows:

> "4. Conditions to be fulfilled by applicant. Where, after inspection of the premises, evaluation of compliance to the conditions under regulation 3 and conducting such enquiries as may be necessary, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that licence may be granted, he shall require the applicant to,-
>
> (a) provide an all risk insurance policy, that includes natural calamities, riots, fire, theft, skillful pilferage and commercial crime, in favour of the President of India, for a sum equivalent to the amount of duty involved on the dutiable goods proposed o be stored in the public warehouse at any point of time;
>
> (b) provide an undertaking binding himself to pay any duties, interest, fine and penalties payable in respect of warehoused goods under sub-section (3) of section 73A or under the Warehouse (Custody and Handling of Goods) Regulations, 2016;
>
> (c) provide an undertaking indemnifying the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, from any liability arising on account of loss suffered in respect of warehoused goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, delivery, storage, despatch or handling; and
>
> (d) appoint a person who has sufficient experience in warehousing operations and customs procedures as warehouse keeper"

Section 73 A of the Customs Act, 1962 reads as follows:

> **73A. Custody and removal of warehoused goods. -**
>
> "(1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
>
> (2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.

> (3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force."

The Regulations 4 is to be read along with section 73A. Section 73 requires the appellant to pay duty, interest, fine and penalties when the goods are removed from the warehouse in contravention of Section 71. Section 71 of the Customs Act, 1962 reads as under:

> **"Section 71** of the Customs Act states that goods not to be taken out of warehouse except as provided by this Act, No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or (export), or for removal to another warehouse, or as otherwise provided by the Customs Act."

A combined reading of Section 71 and Section 73A clearly shows that it applies to the physical removal of goods from the warehouse.

5. The facts of the case are that there was a fire in the warehouse and consequently goods were lost/ destroyed. The first question raised by the appellant is if such loss/ destruction can be treated as removal in terms of Section 71 and 73A of the Customs Act, 1962. We are of the opinion that the removal in terms of Section 71 or section 73A does not include destruction of goods by way of fire or any other reason. There is no provision in the act or regulations to treat such destruction/ loss on account of fire, is deemed removal. In these circumstances, we are of the opinion that no liability to pay duty or interest would arise under Section 71/73A of the Customs Act, 1962 as in the instant case as there was no illicit physical removal of warehoused goods from the warehouse.

6. The lower authorities have also sought to invoke regulation 4(c) of the Custom Warehousing Regulation, 2016. The said regulation provide for the warehouse keeper to give an undertaking indemnifying the Principal Commissioner of Customs or Commissioner of Customs, as the case may be from any loss arising on account of loss suffered in respect of warehoused goods due to accident, damage, destruction, deterioration or any other unnatural cause during the receipt, delivery, storage despite or handling. It is seen that the said undertaking is to protect the Commissioner of Customs from any liability arising on account of such laws suffered in respect of warehoused goods. In the instant case, the Commissioner has not shown any liability arising on account of such goods. There is no liability of customs duty or interest on the Commissioner of Customs and therefore invocation of clause (c) of Regulation 4 is not warranted in the facts of the case. The impugned order also invokes clause (b) of Regulation 4 of the said regulations. It is

seen that the said clause also invokes section 73 A of the Customs Act. As can be seen from above discussion section 73A applies only when the goods are physically removed from the warehouse improperly. Any loss arising on account of fire or any other natural cause cannot be treated as removal in terms of Section 73A and therefore, the provisions of clause (b) of Regulation 4 are also not applicable to the instant case. From the above discussion, it is apparent that provisions of Section 73A cannot be invoked to recover duty or interest or impose penalty in case where there is loss on account of fire within a bonded warehouse. The impugned order therefore cannot be sustained and is set aside. The appeal is consequently allowed.

(Order pronounced in the open court on 27.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha