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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 11330 of 2016
Customs Miscellaneous (CO) Application No. 10588 of 2016

(Arising out of OIA-JMN-CUSTM-000-APP-240-243-15-16 dated- 14/03/2016 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

C.C.-Jamnagar(prev) ....**Appellant**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

VERSUS

Shantilal Multiport Infrastructure Pvt Ltd ......**Respondent**
City Point, Opp. Town Hall,
Jamnagar, Gujarat

WITH

Customs Appeal No. 11331 of 2016 in Customs Miscellaneous (CO) Application No. 10586 of 2016 (C.C.-Jamnagar (prev) Vs. M/s JM Baxi & Co.)

Customs Appeal No. 11332 of 2016 in Customs Miscellaneous (CO) Application No. 10585 of 2016 (C.C.-Jamnagar (prev) Vs. M/s Ruchi Infrastructure Ltd.)

Customs Appeal No. 11333 of 2016 in Customs Miscellaneous (CO) Application No. 10589 of 2016 (C.C.-Jamnagar (prev) Vs. M/s Shakti Clearing Agency)

Appearance:
Shri G. Kirupanandan, Superintendent (AR) appeared for the Applicant
None appeared for the Respondent

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

Final Order No. A / 11400 - 11403 /2022

DATE OF HEARING: 27.07.2022
DATE OF DECISION: 18.11.2022

RAMESH NAIR

Following four appeals have been filed by the revenue against the impugned Common Order-In-Appeal dated 14.03.2016 passed by the Commissioner (Appeals), Ahmedabad, whereby the dropping of demand of establishment charges ordered by the original authority has been upheld in favour of the respondents.

Appeal No.	O-I-A	Name of Respondent
C/11330/2016	JMN-CUSTM-000-APP-240-243-15-16 dated	M/s Shantilal Multiport Infrastructure Pvt. Ltd.

	14.03.2016	
C/11333/2016	JMN-CUSTM-000-APP-240-243-15-16 dated 14.03.2016	M/s Shakti Clearing Agency
C/11332/2016	JMN-CUSTM-000-APP-240-243-15-16 dated 14.03.2016	M/s Ruchi Infrastructure Ltd.
C/11331/2016	JMN-CUSTM-000-APP-240-243-15-16 dated 14.03.2016	M/s JM Baxi & Co.

1.2 Brief facts of the case are that all the above four respondents applied separately for specific Jetties as 'Landing Place' under section 8(a) of Customs Act, 1962. The said places were declared as 'Landing Place' under Section 8 (a) of Customs Act, 1962 vide different Notification and all four respondents were appointed as custodians under Section 45(1) of Customs Act, 1962 by the Commissioner of Customs, Ahmedabad for unloading of imported goods, loading of export goods and transshipment of goods. Subsequently all the four respondent applied for the approval as "Customs Cargo Service Provider" and were approved as 'Customs Cargo Service Provider" vide different Customs (Preventive) Commissionerate office's letter subject to fulfillment of conditions as specified therein in terms of provisions contained under Handling of Cargo in Customs Act & Regulations, 2009(HCCAR, 2009). Deputy Commissioner of Customs Division, Jamnagar in terms of condition No. 13 of Notifications issued for appointment of respondents as 'Custodians' and as per the regulation 6(1)(0) of HCCAR, 2009 issued individual orders to all the respondents directing them to pay Establishment Charges from time to time by way of issuance of Order to the Respondent periodically. It is observed that since 2010-11 to 2014-15 (Upto May 2014) Establishment Charges have not been paid in full by aforesaid respondents for which in order to recover establishment charges, show cause notices were issued. The adjudicating authority vide Order-In-Original No. 02 to 05/DC/2015-16 dated 28.05.2015 dropped the proceedings of recovery of Establishment Charges and imposition of penalty on the aforesaid four respondents. Aggrieved by the original order, revenue filed appeals before the Commissioner (Appeals), who vide impugned common order-in-appeal rejected the appeals of revenue and upheld the Order-In-Original. Hence, the present appeals by the revenue before us.

2. Shri G.Kirupanandan, Learned Superintendent Authorized Representative appearing on behalf of the Revenue Department, justified the order of the review authority and submits that Ld. Commissioner (Appeals)

has passed the impugned order without appreciating the facts of the case and without understanding the issue involved in the case. The adjudicating authority failed to understand the clarification issued by the Board vide Circular No. 27/2004-Cus dated 06.04.2004. In the present matter all the four respondents were appointed as 'Custodian' by the Commissioner of Customs, Ahmedabad. From the Circular No. 27/2004- Cus dated 06.04.2004, it is understood that the Board has exempted three categories of custodians from payment of cost recovery charges. But at para 2 of the said Circular, it has been mentioned that, the condition and obligation already being discharged by the earlier custodians for such existing air cargo complexes (including courier terminals) or ports should be retained and applied to the new custodians also. Further all the four respondents were appointed as 'Custodian' by the Commissioner of Customs, Ahmedabad. Therefore, as per para 2 of Circular No. 27/2004-Cus dated 06.04.2004, all the four respondents had to continue to discharge the conditions and obligations even after 26.06.2002 and pay establishment charges of the customs staff posted for their respective jetties.

2.1 He also submits that adjudicating authority has failed the take notice to the said respondents had applied for waiver of establishment charges before the Commissioner of Customs, Jamnagar vide their respective applications. The Commissioner, Customs, Jamnagar allowed their application but waived the establishment charges from the date of application. That it is on record that all the respondents had applied for waiver of establishment charges in the month of May/June 2014. Hence the waiver of establishment charges would be effective from their date of application i.e. May/June, 2014, as explicitly intimated to the respondents by the Deputy Commissioner, Customs, Jamnagar. Thus, the waiver granted by the Commissioner, Customs, Jamnagar was prospective in nature and no way it can be given retrospective effect.

2.2 Further he submits that the as per Para 5 (b) and 5(C) of Circular No. 16/2013-Customs dated 10.04.2013, exemption from cost recovery charges shall be prospective and no cost recovery charges should be outstanding. Therefore, the waiver granted by the Commissioner, Customs, Jamnagar was prospective in nature. Also cost recovery charges were outstanding against the respondents. That it is on records that the show cause notices were issued to the said respondents for the period from 2010-11 to May, 2014 whereas the waiver of establishment charges was granted only with effect from May 2014. Thus, the Appellate Authority erred in dropping the demand of establishment charges for the period from 2010-11 to May 2014, ignoring the waiver granted by the Commissioner, Customs, Jamnagar.

3. On behalf of Respondents no one appeared. However we considered their cross-objections filed in this matter.

4. We have carefully considered the submissions made by the learned Authorized Departmental Representative and perused all the records. The limited issue to be decided in present appeals is whether the Respondents are required to pay establishment charges. We have gone through the regulation of HCCAR, 2009 and find that from said regulations it comes out that Customs Cargo Service providers, which were hitherto termed and notified as 'custodians' before issuing of Notification No. 26/2009-Cus (N.T.) dated 17.03.2009 for notifying the HCCAR, 2009, were required to pay the cost of the officers posted there by the Commissioner of Customs ' on cost recovery charges' unless specifically exempted by an order of the Ministry of Finance, Government of India.

4.1 We have gone through the Circular No. 13/2009-CUS dated 23.03.2009 issued by the Central Board of Excise and Customs, Ministry of Finance Government of India. The said circular in clear terms clarifies that payment of cost recovery charges in respect of ports and airport has been exempted for three categories of custodians specified in Circular No. 27/2004- Cus. dated 06.04.2004. To examine whether the custodians which are the respondents in the present matter fall under the exempted categories or not., we also gone through the contents of Circular No. 27/2004 and observed that three exempted categories are:

i. Custodians notified under Section 45 of Customs Act, prior to 26.06.2002 and no change in custodianship or area after 26.06.2002.
ii. Custodians notified prior to 26.6.2002 but part of whole of the same premises transferred (on lease or otherwise) to new custodian on or after 26.06.2002
iii. Custodians notified prior to 26.02.2002 but premises extended after 26.06.2020 under the same custodianship.

4.2 We also perused the individual Notifications under which all the four Respondents were appointed as 'custodians' and we find that all the four were notified as 'Custodians' well before 26.06.2002.

4.3 In view of the Board circular we are of the view that government has exempted the Custodians notified before 26.06.2002 from the payment of 'cost recovery charges'.Therefore, the Commissioner (Appeals) is legally correct in extending the benefit of waiver of establishment charges in this matter.

4.4 We disagree with revenue's contention that all the four respondents have applied for waiver of establishment charges in the month of May/June 2014 , which was allowed by Commissioner of Customs, Jamnagar from the date of application as such the waiver of cost Recovery charges/ Establishment charges would be effective from the date of application made by respondent in May/June,2014. We find that there was no requirement of any application for claiming exemption in this matter. In the present matter there is dispute that all the four respondents have been appointed/ notified as 'Custodians' well before the 26.06.2002 and as per circular No. 27/2004-Cus dated 06.04.2004 and 13/2009-Cus. dated 23.03.2009, recovery of establishment charges/ cost recovery charges stands exempted/waived.

5. On the above settled position, the Revenue's appeals are not sustainable. As a result, the Revenue's appeals are dismissed. Cross-objections also stand disposed of accordingly.

(Pronounced in the open court 18.11.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta