REPORTABLE

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

REGIONAL BENCH – COURT NO. 02

Customs Appeal No. 36 of 2012-SM

[Arising Out Of OIO-DKL/COMMR/14/2011-12 Dated- 28/12/2011 Passed By Commissioner of CUSTOMS-KANDLA)

Messrs Kesar Enterprise Ltd **.....Appellant**
Terminal 02, Plot No. 5 & 6,
Old Kandla, Gujarat

VERSUS

C.C.-Kandla **.....Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri. Devan Parikh, Senior Advocate & Shri Dhaval K Shah, Advocate for the Appellant
Shri. A. R. Kanani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

FINAL ORDER NO. 10032 /2025

DATE OF HEARING: 21.01.2025
DATE OF DECISION:21.01.2025

In the instant case, initially the department wanted appellants to operate as the custodian for which purpose the licences were also granted which, *inter alia*, contained the condition that in the capacity as a custodian, they will get the insurance of the goods in the custody done. The appellants in response to show cause notice produced a letter from the insurance company which is exhibited at running page 67 of the appeal memo in which the insurance company refused to do the insurance of the goods in their custody in storage tank at the Kandla port as by itself Kandla port authorities are custodian in their own right. The objection of the insurance company emanated from the fact that the appellants had no insurable interest in the matter. A Show Cause Notice dated 3rd February, 2011 was issued to the appellants seeking to impose penalties under various provisions of the Customs Act, 1962 for failure to comply with the conditions of their license of custodianship more particularly of failing to take insurance. The proposal in the show cause notice with the above allegation was decided against the appellant vide decision dated 28.12.2011 in which stoic silence has been maintained in response to the party's defence that they could not have got the insurance done. In view of the stand of the insurance company, which declared that there were no insurable interests vested in them. Prior to this, the appellants have indicated that vide a letter dated 07.12.2011 issued by the department indicated that they could not have the custodianship within the custodianship of another entity and therefore the party's having the storage tank cannot be considered as the custodian and should be rather licensed as a private warehouse. The stated sequel position by the appellants is that they were licensed as a private warehouse, subsequent to this letter by withdrawal of their custodianship vide Public Notice 17/2015 and their status as such private warehouse continues till date. Therefore, the department itself has followed in letter and spirit, the letter dated 07.12.2011 and are continuing to do so and at this stage maintaining that custodianship within the custody of another custodian was not the course of action at any time to be adopted by the appellants or consequently to be adopted for license. The letter dated 07.12.2011 which is exhibit at running page 54 of appeal memo is reproduced below (in text):-

सीमा शुल्क आयुक्त का कार्यालय,
सीमे शुल्क भवन, बालाजी मंदिर के पास, कांडला
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,
NEAR BALAJI TEMPLE, KANDLA-370 210 (GUJARAT)
Phone No. 02836-271468/469, Fax No : 02836-271467

Date: 07/12/2011

File No. S/20-01/2009-10.Appg (G)

To,
All Liquid Terminals,
Kandla.

Gentlemen,

Sub:- Dual status of liquid tank terminals at Kandla: reg

On the above, mentioned subject, it is to inform that you have been appointed as Custodian under Section 45 of the Customs Act, 1962, Further, kind attention is also invited to the Handling of Cargo in Customs Areas Regulation, 2009.

2 The Issue regarding status of liquid storage tanks, whether they are to be treated as a Customs area or a private bonded warehouse or both was examined and it has been decided that Handling of Cargo In Customs Areas Regulation, 2009 are not applicable to private bonded warehouse and that there cannot be two custodians for the same area. It has further been decide that all liquid tank terminals may be licensed as private/public bonded warehouse under the provisions of Section 57/58 of Customs Act, 1962 and the custodianship granted to them will be withdrawn it has further been decided that all the liquid tank, terminal owners will perform the procedures and responsibilities of bonded warehouse and 'Handing of Cargo In Customs Area Regulations, 2009 will not be applicable to them.

3. In view of above, it is requested that your liquid tank terminals must be licensed as private/public bonded warehouse under the provisions of Section 57/58 of the Customs Act, 1962 Further the custodianship granted to your terminal under Section 45 of the Customs Act 1962 s hereby withdrawn,

Yours sincerely

(MAHESH KUMAR)
DEPUTY COMMISSIONER (AG)
CUSTOM HOUSE, KANDLA

2. Learned AR confronted with the situation pleaded that the penalty is justified as there were violations of the condition of the licence as was initially issued to them and as was proposed in the show cause notice. He reiterates the findings and justifies the penalty imposed.

3. This Court has gone through the adversarial arguments and finds that letter dated 07.12.2011 clarified the position from the executive side itself

and should have been considered by the adjudicating authority while passing order dated 28.12.2011 as the letter was issued by DC Customs of the same port and was in normal course available to the department while deciding the matter. At this stage, this Court finds that the decision as contained in letter dated 07.12.2011 is valid and correct in law. This Court agrees that a licensed custodianship cannot be granted along with other authority i.e. port authority. There cannot be dual custodianship of the same goods as has been envisaged in the letter dated 07.12.2011(reproduced supra). Therefore the legal position brought out in letter dated 07.12.2011 of the DC Customs is proper and legal and supersedes any license which was given contrary to position stated in this letter even if earlier. Further, the non consideration of the letter of the insurance company, which itself indicated that they were not capable of insuring the goods in the storage tank in view of there being no insurable interest was improperly not considered by the adjudicating authority in this matter. On both these counts, the order of the adjudicating authority is therefore not sustainable, same is set aside.

4. Consequently, penalties imposed are also set aside. Appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi