

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20053 of 2021

(Arising out of Order-in-Original No. BLR-CUSTM-CITY-010-19-20 dt. 07.02.2020 passed by Commissioner of Customs, Bangalore)

**M/s. Volvo Group India
Private Limited,**
Yalachahally, Tavarekere Post,
Hoskote,
Bangalore - 562 122.

Appellant(s)

VERSUS

Commissioner of Customs,
C.R. Building,
PB No.5400, Queen's Road,
Bangalore - 560 001.

Respondent(s)

APPEARANCE:

Mr. Rohan Karia, Advocate and Mr. Nischal K.M., Advocate for the appellant.

Mr. H. Jayathirtha, Superintendent (AR) for the respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20663 / 2023

Date of Hearing: 05/07/2023

Date of Decision: 05/07/2023

Per : DR. D.M.MISRA

This is an appeal filed against the Order-in-Original No. BLR-CUSTM-CITY-010-19-20 dt. 07.02.2020 passed by Commissioner of Customs, Bangalore.

2. Briefly stated the facts of the case are that the appellants were holders of Private Warehouse Licence No.3/2015 dt. 15/09/2015 issued under Section 58 of Customs Act, 1962. The said licence was regularised under the new Warehouse Licensing Regulations, 2016. Consequent to the Thematic Audit of their private warehouse on 07/12/2018 and Audit Note submitted on 10/12/2018, it was noticed that 20 machines were removed from the bonded warehouse premises and kept outside the bonded area. Thus, imported machines which were removed from the bonded area without payment of duty were placed under seizure in accordance with Section 110 of the Customs Act, 1962. Thereafter investigation initiated and after recording statements and completion of investigation, show-cause notice was issued to the appellants under Section 124 of the Customs Act, 1962 proposing confiscation of goods and recovery of duty. Pending adjudication, goods valued at Rs.10,33,47,000/- were released provisionally on execution of bond and bank guarantee. Also, an inquiry was separately conducted by the Department as per the provisions of Warehouse (Custody & Handling of Goods) Regulations, 2016. The warehouse licence of the appellants was suspended on 03.04.2019. The appellants also surrendered their licence on 08.04.2019 but it was not accepted by the Department due to pendency of inquiry against them. Inquiry report was submitted on 08.07.2019 alleging violation of various provisions of the said Warehousing Regulations, 2016. Copy of the inquiry report was endorsed to the appellants and a personal hearing was

allowed by the adjudicating authority. By the impugned order, the adjudicating authority cancelled the private warehousing licence and also imposed penalty under Section 117 of the Customs Act, 1962. Hence the present appeal.

3. At the outset, the learned advocate for the appellant submitted that imposition of penalty on the appellant under Section 117 of the Customs Act, 1962 by the adjudicating authority is in gross violation of the principles of natural justice. He submits that before imposing penalty, notice was not issued to them under Section 124 of the Customs Act, 1962 proposing actions for alleged violation of Warehousing Regulations, 2016. He submits that the seizure and confiscation of the excess goods found outside the bonded warehouse for which a show-cause notice was issued to them on 26.06.2019 cannot suffice the issuance of the show-cause notice for imposition of penalty under Section 117 of the Customs Act, 1962 alleging violation of the Warehouse (Custody & Handling of Goods) Regulations, 2016. It is his contention that therefore, the adjudication order is bad in law and imposition of penalty be set aside. In support, he relies on the judgment of the Hon'ble Bombay High Court in the case of Syska LED Lights Pvt. Ltd. Vs. UOI [2021(377) ELT 33 (Bom.)].

4. *Per contra*, learned AR for the Revenue has submitted that the adjudicating authority after affording an opportunity of hearing to the appellant, passed the order imposing penalty for

violation of Warehouse (Custody & Handling of Goods) Regulations, 2016. He submits that a detailed inquiry conducted by the Department and copy of the inquiry report was endorsed to the appellant; the appellant made their submissions on the inquiry report and none of the violations have been rebutted by them; therefore imposition of penalty under Section 117 of the Customs Act, 1962 for violations of various Regulations is justified. Learned AR for the Revenue submits that *mens rea* is not required for imposition of penalty under Section 117 of the Customs Act, 1962. In support, he refers to the judgment of this Tribunal in the case of Central Warehousing Corporation Vs. CC, Bangalore [2012(283) ELT 567 (Tri. Bang.)] and Welspun Maxsteel Ltd. Vs. CC (Preventive), Mumbai [2015(327) ELT 518 (Tri. Mum.)].

5. Heard both sides and perused records.

6. I find force in the contention of the learned advocate for the appellant inasmuch as the show-cause notice issued proposing confiscation of the goods lying outside the bonded area cannot suffice the requirement of imposition of penalty without issuance of a show-cause notice proposing actions for violation of Warehouse (Custody & Handling of Goods) Regulations, 2016. The Department after conducting inquiry even though endorsed a copy of the same to the appellant; however, notice was not issued to the appellant proposing actions on the basis of the said report for alleged violation of Warehouse (Custody & Handling of Goods)

Regulations, 2016. Thus, there is a violation of principles of natural justice. In the result, the impugned order is set aside and the matter is remanded to the adjudicating authority to initiate the proceedings afresh if so inclined by way of issuance of the show-cause notice and observing principles of natural justice in deciding the case afresh. In the result, the impugned order is set aside and appeal is allowed by way of remand to the adjudicating authority.

(Pronounced and dictated in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

Raja...