CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No.20283 of 2021

[Arising out of the Order-in-Original No.COC-CUSTM-000-COM-17/2020-21 dated 22.2.2021 passed by the Commissioner of Customs, Cochin.]

M/s. P. J. Johnson & Sons ....**Appellant**
Ship Chandlers & Engineers
No.24/1401, Elixer Building,
Venkitaraman Road
Wellingdon Island,
Cochin – 682 003.
Represented by its Managing Partner
Sri Nigil Hubert

Vs.

The Commissioner of Customs ....**Respondent**
Custom House,
Willingdon Island
Cochin – 682 009.

Appearance:

Mr. M. Balagopal, Advocate ....**For Appellant**

Vs.

Mr. P. Saravana Perumal,
Addl. Commissioner (AR) .... **For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 20.07.2023

Date of Pronouncement: 26.07.2023

FINAL ORDER No. 20734 of 2023

<u>Per R. BHAGYA DEVI:</u>

P. J. Johnson and Sons Ship Chandlers and Engineers, the appellant herein, was permitted to carry out regular Ship Chandler's work at Cochin port vide Order in F. No.S25/290/2017-I & B. Cus; dated 3.1.2020.

2. On investigation, it is found that 2,00,000 Nos. of 3 ply non-woven masks which were loaded into the Philippines Navy vessel BRP DAVAO Delsur as ships stores were caried to Philippines. The said goods appeared to fall under prohibited items for export as per DGFT Notification No.44/2015-2020 dated 31.1.2020 amended vide Notification Nos.47/2015-2020 dated 8.2.2020, No.48/2015-2020 dated 25.2.2020 and No.52/2015-2020 dated 19.3.2020, hence notice was issued to the appellant for revocation of permission granted for operating as Ship Chandler's and penalty under Section 117 was also proposed.

3. In the impugned order, the Commissioner held that as per Section 89 of the Customs Act, 1962, stores are to be freely exported. However, the goods to be supplied onboard the foreign going vessel as stores should be in such quantum taking into cognizance the number of passengers and crew and the length of voyage. He further states that even ascertaining the passengers and crew on board numbers about 280 as declared by the appellant, the number of masks required would be 68600 and therefore 2,00,000 masks supplied onboard was seer violation of

the provisions of Customs Act, 1962. He holds that the appellant should have intimated to the department and refused to carry out the activity except with the express permission and hence, he has failed in his duty as a ship chandler. Accordingly, revocation of order to operate as ship chandler was issued and Rs.4,00,000/- penalty was imposed on the appellant under Section 117 of the Customs Act, 1962.

4. The learned counsel on behalf of the appellant took us through the Trade Facility Notice No.71/2013 dated 23.5.2015 where simplified custom procedures for supply of fuel, ship stores, provisions and fresh water to vessels on Cochin port has been laid down. Accordingly, the appellant vide their letter dated 5.5.2020 sought permission to file manual shipping bill which was admittedly permitted by the Preventive Officer. Manual Shipping Bill was filed for export of duty-free goods wherein it was clearly mentioned number of boxes as 59 boxes, description of the goods as non-woven 3-fold mask (3 ply) (Donation to Government of Philippines) quantity mentioned as 2,00,000 pieces which was assessed and Let Export order was issued and allowed for shipment. Letter dated 6.5.2020 is also on record, which is an application for daily/weekly pass where the name of the vessel is clearly mentioned as 'PH NAVY VESSEL – BRP DAVAO DELSUR' and the items are also mentioned as' supply of non-woven 3-fold mask (3 ply) 59 Box to the vessel', which is signed by the jurisdictional officers. Letter dated 6.5.2020 of the appellant is extracted below:

Exct. P5 - 34

P. J . JOHNSON & SONS
SHIP CHANDLERS & ENGINEERS
OWNERS AND SUPPLIERS OF
MOTOR LAUNCHES & TUGS
24/1401, ELIXER BUILDING, VENKITARAMAN ROAD
WILLINGDON ISLAND, COCHIN - 682 003

Office : +91 484 2667703, 4047422
Mobile : +91 98470 45422
Res : +91 484 2224646, 2220794
E-mail : pjjandsons@hotmail.com
: pjjandsons@gmail.com

(Annexture-I)

APPLICATION FOR DAILY/WEEKLY PASS

SHOW ID PROOF
TO CISF CoPT

To
The Traffic Manager
Mattancherry Wharf / Ernakulum Wharf / ICTT Vallarpadam/FACT Berth
Sub: Application for the Issue of Daily /Weekly Pass

Kindly issue Wharf Entry Pass to the following personnel of M/s P J Johnson & Sons for 1 Day 06th May 2020.

No	Name	Photo ID	Id No	Designation	M/F
1	K.A Azeeb	Cochin Port Pass	54000164	Representative	M
.	Ashok Kumar	Cochin Port Pass	54000264	Labour	M
3	Mayin M.H	Driving License	43/217/2001/2022	Driver	M

Purpose of Visit: Supply of Non Wooven 3 Fold Mask (3Ply) 59Box to the Vessel "PH NAVY VESSEL- BRP DAVAO DELSUR by Road

Vehicle No: KL 43 N 1177
Location of Vessel: BTP

"Not to use Mobile Phone while driving"

I declare that the information furnished above is true. Further, I hereby undertake full responsibility for ensuring good conduct of the above person in the Port Premises & in the event of misuse of Passes, action as deemed fit including cancellation of registration may be taken by the port.

Thanking You,

Yours Sincerely,

BEN LINE AGENCIES (INDIA) PVT. LTD. COCHIN

CHECK & PERMIT
From 06 To 06/05/20
I/C CISF PASS SECTION
COCHIN PORT TRUST

P.J. JOHNSON & SONS
Authorised Signatory

(Name and Signature of Authorized Signatory)

Recommended and forwarded to Asst. Commander, CISF pass Section

Authorized Signatory of the concerned department

Received Rs 10 for 1 Persons Vide receipt Pass Section	Verified and Issued 6/5/20 Stamp/Seal of Issuing Authority

OFFICE OF THE ASST. TRAFFIC MANAGER (ERNAKULAM WHARF) COCHIN PORT TRUST 06 MAY 2020

DUTY OFFICER

SUPERINTENDENT

4.1 They also placed on record the letter dated 14.5.2020 issued by Embassy of the Republic of Philippines, New Delhi to the Commissioner of Customs stating that 2,00,000 pieces of disposal 3 ply masks were loaded on to the Philippines Navy Vessel, in support to the Philippines's Government efforts to mitigate the impact of COVID19 Pandemic. In view of the above, permissions granted by the respective authorities for exporting the same, the question of suspension of his permission or imposing of penalty does not arise. Hence, requested for allowing the appeal.

5. The learned Authorised Representative for the Revenue submits that since the case were prohibited, the question of allowing these goods for export was not correct and hence, the authorities were right in revocation of the permission and imposing penalty.

6. It is an admitted fact that 2,00,000 of 3 ply non-woven masks which were loaded on to the Philippines Navy vessel BRP DAVAO Delsur was meant for Philippines Government. The Trade Facility Notice No.17/2019 dated 23.5.2019 clearly laid down the procedures for ship stores which was followed by the appellant by filing a Manual Shipping Bill and clearly mentioning that supply of non-woven 3-fold mask (3 ply) 59 Boxes were being shipped on to the vessel. The appellant has placed all the necessary permissions and records filed and signed by the respective authorities at different stages. It is also an admitted fact that the goods are meant for Philippines Government as is admitted by the Embassy of Republic of Philippines, New Delhi vide their letter dated 14.5.2020 issued by Embassy of the Republic of the Philippines, New Delhi which is reproduced herein below:

EMBASSY OF THE REPUBLIC OF THE PHILIPPINES
NEW DELHI

14 May 2020

Dear Commissioner Yousaf,

Greetings from the Embassy of the Philippines in New Delhi.

Please be informed that a maximum of fifty-nine (59) boxes of medical cargo containing 2,00,000 pieces of disposal (3 ply) anti dust and ear loop face masks were loaded onto the Philippine Navy Vessel BRP Davao del Sur (LD 602) in the Port of Cochin, Kerala, India on 07 May 2020 as a donation to the office of the Civil Defense of the Philippine Department of National Defense in support of the Philippine Government efforts to mitigate the impact of the COVID-19 pandemic.

The port of destination will be at Pier 13, South Harbor, Manila, Philippines.

Hence, it appears that the appellant (Ship Chandler) had not deviated nor violated any of the provisions of the Customs Act, 1962 and there is no allegation in the impugned order of violation of any of the provisions of the Customs Act, 1962.

6.1 Since the goods were 'Ship Stores', the applicability of the DGFT Notification is not relevant. The only allegation stated by the Commissioner in the impugned order is Section 89 of the Customs Act, 1962 which reads as follows:

> **'Stores to be free of export duty**' – Goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart."

The above provisions clearly state that the Proper Officer i.e., the customs authorities have to determine taking into consideration the size of the vessel or aircraft the number of passengers and crew and the length of the voyage on which the vessel or aircraft, have to determine the quantity that need to be supplied as stores on to the vessel. Hence, it was the duty of the concerned authorities to verify these facts before allowing 2,00,000 of 3 ply non-woven masks having been permitted and loaded on to the Vessel, they cannot now turn around and make the appellant having grossly failed in his duty to intimate the authorities.

7. In view of the above discussions, the Appellant in fact has followed all the procedures and with necessary permissions has loaded the said goods on to the vessel. In view of this, the impugned order is set aside and the appeal is allowed.

(Order pronounced in open court 26.07.2023.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

RV