CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 60337 Of 2020
Customs Cross Application No. 60283 of 2020

[Arising out of OIO No. Commr/Asr/Ldh/Custom/08/2020 dated 17.09.2020 passed by the Commissioner of Customs, Ludhiana]

M/s Overseas Warehousing Private Limited : Appellant (s)
C-205, Phase V, Focal Point Ludhiana

Vs

Commissioner of Customs, Ludhiana : Respondent (s)
ICD, GRFL, G T Road, Sahnewal, Ludhiana

APPEARANCE:
Shri R. K. Hasija, Advocate for the Appellant
Shri M. S. Dhindsa, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

ORDER No. A/60921 / 2021

Date of Hearing:25.08.2021

Date of Decision:07.10.2021

Per : ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the penalty of Rs. 10,000/- has been imposed under Regulation 12 of the Handling in Cargo in Customs Area Regulations, 2009.

2. The brief facts of the case are that the appellant is a customs cargo service provider (CCSP) approved under Rule 10 of the Regulations readwith Section 45 of the Customs Act, 1962. It has been functioning in the capacity of a custodian of imported and export cargo, in terms of Section 45 of Customs Act, 1962 since 1997. One M/s J.S. Steel Traders (importer) filed two Bills of Entry for clearance of Heavy Melting Scrap at Appellant's CFS (OWPL), Ludhiana. The said goods were examined by the Customs SIIB staff and found to contain
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CR Sheets/Sheet cuttings of various sizes weighing various sizes. The importer filed writ petition before the Hon'ble Punjab & Haryana High Court and vide interim order dated 06.04.2017, the Hon'ble High Court directed the Customs to pass an order of provisional release and in the event of goods being released, the officer concerned shall also pass an order for issuance of detention memo as per law. Thereafter, as per directions, the goods were ordered to be released provisionally on 06.04.2017 and a detention certificates to the importer, who, neither took the provisional release nor opted for warehousing. Further, the Hon'ble High Court, vide Order dated 18.04.2017, directed the Customs to stipulate the parameters for mutilating material. Vide Orders dated 05.05.2017, 72 MTs of melting scrap out of total quantity of 159.70 MTs and 65.895 MTs of HMS out of total quantity of 132.895 MTs were released provisionally. The importer took provisional release of the quantity of melting scrap but he did not opt for warehousing for the remaining goods. On appeal, the matter went up to this Tribunal, the Tribunal vide Final Order No. 61965-61966 dated 26.03.2018 held that the goods could be released provisionally to the importer with certain conditions. Despite that the importer neither took provisional release nor opted for warehousing. Further, the goods were assessed and it was held that the goods were mis-declared, reclassified them, ordered their confiscation with an option to redeem the goods on payment of redemption fine and differential duty and penalties were also imposed. The importer paid the differential customs duty, redemption fine and penalty and also settled the matter amicably with the Appellant wherein the detention/ rental charges were substantially reduced and the importer got delivery of the goods. In between, on 10.05.2019 the appellant made a complaint with the Chief

Commissioner with regard to waiver of detention/demurrage charges charged by the appellant. The said complaint was withdrawn by the importer vide its letter dated 14.05.2019. Despite that a show cause notice dated 27.06.2019 was issued to the appellant for imposing penalty and a penalty of Rs. 10,000/- was imposed under Regulation 12 of the Customs Area Regulations, 2009 holding that the appellant has failed to comply the direction of the department and did not adhere the provision of the regulations. Against the said order, the appellant is before us.

3. The Ld. Counsel for the appellant submits as under:-

(i) The main crux of the impugned order of Commissioner is violation of Regulations 6(1)(l) of the regulations, wherein it has been mandated that the customs cargo service provider shall "**subject to any other law for the time being in force**", shall not charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or examining officer, as the case may be.

(ii) The issue therefore, to be decided is whether the appellant has violated Regulation 6(1)(l) when he has substantially reduced the detention/ rental charges to the satisfaction of the importer as evident from importer's letter dated 14.05.2019, whereas the Department has itself realized differential customs duty, redemption fine and penalty from the importer.

(iii) As per department's own clarification contained in the Customs Manual in Chapter 15/16 issued year after year and still continuing, it is not obligatory as held in recent court judgments that custodians must waive the rentals payable to them. Para 3.4 of Chapter 15 of the Customs Manual clearly provides that wherever in adjudication proceedings, the parties have been allowed to clear the goods on payment of redemption fine and penalty and parties, instead of clearing the goods on payment of fine and penalty, prefer an appeal, they will have to pay demurrage/ detention charges, etc. even if they succeed in appeal, as the liability has arisen due to their filing appeal and not clearing the goods for which option was available. Further, taking note of various judgments of the respective High Courts and Supreme Court on the issue, a comprehensive judgment has been delivered by Hon'ble High Court of Delhi in the case of **M/s Global Impex and others vs. Union of India and ors.- 2019 (12) TMI-957-Delhi High Court.** The findings are as under:

> **104. From the afore-cited decisions, the following clear principles emerge:**
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> ***(i) The custodian has a lien over the imported goods, consigned to its custody. This lien may be statutory, as provided under the IAA Act, all the Major Port Trusts Acts, or contractual. It may also be relatable to Sections 170 and 171 of the Indian Contract Act, 1872.***
>
> ***(ii) This lien entitles the custodian to retain hold of the goods, consigned to its custody, till all its dues, including ground rent and demurrage, are paid.***
>
> ***(iii) The Customs authorities have no power, or the jurisdiction, to issue any instruction, to the custodian, requiring the custodian to waive, in whole or in part, the demurrage chargeable by it. …….***
>
> ***(iv) In applying the above principles, the issue of whether the goods in question had been licitly, or illicitly, imported, as also the detention of the goods, by the Customs authorities, was justified or unjustified, bona fide or mala fide, are entirely irrelevant.***
>
> ***(v) The liability to pay the demurrage is on the importer, irrespective of the justifiability, or unjustifiability, of the seizure and detention of the goods by the Customs authorities. Even in a case in which the seizure is entirely unjustified, the importer would, in the first instance, have to pay demurrage, to the custodian and, thereafter, pursue, with the Customs authorities, for obtaining reimbursement of the amount.***
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> ***(vi) The only exception, to the application of the above principles, is in a case in which the custodian himself is guilty of unconscionable delay, or of continuing to hold onto the goods without good reason or authority.***
>
> ***(vii) Rates of demurrage were deliberately made prohibitive, so as to discourage importers from consigning goods to the custody of the Port Trust or other custodian, and to avoid congestion at the port.***

(iv) In view of the above judgment as also the clarification of the Board, the impugned order imposing penalty on the appellant is not sustainable and the appeal of the appellant is liable to be allowed.

4. On the other hand, the Ld. AR opposed the contention of the Ld. Counsel and submitted that the detention certificate for waiver of demurrage was issued on the direction of the Punjab and Haryana High Court and by this Tribunal. The said order has not been adhered by the appellant, therefore, the penalty has rightly been imposed. It is also submitted that the respondent were having power to issue detention certificate under Rule 6 1 (1) of HCAAR, 2009. He also submitted that the subordinate legislation has legal packing would prevail in case of conflict. He further submitted that the case was relied upon by the Ld. Counsel for the appellant are distinguishable and are not relevant in the facts of the case.

5. Heard the parties and considered the submissions.

6. On going through the arguments advanced before us, we find that the facts of the case are not in dispute. The appellant,s only dispute is with regard to impose the penalty when the importer made a complaint to the Chief Commissioner for asking of detention/demurrage charges by the appellant despite waiver certificate has been issued. As the dispute has been settled by the importer and the appellant amicably and to that effect a certificate was also issued by the importer and for ease of convenience, the same is extracted herein as under:-

...122484
...: 90780011 Dt. 26-08-2003
...c. Reg. No.: ALSPS4001LXD001

(Subject to Fatehgarh Sahib Jurisdiction Only)

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JST **J. S. Steel Traders**

Deals in : Indian & Imported Iron & Steel Goods

Amloh Road, Disposal Road, MANDI GOBINDGARH-147301 (Pb.) INDIA

Dated....14-05-2019....

Ref. No.........................

TO WHOMSOEVER IT MAY CONCERN

With reference to letters addressed to Chief Commissioner/Commissioner dated 09.05.2019 of my Advocate Sh. Saurabh Kapoor in r/o B.E. No. 8155288 dated 11.01.2017 and 841479 dated 02.02.2017, I Jaswant Singh, Prop. M/s J.S, Steel Traders, Mandi Gobindgarh hereby submit that I have taken delivery of the detained goods lying in the custody of M/s Overseas Warehouse Pvt. Ltd., Village Ramgarh, Ludhiana. Accordingly, letters 09.05.2019 may be considered withdrawn as the said goods stand delivered to me. Inconvenience caused, if any is regretted.

M/s J.S, Steel Traders

Jaswant Singh

Prop.

7. We also note the appellant has been granted registration to function in terms of HCAAR, 2009 and the incident which has happened is the first of its kind for imposition of penalty for this infraction would not be justified and simple warning should be suffice.In view of this, we hold that no penalty be imposed and the appellant be warned to be careful in future.

8. In these circumstances, we set-aside the impugned order and waive the penalty imposed on the appellant.

9. In result, the appeal is allowed with consequential relief, if any. The cross objection is also disposed of.

(Pronounced on 07.10.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

G.Y.