CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs E.H. Application No. 60296 of 2021
in
Customs Appeal No. 60420 of 2021

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-794-2021 dated 01.09.2021 passed by the Commissioner (Appeals), CGST, Ludhiana]

N K Impex India **......Appellant**
B-60-B, Phase V, Focal Point,
Ludhiana 141008

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
ICD, B-2-B, G.T. Road, Sahnewal,
Ludhiana 141120

with

Customs E.H. Application No. 60297 of 2021
in
Customs Appeal No. 60421 of 2021

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-793-2021 dated 01.09.2021 passed by the Commissioner (Appeals), CGST, Ludhiana]

Findoc Impex **......Appellant**
B-XXV-539/A, 10 Karabara, Opposite Kali Sadak,
New Shivpuri Chowk, Ludhiana

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
ICD, B-2-B, G.T. Road, Sahnewal,
Ludhiana 141120

APPEARANCE:

Present for the Appellant: Mr. Sudhir Malhotra, Ms. Kanika Malhotra, Advocates

Present for the Respondent: Mr. Rajeev Gupta, Mr. M.S. Dhindsa, ARs

<u>CORAM:</u> HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60969 – 60970 /2021

DATE OF HEARING: 25.11.2021
DATE OF DECISION: 24.12.2021

PER ASHOK JINDAL:

The appellants are in appeal along with applications for early hearing of the appeals on the ground that goods in question have been seized and absolutely confiscated which are perishable in nature.

2. Considering the fact that goods in question are perishable in nature, therefore, the applications for early hearing of the appeals are allowed and the appeals are taken up for final disposal.

3. This is second round of litigation. In the earlier round of litigation, the matter was remanded back to the adjudicating authority for re-consideration of the request for provisional release of the impugned goods by this Tribunal.

4. The facts of the case are that dry dates were imported from Dubai showing the country of origin as Kingdom of Saudi Arabia. In Appeal No. C/60421/2021, the bill of entry was filed by M/s Findoc Impex, the importer and the goods were cleared by Customs after SIIB investigation. Subsequent to clearance of the goods, the same were sold to M/s N K Impex India, which were seized by DRI, Ludhiana from the godown of M/s N K Impex India on 02.07.2020. In Appeal No. C/60420/2021, the bill of entry was filed by M/s N K

Impex India on 14.02.2020 and the impugned goods were seized at port on 19.05.2020. The goods were absolutely confiscated and absolute confiscation was challenged before this Tribunal. This Tribunal remanded the matter back to the adjudicating authority for re-consideration of the request for provisional release of the goods with certain observations. The order of this Tribunal was challenged by the respondent before the Hon'ble High Court of Punjab & Haryana, wherein it has been held that as adjudicating authority has passed the order in compliance with the direction of this Tribunal, therefore, the appeals filed by the respondent have become infructuous and were disposed off as infructuous. In remand proceedings, the goods were again absolutely confiscated, therefore, the appellants are before me.

5. The Revenue raised the preliminary objection that the Single Member Bench of this Tribunal has no jurisdiction to decide the issue as issue involved relates to classification and rate of duty. On going through the papers placed before me, the only issue before me is that whether the impugned goods can be released provisionally or not? Therefore, the preliminary objection raised by the Revenue is turned down. Further, the Revenue heavily relied on the order dated 05.03.2021 which is an ex-parte order, wherein the Revenue stated that this Tribunal has decided a case which is beyond its jurisdiction with respect to pecuniary aspect up to Rs. 50,00,000/- for dealing with a matter by a Single Member. It was also stated that the value of the goods is Rs. 55,88,118.13 and total duty payable is Rs.

1,73,00,813.73 and the Hon'ble High Court stayed the operation of the said order. I have gone through the submissions made by the Revenue before the Hon'ble High Court but the same is not the subject matter of the appeals before me as the only issue is of provisional release of the impugned goods and the issue of classification or rate of duty are not the subject matter of the appeals. Therefore, the preliminary objection raised by the Revenue is rejected and the appeals are dealt on merits.

6. In the **Appeal No. C/60420/2021**, the ld. Counsel for the appellants made the following submissions: -

6.1 The rejection of provisional release of the goods by the ld. adjudicating authority is on 27.01.2021, whereas the show cause notice has been issued on 30.06.2021 for absolute confiscation of the goods in question as the appellant failed to produce the attested copy of Phytosanitary Certificate from the country of origin. The only issue in this case relates to non-furnishing of Phytosanitary Certificate of country of origin.

6.2 It is his submission that the impugned goods were seized on 19.05.2020 and the show cause notice has been issued on 30.06.2021 for absolute confiscation of the goods. The same is beyond the extended period of limitation of one year under Section 110(2) of the Customs Act, 1962. Therefore, the goods are required to be returned to the appellant.

6.3 It is further submission that CBIC after seeking legal opinion vide Circular No. 157/13/2021-GST dt. 20.07.2021 issued clarification regarding extension of limitation under GST law in terms of Hon'ble Supreme Court order dt. 27.04.2021 in Suo Moto Writ (C) No. 3/2020 inter-alia as under:

> "As regards issuance of show cause notice, granting time for replies and passing orders, the present orders of the Hon'ble Supreme Court may not cover them even though they are quasi judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits etc."

therefore, he prayed that the seizure dated 19.05.2020 is to be vacated as the show cause notice has been issued on 30.06.2021 beyond the period of limitation prescribed under Section 110(2) of the Customs Act, 1962.

7. In the **Appeal No. C/60421/2021**, the ld. Counsel for the appellants made the following submissions: -

7.1 It is a submission that the investigation by SIIB which concluded that country of origin is Kingdom of Saudi Arabia. The said investigation report of SIIB has not been challenged by the Revenue, hence, the order of release of goods has attained finality as the same has not been challenged.

7.2 Further, it is submitted that the impugned goods after clearance by Customs are no longer imported goods. Therefore, the goods cannot be confiscated or seized.

7.3 He further submitted that as during the arguments, the Revenue has submitted that a show cause notice has been issued to the appellant on 16.11.2021 demanding duty @200% under CTH 98060000 inter-alia on the goods imported vide bill of entry no. 6596563 dt. 23.01.2020. It was the contention of the Revenue that the goods imported vide the above said bill of entry are of Pakistan origin as all the containers bearing same container numbers and same seal numbers were transshipped from Pakistan to UAE and then from UAE to India. The ld. Counsel objected the contention of Revenue and submitted that container numbers do not match as the container numbers for goods imported from Pakistan to UAE are different from container numbers of goods imported from UAE to India. It is his further submission that there was no reference of communication exchanged with overseas authorities in the show cause notice. There is no reference of investigation conducted from shipping line in the show cause notice.

7.4 It is the submission that no clarification was given with regard to container numbers as they are different. Further, neither any correspondence with overseas authorities nor any investigation conducted from shipping line brought on record. Therefore, the authenticity of Phytosanitary Certificate from country of export is available on the website has neither been disputed in the impugned order nor in show cause notice. The show cause notice dt. 16.11.2021 is vindictive in nature based on incorrect facts.

7.5 It is further submission that a show cause notice dt. 30.06.2021 has been issued to the appellant for absolute confiscation of the impugned goods, whereas in the show cause notice dt. 16.11.2021, duty is demanded on the impugned goods. It is also a submission that it is incorrect to propose absolute confiscation and demand of duty thereon in respect of same goods by two different show cause notices. Therefore, the impugned goods are required to be released.

7.6 He also submitted that the show cause notice dated 30.06.2021 is barred by limitation as the same has been issued after one year of the seizure in terms of Section 110(2) of the Act.

7.7 He further submitted that the goods are perishable in nature and being long time elapsed since import of impugned goods, so before release of the goods, the goods are to be examined whether the goods are fit for human consumption or not. He also submitted that the demurrage and detention charges may kindly be waived.

8. On the other hand, the ld. A.R. opposed the contention of the ld. Counsel. He submitted that the impugned goods are prohibited goods as Section 2(33) of the Customs Act, 1962 defines "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force. Further Section 11 of the Customs Act, 1962 lays down the power to prohibit importation and exportation of goods. Plant Quarantine (Regulation of Import into India) Order, 2003 regulates import and prohibition of import of plants and plant products into

India. The impugned goods having being imported in violation of the Plant Quarantine (Regulation of Import into India) Order, 2003 are prohibited which can affect the power bio-security of the nation. He also relied on the decisions of the Hon'ble Apex Court in the cases of *Sheikh Mohd Omer vs. Collector of Customs, Calcutta – 1983 (13) ELT 1439 (SC)* and *Omprakash Bhatia vs. Commissioner of Customs, Delhi – 2003 (155) ELT 423 (SC)*. He further submitted that provisional release of the goods is not mandatory for absolute all the prohibited goods in nature.

9. Heard the parties and considered the submissions.

10. As the facts of the case in both the appeals are little bit different, therefore, both the appeals are decided separately as follows:

11. **Appeal No. C/60421/2021** – As in this case, the goods were cleared for human consumption after the investigation conducted by SIIB who observed that the goods in question were originated from Kingdom of Saudi Arabia and the goods were allowed to be cleared. The said order has attained finality and has not been challenged by the Revenue. Further, the goods were seized on 02.07.2020. Section 110(2) of the Customs Act, 1962 specifies that if the goods were seized under Section 110(1) of the Act and no notice in respect thereof is given under clause (a) of Section 124 of the Act within six months of the seizure of goods, the goods shall be returned to the person from whose possession they were seized. The said period can be extended for another six months by recording the reasons in

writing for extending such period. Further, any order of provisional release of the seized goods has been passed under the Section 110A, the said extended period of six months shall not apply. For better appreciation, Section 110(2) is extracted herein below:

> ***Section 110(2) of the Customs Act, 1962***
> *"(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*
> *Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:*
> *Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply."*

On going through the said provisions, the show cause notice is required to be issued within six months from the seizure of the goods and if the show cause notice cannot be issued within six months, then after recording the reason in writing, the period can be extended for another six months. Further, in case of the goods were provisionally released, then the period of six months shall not apply. Admittedly, in this case, the goods were not allowed to be released provisionally. Therefore, the time limit prescribed under Section 110(2) of the Act shall apply to the facts of the case. Therefore, the show cause notice was required to be issued within six months from the date of seizure

i. e. till 01.01.2021, further no time limit has been extended by recording the reasons in writing as the proviso to Section 110(2) of the Act. The Revenue has taken the shelter of Section 6 of Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 read with Notification No. 450/61/2020-Cus.IV (Part 1) dated 30.09.2020. As per Section 6 ibid, the time limit was extended to 30.09.2020 and the same was extended till 31.12.2020 vide Notification cited herein above. The time limit for issuance of the show cause notice of six months falls on 01.01.2021, therefore, the provisions relied upon by the Revenue of Section 6 of Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 read with Notification No. 450/61/2020-Cus.IV (Part 1) dated 30.09.2020 are of no help. Further, in the show cause notice, it has been mentioned that the show cause notice was required to be issued on 17.03.2021 under Section 110(2) of the Customs Act, 1962 which has been extended by letter dt. 16.03.2021 that the same has been extended up to 30.06.2021 which is against the law as six months period was expired on 01.01.2021 of the seizure and within six months till 01.01.2021, the Revenue was required to pass an order recording reasons in writing for extension of time. No such order is placed on record. In that circumstance, I hold that the show cause notice issued to the appellant is barred by limitation, therefore, the show cause notice for absolute confiscation is not sustainable. Accordingly, the goods are required to be released to the appellant after examination thereof to find out whether same are fit for human consumption or not and the demurrage and detention charges are required to be waived.

12. It has also been observed that another show cause notice dt. 16.11.2021 has also been issued to the appellant for demand of duty. I find that on the one side, the Revenue is absolutely confiscating the goods and, on the other side, they are demanding the duty on the impugned goods. The two parallel proceedings cannot continue together. As the show cause notice dated 30.06.2021 has been issued beyond the time limit prescribed under Section 110(2) of the Act, therefore, the show cause notice dt. 30.06.2021 is barred by limitation and the goods are required to be returned to the appellant. As the Show Cause Notice dated 16.11.2021 is not the subject matter of the appeal, therefore, the Revenue is at liberty to adjudicate the show cause notice dt. 16.11.2021 in accordance with law.

13. **Appeal No. C/60420/2021** – In this case, the goods have been seized on 19.05.2020 and the show cause notice has been issued on 30.06.2021. The observations made in Appeal No. C/60421/2021 with regard to time limit to issue show cause notice under Section 110(2) of the Act, I hold that the show cause notice has been issued to the appellant beyond the time limit prescribed under Section 110(2) of the Act on 30.06.2021 whereas the goods have been seized on 19.05.2020 and no order recording reasons in writing has been passed for extension of time, therefore, the show cause notice issued to the appellant for absolute confiscation of the goods is not sustainable.

14. Accordingly, the Revenue is directed to release the goods to the appellant after examining the same whether same are fit for human consumption or not and the demurrage and detention charges are required to be waived.

15. The appeals are disposed of in the above manner.

(Order pronounced in the court on 24.12.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi