

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 42103 of 2018

(Arising out of Order-in-Appeal No.180/2018-TTN (CUS) dated 28.6.2018 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore @ Trichy)

M/s. ECOM Gill Coffee Trading Pvt. Ltd.
ECOM House, 489/1, Borewell Road
Whitefield, Bangalore – 560065.

Appellant

Vs.

Commissioner of Customs
Custom House
New Harbour Estate
Tuticorin.

Respondent

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant
Ms. K. Komathi, JC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **41155 / 2019**

Date of Hearing: 30.09.2019

Date of Decision: 30.09.2019

The appellant is aggrieved by the late fee of Rs.14,95,000/- levied under section 46(3) of Customs Act, 1962.

2. Brief facts are that M/s. Vazhavilla Cashews, Kollam had entered into an agreement for import of dried raw cashew nuts from the overseas supplier M/s. Ecom Agro Trade Limited, London. The ship liner filed IGM dated 10.8.2017. Later, M/s. Vazhavilla Cashews, Kollam sold the consignment on high sea sales to M/s. Ambalakkara Cashews who filed Bill of Entry on 12.8.2017. Due to some financial

issues between the shipper and the first consignee, the original documents were called back by the shipper from the bank. Later, the shipper identified the appellant herein as new buyer for clearing the goods. An application for amendment of the IGM was filed before the Assistant Commissioner vide letter dated 3.11.2017 which was received by the department on 12.12.2017. Permission was granted for amendment on 12.12.2017. Thereupon the Customs Broker filed application for cancellation of Bill of Entry on 15.12.2017 and the department ordered cancellation of Bill of Entry on 9.1.2018. The new Bill of Entry was filed on behalf of the appellant herein on 12.1.2018. The department proceeded against the appellant alleging late filing of Bill of Entry which after due process of law came to be penalized by imposing late fee of Rs.14.95 lakhs. The payment was made under protest by the appellant herein. Against such order, the appellant filed appeal before Commissioner (Appeals) who upheld the late fee imposed by the original authority. Hence this appeal.

3. On behalf of the appellant, Id. counsel Shri A.K. Jayaraj appeared and argued the matter. He adverted to the facts of the case and submitted that there was no delay occurred due to any act or omission on the part of the appellant herein. The situation arose that the first consignee could not clear the goods and the shipper had to identify another purchaser for clearing the goods. This was the main reason which resulted in the delay in filing the Bill of Entry even though the goods had arrived on 11.8.2017. Before filing the Bill of Entry by the new purchaser, it was necessary to amend the Bill of Entry as well as to file amended IGM etc. The date of the events would establish that the appellant had diligently acted for filing the

Bill of Entry at the earliest. An application for amendment of the IGM was filed on 3.11.2017 which was received only on 12.12.2017. The permission to amend the IGM was granted on the same day. Thereafter the department had to issue order for cancelling the Bill of Entry which was done on 9.1.2018. After cancellation of the earlier Bill of Entry on 9.1.2018, the new Bill of Entry was filed on 12.1.2018 itself. Hence there is no delay in filing the Bill of Entry by the new purchaser. For these reasons, the new purchaser / importer cannot be penalized alleging late filing of Bill of Entry.

3.1 He submitted that the events and dates would reveal that any delay in filing the Bill of Entry was beyond the control of the importer / appellant herein as well as it was due to bonafide reasons. Adverting to the Standing Order No. 1/2017 dated 6.9.2017, the Id. counsel argued that the department has issued directions that the delay has to be considered judiciously and the late fee should not be imposed on a routine manner. It is also emphasized therefore that the delay in filing due to any others reasons which are considered as bonafide by the proper officer should be condoned and no late fee should be imposed.

3.2 To the discussions made by the Commissioner (Appeals) that the new purchaser appellant herein is an Indian company of the overseas supplier, it is countered by the Id. counsel that both the organisations are separate entities and therefore it cannot be a ground to impose late fee. He also relied upon the decision of the Tribunal vide Final Order No. 40772 to 40780/2019 dated 8.5.2019 in M/s.Blueleaf Trading Company Vs. Commissioner of Customs , Trichy.

It is argued by him that in a similar situation, the Tribunal has set aside the late fee.

4. The Id. AR Ms. K. Komathi appeared on behalf of the department. She submitted that there has been willful delay on the part of the appellant to file the Bill of Entry for which the late fee has been imposed. She adverted to sub-section (3) of Section 46 of the Customs Act, 1962 and argued that an amendment has been brought in wherein by the said sub-section, the Bill of Entry has to be presented before the end of the next day following the day on which the aircraft or vessel or vehicle carrying the goods arrives at Customs station. The 2nd proviso states that where the Bill of Entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer has to pay charges for late presentation of the Bill of Entry as prescribed. That in the present case the new purchaser is an Indian unit of the overseas supplier. Therefore, they could have handed over or procured the documents easily. There has been delay in filing the application for amendment of the IGM as well as presentation of the Bill of Entry. The Commissioner (Appeals) in para 10 and 11 has discussed these facts in detail. Therefore the late fee imposed is just and proper.

5. Heard both sides.

6. As narrated above, the facts would reveal that the initial purchaser of high seas sales M/s. Vazhavilla Cashews, Kollam could not take delivery of the goods even though they had filed Bill of Entry on 12.8.2017. Therefore, the shipper identified another purchaser namely the appellant therein for clearing the goods. After filing an

application for amendment of IGM and also after filing the request for cancellation of Bill of Entry which was ordered on 9.1.2018, the Customs Broker has filed the new Bill of Entry on behalf of the new consignee on 12.1.2018. Thus after obtaining the order of cancellation of earlier Bill of Entry, the new Bill of Entry has been filed within three days. From the facts it cannot be said that the appellants herein has committed any act or omission in causing delay in filing the Bill of Entry.

6.1 The argument of the Id. AR that the appellant could have obtained document earlier because the appellant / new purchaser is an Indian unit of the overseas supplier also does not hold much water. Both the units are different entities. The department does not have a case of any malafidness in the import of the goods. Further, the standing order issued by the department gives clear direction as to when the late fee can be imposed. Intention of introducing such late fee is to avoid unreasonable delay and taking advantage of the space for storing the goods by the importer. In the present case, delay occurred only because of the original importer failed to clear the goods. The subsequent importer who is the appellant herein cannot be saddled with the late fee as he has taken efforts to get the IGM amended as well as cancelling the earlier Bill of Entry within a reasonable time. The standing orders issued by the Board states that the late charges due to delay in filing the Bill of Entry has to be considered judiciously and the late fee should not be imposed on a routine manner. So also it states that when there is a delay due to any reasons which is considered a bonafide, the late fee should not

be imposed. For better appreciation, the said paragraph in the standing order is reproduced:-

"3. In the light of the above clarification of the Board and as a measure of trade facilitation, it has been decided that the proper officer may waive the late charges due to delay in filing of Bill of Entry in the following cases judiciously and it should not be imposed as a matter of routine.

i. Technical problems related to ICEGATE connectivity, server etc.

ii. The Bill of Entry number not generated by the system within the free period;

iii. Delay caused due to reasons which are beyond the control of the importer like natural calamities etc.

iv. Delay in filing due to any other reasons which are considered as bonafide by the proper officer."

6.2 The Tribunal in the case of Blueleaf Trading Company cited supra had occasion to consider a similar situation wherein the late fee imposed was set aside.

7. After appreciating the facts and the law enunciated above, I am of the view that the late fee imposed is not legal or proper. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
Member (Judicial)