CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Customs Appeal Nos. 40162 to 40176 of 2020 - SM

[arising out of Order-in-Appeal SEA PORT. Cis. II Nos.614 to 626/2019, dated 04.12.2019 passed by Commissioner of Customs (Appeals), Chennai]

M/s.Hapag Lloyd India Pvt. Ltd., **Appellant**
Venkatanarayana Towers, 1st Floor,
No.60, Venkatanarayana Road,
T. Nagar, Chennai – 600 017.

VERSUS

Commissioner of Customs, **Respondent**
EGM Cell,
Chennai IV Commissionerate,
No.60, Rajaji Salai,
Customs House,
Chennai – 600 0001.

Appearance:

Shri Venugopalan Mangatily Poonath,
Authorised Representative, for the Appellant

Ms. T. Usha Devi, JC (AR) for the Respondent

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 24.06.2021
Date of Pronouncement :05.07.2021

FINAL ORDER Nos. 41641-41655 / 2021

The brief facts of the case are that the appellant failed to file the Export General Manifest ['EGM' in short] in respect of shipping bills as shown in the table below:-

Sl.No.	Appeal No.	O-in-O No.	O-in-O, dated	Shipping BillNo./ Date
1	2	3	4	5
01	C/50/II/351/O/2019-SEA	68483/2019	11.04.2019	5835436, dated 03.05.2017
02	C/50/II/352/O/2019-SEA	68482/2019	11.04.2019	5837202, dated 03.05.2017
03	C/50/II/353/O/2019-SEA	68481/2019	11.04.2019	5757034, Dated 29.04.2017
04	C/50/II/354/O/2019-SEA	68480/2019	11.04.2019	4697500, Dated 13.03.2017
05	C/50/II/355/O/2019-SEA	68478/2019	11.04.2019	3823208, Dated 01.02.2017
06	C/50/II/356/O/2019-SEA	68479/2019	11.04.2019	6352029, Dated 28.05.2017
07	C/50/II/357/O/2019-SEA	68477/2019	11.04.2019	5342225, Dated 11.04.2017
08	C/50/II/358/O/2019-SEA	68476/2019	11.04.2019	5553243, Dated 20.04.2017
09	C/50/II/359/O/2019-SEA	68475/2019	11.04.2019	5528311, Dated 19.04.2017
10	C/50/II/360/O/2019-SEA	68474/2019	11.04.2019	5627969, Dated 24.04.2017
11	C/50/II/374/O/2019-SEA	67925/2019	15.03.2019	8869318, Dated 25.09.2017
12	C/50/II/375/O/2019-SEA	67927/2019	15.03.2019	8764372, Dated 10.09.2017
13	C/50/II/376/O/2019-SEA	67928/2019	15.03.2019	8754964, Dated 19.09.2017

Show-cause notice was issued to the appellant proposing to impose penalty under section 117 of Customs Act for contravening section 41 of the Customs Act,1962. After adjudication, the original authority imposed penalty of Rs.1 lakh against each shipping bill. The appellant filed appeal before the Commissioner (Appeals) against such order and the Commissioner (Appeals) reduced the penalty to Rs.30,000/- against each shipping bill. Aggrieved by such order, the appellant is now before the Tribunal.

2. On behalf of the appellant, Shri Venugopalan, M.P., Manager [Port/Terminal Operations] of the appellant-Company appeared and argued the matter. It was submitted by him that these exports have taken place in 2017. According to him more than 600 shipping bills were filed by them for various vessels and, therefore, the error must have occurred due to oversight. He referred to para 9 of the Order-in-Original and submitted that according to their knowledge they have filed EGM for these shipping bills well in advance but due to some error, it was not showing as EGM filed and the same has been refiled and rectified. It is argued by him that during the said period, there was no facility for the carrier/exporter to check and verify whether the documents have been correctly uploaded in the site of the

Customs department. After 2020, the site has been made more facilitating so that it is now possible for the exporter/carrier to check whether the documents have got uploaded. The appellant at that time did not have any access of the data to identify any omission so as to ensure whether all documents have been correctly uploaded or not.

3. It is stressed by him that the appellant as a vessel operator had no fraudulent intention in omitting to file the EGM. There was no intention to suppress anything. There is no such allegation by the department in the show-cause notice and, therefore, for mere error the penalties ought not to have been imposed. He referred to section 41(3) and submitted that this sub-section provides for amendment of shipping bill if the documents submitted are incorrect or incomplete. If the department had pointed out then and there itself, the appellant would have rectified/amended the shipping bill. He pleaded that the penalties may be set aside.

4. The learned Authorised Representative for the Revenue Ms. T. Usha Devi appeared on behalf of the department. She reiterated the findings in the impugned order. She submitted that it is the responsibility of the carrier to deliver to the proper officer, the EGM before departure of the conveyance. As such, there is clear omission on the part of the appellant to file the EGM and, therefore, penalties imposed are legal and proper.

5. Heard both sides.

6. The penalties in the above case have been imposed for non-filing of EGM/shipping bills as required under section 41 of the Customs Act, 1962. Section 41 reads as under:-

> "Delivery of export manifest or export report.—
>
> (1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form.

The penalty has been imposed under section 117 of the Customs Act, 1962, which reads as under:-

> "Any person, who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding one lakhs rupees".

7. Section 41 thus cast duty upon the person in-charge of conveyance/carrier to file the EGM in relation to the goods which are exported. In case of any omission or error in filing documents, the law provides for opportunity to correct the same. Sub-section (3) of section 41 reads as under:-

> "If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented."

From the above sub-section, it is clear that if necessary documentary are incomplete or incorrect the proper officer can permit to amend or supplement the EGM. The law thus foresees that errors can occur while filing the EGM. In the present case, the appellant being a carrier/vessel operator they had to file lot of shipping bills with respect to many vessels and, therefore, an omission might have occurred in the present case. Had it been pointed out, at that time, the same would have been rectified by the appellant. All these shipping bills are of various dates between 01.02.2017 to 25.09.2017. However, the department has issued the show-cause notices much later only after a lapse of two years in 2019. Thus, there is much delay in initiating proceedings against the lapse for reasons best known to the department only.

8. Be that as it may, it has to be seen that the proper officer of the Customs has to first verify whether the goods have reached the port. So also, the proper officer has to verify whether the documents regarding the export have been filed including the shipping bills. Only after such verification, the let export order or out of charge is issued. If LEO was issued without EGM being filed, it would imply that the proper officer has endorsed the fact of non-filing of EGM/shipping bill, which may be due to oversight on his part. In any case, there is no allegation of fraud or wilful suppression of documents. So also, there is no allegation in respect of the nature and quantity of the goods exported. Moreover, the appellant has stated that during the relevant

period there was no facility to know whether the documents have been correctly uploaded. Later, the department has improved their data-base by including such facility. In such circumstances, the non-filing of shipping bill is a condonable lapse.

9. In Circular No.1/2019-Cus., F.No.450/119/2017-Cus-IV, dated 02.01.2019, the department has put forward resolutions to solve the problem of EGM errors which hamper IGST refund processing. In the present case also, in Para 11 of O-in-O, it is seen stated that the IGST refund claim for these impugned shipping bills could not be processed and delivered to the exporter in time. It is highly probable that the error of non-filing of EGM would have come to the notice of the department only while processing the IGST refund claims submitted by the exporter. In sub-para(iv) of Para 2 of the above circular, the Board has stated that penal provisions for violation of section 41 is not to be invoked till 31.01.2019. The said para reads as under:-

> "Board expects its jurisdictional officers to take all necessary steps to ensure that all EGMs of cargo-related to past cases are filed before 31st January, 2019. As a measure of facilitation, penal provisions may not be invoked for EGMs filled till 31st January, 2019. However, continued non-compliance beyond 1st February,2019 may be dealt strictly by taking recourse to penal provisions in accordance with the law."

10. From the above, it can be seen that only for continued non-compliance beyond 01.02.2019, the penalty is required to be imposed. In the present case, on receiving notice from department, the appellant has immediately rectified the defect. There is no allegation of continued non-compliance. The learned Authorised Representative has relied upon the decision in the case of *Commissioner of Customs (Port), Kolkata Vs M/s. PIL India Pvt. Ltd.,* reported in *2016 (343) E.L.T.356 (Tri.-Kolkata).* The circular was not considered in the above decision. In the circular, it is stated that penal provisions are to be resorted for continued non-compliance. Further, in the present case, it is clearly brought out that during the relevant period the system was not having the facility to check and verify whether documents are filedThe above circular dated 02.01.2019 cited supra issued by Board is binding on the department.

11. For the reasons discussed above, I hold that the penalty imposed is unwarranted. The impugned orders are set aside. Appeals are allowed with consequential reliefs, if any.

(Pronounced in open court on **5th July, 2021**)

(Sulekha Beevi C.S.)
Member (Judicial)

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