

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI

**C/42253/2016**

(Arising out of Order-in-Appeal No. 926/2016 dated 17.10.2016  
passed by the Commissioner (Appeals), Customs, Chennai).

M/s. Thiru Rani Logistics Pvt. Ltd.

Appellant

CC, Chennai

Respondent

Appearance

Shri S. Muthu Venkataraman, Advocate  
for the appellants

Shri B. Balamurugan, AC (AR)  
for the Respondent.

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member Technical**

Date of Hearing/Decision: 13.04.2017

FINAL ORDER No. 40628 /2017

The brief facts of the case are that the appellants were holding Public Bounded Warehouse License and operating three warehouses viz., A, B and C, out of these "A and B" warehouses were licensed for storage of duty payable cargo under Customs Bond and warehouse "C" was used for storage of duty paid cargo on general warehousing, however, the same was not a bonded warehouse. Pursuant to a fire accident due to electric short circuit



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in warehouse C and subsequent inspection of the premises, it emerged that while there was no damage caused to warehouses A & B, however bonded goods from these warehouses, which have been shifted to the warehouse C have been destroyed. The Department took the view that the movement/shifting of impugned bonded goods from the licensed warehouse premises to a non-licensed and non-permitted warehouse "C" amounts to illegal/improper/un-authorized removal of warehoused goods in contravention of the provisions of Section 71 of the Customs Act, 1962. In adjudication proceedings initiated against the appellant, original authority inter alia demanded customs duty of Rs. 27,34,290/- relating to destroyed bonded goods along with interest thereon, ordered that appellant shall reimburse the value of the bonded goods destroyed to the importers, and also imposed penalties inter alia, a penalty of Rs. 7,50,000/- under Sections 112 (a) and 112 (b) of the Act, on the appellant. On appeal, the Commissioner (Appeals), vide the impugned order inter alia set aside the order of the adjudicating authority to reimburse the value of the bonded goods to the importer and also reduced the penalty to Rs. 4,00,000/-, however upheld duty demand and interest liability. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, Id. Advocate Shri S. Muthu Venkataraman, submits that the appellants are in appeal only on the issue of penalty imposed on them. He submits



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that in the absence of malafide, there was no reason to impose penalty under Section 112 (a) and (b) of the Act.

3. On the other hand, Id. AR Shri B. Balamurugan, supports the impugned order and states that on earlier occasion also discrepancies had noticed like bonded cargo found stacked in non-bonded warehouse, in violation of licensing conditions.

4. Heard both sides and have gone through the facts. Without doubt, the appellant has certainly violated the licensing conditions. As a custodian of the bonded goods in a public bonded warehouse, for removal of the goods from the bonded warehouse for whatsoever reason, even it to shift them temporarily to an adjacent warehouse, intimation/permission is required to be given/obtained from the competent authority. This was certainly not done in the present case. Appellant also cannot take the plea of ignorance of procedural requirement because this is not the first occasion that they have been hauled up for such an infraction. In the event, I am of the considered opinion that the penalty under Section 112 (a) and (b) is very much imposable on the appellant for the reasons given by the original authority. At the same time, allegation is only concerning procedural violation in removal of licensed goods from the bonded warehouse to an adjacent shed. It is not the case that the goods have been removed clandestinely for illicit sale or disposal. Id. Advocate mentions that the shifting of goods to the adjacent godown was only due to space constraints on account of lintel collapse in the bonded warehouse and that the

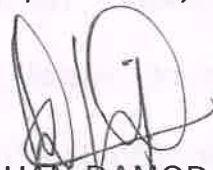


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goods have been shifted for this reason only as a temporary measure. I find that the lower appellate authority has also observed in para-6 of the impugned order that it is a case of storing the goods outside the bonded warehouse without malafide intention. Taking all these factors into account, I hold that while penalty is definitely impossible in this case, a lower penalty of Rs.2,00,000/- would meet the ends of justice. Ordered accordingly.

5. Appeal is disposed of in the above terms.

(Order dictated and pronounced in the open court)



18<sup>04</sup>/<sub>2017</sub>

(MADHU MOHAN DAMODHAR)  
MEMBER TECHNICAL

BB



प्रमाणित प्रति / Certified True Copy



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