IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 27.01.2017
Date of Decision:08.02.2017

Customs Appeal No.52524/2015 CU(DB)

[Arising out of Order-in-Original No.JOD-CUSTM-PRV-COMMR.05/2015 dated 30.03.2015 passed by the Commissioner of Customs, Jodhpur]

M/s.Container Corporation of India Ltd. Appellants

Vs.

CC, Jodhpur Respondent

Appearance:

Rep. by Shri B.K. Singh, Advocate for the appellant.
Rep. by Shri K. Poddar, DR for the respondent.

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.50679/2017

Per B. Ravichandran:

The appeal is against order dated 30.03.2015 of Commissioner of Customs, Jodhpur. The appellants were appointed as Custodian of Inland Container Depot (ICD) at Jodhpur under Section 45(1) of Customs Act, 1962 in June, 2001. On 6.11.2001, Ministry of Finance conveyed the sanction of 13 temporary posts, of customs officials of various ranks, to manage the customs work in the ICD. One of the conditions for managing the ICD is that the appellants have to pay Cost Recovery Charges @ 185% of the salary of the staff deployed to the Government. The present appeal is relating to appellant's liability to pay such cost recovery charges for the period 1.4.2009 to 31.12.2012 amounting to Rs.4,12,94,397/-. The jurisdictional Commissioner insisted on the full recovery of the said amount with interest. The proceedings were also initiated against the appellant for, among other things, recovery of the above said amount. A show cause notice dated 28.2.2013 was issued to the appellant to recover the said amount in terms of Handling Cargo in Customs Area Regulations, 2009. The Commissioner appointed an inquiry officer, who submitted his report on 1.5.2014. The inquiry officer recommended that the appellant is liable to pay Rs.96,47,740/- towards Cost Recovery Charges for the period 2009-10 and the same has already been paid on 15.3.2014. He recorded that the Cost Recovery Charges for the period 1.4.2009 to 31.12.2012 are to be examined with reference to the guidelines dated 24.2.2010 issued by the Ministry. He found that the minimum bench mark for Cargo Handling has been achieved in all the years except for 2009-2010, when the number of shipping bills were less than the standard prescribed.

2. The Original Authority decided the case vide the impugned order and held that the appellants have to pay the full amount of Rs.4.12 crores as the Ministry in the said guidelines decided that the sanction of exemption from Cost Recovery Charges shall be issued for each ICD, on yearly base, keeping in view the performance during the preceding year. It was also mentioned that continuation of post and personnel in the ICD shall be considered by the CBEC only after the custodian has deposited the amount for the defaulted year. Any request for granting fresh exemption shall be considered afresh in accordance with the prescribed procedure. The Original Authority concluded that the waiver/exemption from payment of Cost Recovery Charges is not automatically available to the custodian in case of default but was required to be sought afresh following the prescribed procedure. The Original Authority further held that as the appellants have not paid the Cost Recovery Charges, their application for exemption cannot be considered.

3. Ld. Counsel for the appellant strongly contested the findings in the impugned order. He narrated the chronology of events starting from Circular dated

14.12.95 of the Board providing the guidelines for custodian. He submitted that the appellants were appointed as Custodian of ICD, Jodhpur vide Public Notice No.18/2001-Customs dated 27.06.2001 by the Commissioner of Customs, Jaipur. One of the conditions of the appointment was that the appellant shall pay Cost Recovery Charges as determined, considering the number of officials deployed. The Ministry of Finance vide letter dated 12.09.2005 stated that the Cost Recovery Posts, which are in operation for 2 consecutive years with performance above the bench mark are being considered. Further, Ministry vide letter dated 23.05.2006 communicated the decision to exempt ICDs from payment of Cost Recovery Charges. The appellants' ICD at Jodhpur is one of the listed ICDs.

4. The posts, which were sanctioned in 2001 for managing ICD, the appellant at Jodhpur have been permanently absorbed in the strength of the Department on 18.02.2009. As such, there is no specific Cost Recovery Posts deployed in the ICD at Jodhpur w.e.f. February, 2009. The new Regulations came into force in March, 2009. Thereafter, the appellants were called upon to comply with the various conditions mentioned in the said Regulations. After several communications, the jurisdictional officers were satisfied about the compliance of various conditions. The custodianship of the appellant was renewed for 5 years by the jurisdictional Commissioner communicated vide letter dated 31.3.2010.

5. The impugned order did not identify that under which provisions the demand of arrears of Cost Recovery Charges are being confirmed. The inquiry report clearly brought out the facts regarding the performance of the appellant in the ICD and recommended only payment of Cost Recovery Charges for the year 2009-2010. The matter relating to deployment of exclusive customs staff, liability of appellant to pay Cost Recovery Charges as well as applicability of exemption to the appellant from payment of such Recovery Charges are to be examined and

decided by the CBEC, Ministry of Finance. The Commissioner has not indicated in his impugned order whether the matter has been reported to the Ministry and specific advice has been taken regarding the appellant's eligibility for exemption from Cost Recovery Charges.

6. Ld. Counsel pleaded that the Commissioner acted without authority of his own and confirmed the liability towards Cost Recovery Charges without due consideration of all the guidelines issued by the Ministry and without reference to CBEC.

7. Ld. AR submitted that in terms of the Public Notice issued appointing the appellant as Custodian as well as the new Regulations, they are liable to pay Cost Recovery Charges for Customs Officers and staff deployed in the ICD. Exemption from such charges are to be specifically considered and approved by the Ministry as per the guidelines laid down. There is no automatic or suo moto exemption from such charges. As such, he stated that the appellants have no case against the recovery of such charges.

8. We have heard both the sides and perused the appeal records.

9. The facts of the case are not in dispute. The point of dispute revolves around the liability of the appellant to pay Cost Recovery Charges for the period 1.4.2009 to 31.12.2012. Admittedly, during the said period, various guidelines and instructions have been issued by the Ministry to deal with cost of staff deployed in the ICDs. The appellants were appointed as Custodians of ICD at Jodhpur. One of the conditions specified in the appointment is that they should pay Cost Recovery Charges for the officers deployed there. However, the Ministry vide their letter dated 23.05.2006 exempted the appellant from payment of Cost Recovery Charges. The Annexure to the said letter clearly states that the Cost Recovery Charges for 13 posts sanctioned for ICD at Jodhpur have been exempted. Thereafter, on

24.2.2010, the Ministry issued further clarification to state that the matter was reviewed in consultation with IFU. The sanction for exemption from Cost Recovery Charges shall be issued for each ICD, on yearly basis. The jurisdictional Commissioners were to report the performance of individual ICDs. The Ministry called for a report in this regard. We also note that the permission granted to the appellant to manage the ICD at Jodhpur has been extended for further period of 5 years by the jurisdictional Commissioner and the same was communicated to the appellant on 31.03.2010. It is seen that the Dy. Commissioner, ICD, Jodhpur informed the appellant that Cost Recovery Charges are recoverable for the year 2009-2010 as the appellants have fallen short of bench mark of 7,200 documents to be processed in that year. The appellants vide their letters dated 16.12.2013 and 31.10.2014 have specifically prayed for waiver of Cost Recovery Charges in terms of guidelines issued by the Ministry for the year 2010-11 to 2012-13.

10. From the above narration, it is very clear that the jurisdictional Commissioner has not followed the required process of examining the exemption already granted or waiver available to the appellant from Cost Recovery Charges for various periods, year-wise as per existing guidelines. It is clear that deployment of staff and eligibility of the appellant for exemption from Cost Recovery Charges are to be considered and decided only by the Ministry. We are not informed of any report given by the Commissioner to the Ministry and the decision taken by the Ministry thereupon. The action of the Commissioner in proceeding and confirming the Cost Recovery Charges without due consideration of various guidelines issued by the Ministry and more specifically regarding the entitlement of the appellant for exemption, which has already been granted by the Ministry vide their letter dated 23.05.2006, is not legally sustainable. The denial of exemption to the appellant on the ground that the due application was not filed in time and the matter was not

followed-up is not justifiable. In any case, the matter has to be considered by the competent authority, namely the CBEC, Ministry of Finance, and not by the Commissioner. We note that none of the guidelines brought to our notice with reference to appointment of ICDs gives power to the Commissioner to decide on exemption or waiver of Cost Recovery Charges. The appellants were given exemption from Cost Recovery Charges by the Ministry. Later, the Ministry laid down certain guidelines to state that such exemption will be given year to year based on the report given by the jurisdictional Commissioner. Keeping these facts in mind, we hold that the present impugned order is not legally sustainable. The exemption granted to the appellants as well as the request made by the appellants for such exemption subsequently are to be examined by the competent authority for a proper decision. The Commissioner has to place all the records before the competent authority for a decision and thereafter only the liability of the appellant for Cost Recovery Charges, if any, can be finalized. With these observations, we set aside the impugned order and remand the matter back to the Original Authority for a fresh decision, after consulting the competent authority on this issue. The appeal is allowed by way of remand.

[order pronounced on 08.02.2017.]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.