CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 10.01.2017
Date of Pronouncement: 16.02.2017

Appeal No. C/51645 & 52082/2016-CU[DB]

[Arising out of the Order-in-Appeal No. CC/A/CUS/D - II/PREV/218 - 220/2016 dated 04.03.2016, passed by the Commissioner of Central Excise, New Delhi]

M/s. Goyal Petrochem
Shri Ashok Goyal, Proprietor … Appellant

Vs.

C.C.E. New Delhi ... Respondent

Appearance:

Present Shri R.K. Philips, Advocate for the appellant
Present Shri Amresh Jain, A.R. for the respondent

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

FINAL ORDER NO.51868-51869/2017

Per V. Padmanabhan:

The present two appeals are directed against the order-in-appeal dated 02.03.2016 passed by the Commissioner (A) Customs IGI Airport New Delhi. Brief facts of the case are that on the basis of an intelligence, the Delhi Zonal Unit of DRI investigated a case of import of certain petro-chemical products viz. Pressed Distillate oil (FDO), Heavy Alckeys (RPO), calcium base grease and slack Wax imported at ICD, Ludhiana and ICD, Tughlakabad, New Delhi for mis declaration and undervaluation, by various importers including M/s.Om Udyog, (IEC 3092003551), E-403, Phase VI, Focal Point, Ludhiana

Punjab (hereinafter referred to as M/s. Om Udyog) and M/s. S K Petrochem C-1/4, Krishna Vihar, New Delhi a firm controlled by Shri Jeevan Jain, Proprietor of M/s. Om Udyog, Ludhiana, Investigation further revealed that Shri Jeevan Jain used to import the above mentioned Petroleum products by resorting to mis-declaration and under valuation and subsequently such goods were sold through Delhi based traders including M/s. Goyal Petrochem, H-3 Shivaji Park, Punjabi Bagh, New Delhi owned by Shri Ashok Goyal.

2. Searches were conducted on 28.1.2013 at the premises of M/s. Goyal Petrochem, and residence of Shri Ashok Goyal and during the searches, certain petroleum products i.e. 3150 Liters of Heavy Alkeys, 8400 Kgs. of Calcium Grease, 6300 Liters of Lubricating Oil and 350 Kgs of Sumo Tumo Chemical were found stored at godown premises of M/s Goyal Petrochem, 39/24, Sunita Vihar, Ram Gali, Mundka, New Delhi, which were detained for further investigation after drawl of representative samples. The samples drawn were sent for testing to CRCL, New Delhi for testing of nature and composition (hazardous/ non-hazardous) The CRCL vide test report No. 35/CRCL/2013-14/CL-293 (DRI) dated 5.7.2013 in respect of goods stated as Calcium Grease and 35/CRCL/2013-14/CL-292 (DRI) dated 08.07.2013 reported as under:-

(i) Test Report No. 35/CRCL/2013-14/CL293 (DRI) dated 05.07.2013 (Calcium Grease)

Report:- The sample is in the form of light brown coloured pasty mass having characteristic odour of mineral hydrocarbon oil. It mainly composed of mineral hydrocarbon oil more than 70% by wt. along with calcium salt of fatty acids and additives having following constants:

PAH (Polyaromatic Hydro Carbon) Content : 684.50 Mg/Kg

Kinetic Viscosity at 40^{O} C	:	4.4 CST
Fresh Point (COC)	:	$98^{o\ C}$
Ash Content	:	1% by weight

It does not meet the requirement of Calcium Grease as per IS:506:1997 & 9136 :1993 in respect of kinematic viscosity at 40^{o}C & flash point (COC). Further to confirm whether it will fall under category of hazardous waste. It has been analysed as per requirement of schedule III Part-A. Basel No. 4140 of Hazardous Waste Management Handling and Transboundary Movement Rules, 2008 for listed waste constituents under class A, B, C, D, E of Schedule II of said Rule. To rule out possible presence of waste constitutes in it to the extent of concentrate limit of specified. Sample under reference contain PAHs concentration more than prescribed limit, hence sample under reference merits to fall under category of Hazardous waste.

(ii) CRCL Test Report No. 35/CRCL/2013/CL-292 (DRI) dated 08.07.2013 (Heavy Alckeys)

"Report:- The sample is in the form of brown coloured viscose liquid having green fluorescence with following constants:

Ash content (% by Mass) - NIL
Acidity (inorganic) - NIL
Sediment - NIL
Water content - NIL
Test for halogen - negative
Flash Point (COC) - above 220^{o}
Density (gm/ml) of 15^{o} C - 1.0164
Kinematic Viscosity at 100^{o} – 38.23 cst
Aromatic content - 74.9 by wt
Non-Aromatic content 25.1 % by wt
Aniline Point – 55^{o} C
PAHs Content (mg/kg) – 261.73
(A12 – A 15 Class –A Schedule II)

No technical term / Literature available on the declare description i.e. "Heavy Alckeys" in this laboratory, however above analytical findings reveal that sample under reference is organic residual product generated from petro chemical process and pyrolytic operation (waste streams). Further accordance to Hazardous Waste (Management Handling and Transboundary Movement) Rules, 2008. It was subjected for Waste constituent's analysis and found that PAHs content in this sample are more than 50 mg/per Kg. therefore, it merits to fall under the category of Hazardous Waste as per said Rule.

3. As per the IS 506, 9136, 9917 -1993, the value of the kinematic viscosity @ 40^{o} C & Flash Point Calcium Grease are as under:

(i) IS 506 - : 1993:- Kinematic Viscosity @ 40^{o} C(cSt)	Grade 1	90 to 110
	Grade 2 & 3	61.2 to 74.8
	Grade 4	41.4 to 50.6
	Grade 5	90 to 110
Flash Point	Grade 1	178^{o}C
	Grade 2, 3 & 4	160^{o}C
	Grade 5	178^{o}C
(ii) IS 9917: 1993 Kinematic Viscosity @ 40^{o} C(cSt)		90 to 110
Flash Point		178
(iii) IS 9136: 1993 Kinematic Viscosity @ 40^{o} C(cSt)		90 to 110
Flash Point		178

4. In view of the test report, the department was of the opinion that the goods stated as Grease and Heavy Alckeys detained at the

premises of M/s. Goyal Petrochem during the search proceedings were not up to the requirement of calcium base grease Heavy Alckeys as specified in the IS specifications and were therefore waste products as the impugned goods must have the following specifications:-

	Kinematic Viscosity @ 40 C	Flash Point
As per IS:506, 9917 & 9136: 1993 for Calcium Grease	90 - 110	160 – 178^{o} C
As per test report for calcium Grease	4.4	98^{o} C

5. Since as per CRCL report, the detained goods i.e. grease and Heavy Alckeys were found hazardous under the provisions of Hazardous Waste Rules, 2008 and were covered under schedule-II / Class A under serial no. A 12 , A 13, A 14 & A 15 Hazardous Waste Management Handling and Trans-boundary Movement Rules, 2008 is exceeding the prescribe concentration limit of Hazardous Waste Management Handling and Trans-boundary Movement Rules, 2008 and goods stated as Heavy Alckeys merits to fall under the catetgory of hazardous waste as per Hazardous Waste Rules, 2008 as the PAHs content are more than 50 mg/ Kg. therefore, a show cause notice dated 05.01.2015 was issued to the appellants. The case was adjudicated and the adjudicating authority vide impugned order confiscated 3150 Kgs. of Heavy Alckeys and 8400 Kgs of Grease detained at godown premises of M/s. Goyal Petrochem, 39/24, Sunita Vihar, Ram Gali, Mundaka, New Delhi. A penalty of Rs. 1,00,000/- was also imposed on Shri Ashok Goyal of M/s. Goyal Petrochem and

upon Shri Jeevan Jain, Prop. M/s. Om Udyog. Ludhiana under section 112 of the Customs Act, 1962.

6. Aggrieved by this Order-in-Original the appellants have filed appeal before Commissioner (A) who vide the impugned order upheld the order in original.

7. Hence the present appeal.

8. With the above background we heard Shri R K Philips, appearing for both the appellants as well as Shri Amresh Jain, A.R. for the respondent

9. The Ld. Counsel reiterated the grounds of appeal and submitted as follows:

i) The CRCL in its report relied by Revenue are not pertaining to the samples drawn from the premises of the appellant.

ii) The Lorry receipts which have been issued by M/s. Maharaja Goods Carriers showing the consignee name as M/s. S K Petrochem on the back side name is "Ashok Goyal". On the basis of the above, Revenue has concluded that the appellant is engaged in drawing of hazardous petroleum products imported by Shri Jeevan Jain of Ludhiana. On behalf of the appellant he denied that these do not pertain to the appellant.

iii) He finally submitted that the allegations are based on presumption and assumption and is without corroborative evidence either at the part of transporter or at the hands of Shri Jeevan Jain. Accordingly he prayed that appeals may be allowed.

10. Ld. DR strongly oppose the above plea. He submitted that the goods involved have been rightly confiscated absolutely since these have been found to be of hazardous nature.

11. We find that Commissioner (A) in the impugned order has elaborately discussed the evidence unearthed by DRI as well as nature of the goods and the relevant test report from CRCL. He categorically concluded by giving detailed reasons that the goods in question are of hazardous nature and is in the form of waste. His findings are reproduced below:

"I have carefully gone through the impugned order and the contents of the Appeal and the oral as well as written submissions. I find that the contents of all the appeals filed by the appellants are of similar nature therefore I take all the appeals to decide by one single order. I find that the goods stated as Heavy Alckeys and Grease were detained at the godown premises of M/s Goyal Petrochem by the officers of DRI and during the investigation it has been revealed that the same were imported by M/s Om Udyog, E-403, Phase-VI, Focal Pont, Ludhiana, subsequently sold to M/s Goyal petrochem, H-3, Shivaji Park, Punjabi Bagh, New Delhi. Statements of Shri Ghanshyam Sharma, Forwarding and logistic agent, Ludiana and the documents resumed from the premises of Goyal Petrochem corroborated this fact. I observe that the samples of Heavy Alckeys and Grease were sent to the CRCL, New Delhi for testing of nature (hazardous/ non-hazardous) and composition and the CRCL, New Delhi reported that the goods i.e. Calcium grease was found hazardous under the provisions of Hazardous Waste Rules, 2008 for exceeding the prescribed concentration limit of Hazardous Waste Management Handling and Trans-boundary Movement Rules, 2008 and the same were covered under schedule-II/ Class-A under serial no. A12, A13, A14 & a15 of Hazardous Waste Management Handling and irons-boundary Movement Rules, 2008 and the same were covered under schedule-11/Class-A under serial no. A12, A13,A14 & A15 of Hazardous Waste Management Handling and irons-boundary Movement Rules, 2008 and the same were covered under schedule-II/Class-A under serial no. A 12, A13, A14 & A15 of Hazardous Waste Rules, 2008 and the same were covered under Heading A 12-A 15 of schedule-II Class-A of Hazardous Waste Management handling and Trans-boundary Movement Rules, 2008. I observe that the CRCL test reports have

categorically held that the goods were hazardous wastes as specified in Part A of Schedule-III/II of Hazardous Waste Management handling and Transboundary Movement Rules, 2008, which mandate the requirement of prior informed consent of the country from where it is imported or exported to, and also would require the license from the Directorate General of Foreign Trade, and a prior written permission of the Central Government.

Part A: List of Hazardous Wastes Applicable for import with prior Informed Consent (Annexure VIII of the Basel Convention)

Based No.	*Description of Hazardous Wastes*
A-I	*Metal and Metal bearing wastes.*
A-3	*Wastages containing principally organic constituents which may contain metals and inorganic materials.*
A3010	*Waste from the production or processing of petroleum coke and bitumen.*
A3020	*Waste material oils unfit for their originally intended use.*
A4	*Wastes which may contain either inorganic or organic constituents.*
A4140	*Wastes consisting of or containing off specification or out-dated chem containing any of the constituents mentioned in Schedule 2 to the extent concentration limits specified therein.*

I find that this list is based on Annex VIU of the Basel Convention on Transboundary Movement of Hazardous Wastes and comprises of wastes characterized as hazardous under Article 1,paragraph I{a} of the Convention Inclusion of wastes on this list does not preclude the use of hazard characteristics given in Annex VIII of the Basel Convention (Part C of this Schedule) to demonstrate that the wastes are not hazardous wastes in the Schedule-3 (Part-A) are restricted one, and cannot be allowed without permission from Ministry of Environment & forests and DGFT license, thus it is clear that all the items listed in Part A of the

Schedule-II are restricted and require prior informed consent as well as permission from Ministry of Environment & Forest and DGFT license, thus it is clear that all the items listed in Part A of the Schedule-II are restricted and require prior informed consent as well as permission from Ministry of Environment & Forest and DGFT License. I observe that for all imports of hazardous waste listed in the rules, the port and Customs authorities have to ensure that shipment is accompanied by a movement document, pre shipment inspection report and for test laboratory report from the exporting country. The port and Customs authorities are the designated authorities to verify the documents, inform the Ministry regarding any illegal traffic, carry out random sampling and inspection of the consignments received at the ports.

I further observe that as per Section 2(33) of Customs Act, 1962 (33) "prohibited goods" means any goods the import or export of which is subject to any prohibited under this Act or any other law for the time in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be importer or exported have been complied with,

I find that Shri Ashok Goyal, , Prop. Of M/s Goyal Petrochem has not disclosed the facts regarding procurement of Calicum Grease and Heavy Alckeys but the documents seized from their premises i.e. G>R. and e-mail print out revealed that the impugned goods were imported by Shri Jeevan Jain and diverted to Shri Ashok Goyal, Prop. of M/s Goyal Petrochem. I find that the goods stated as Calicum Grease and Heavy Alckeys appears to be imported in violation of the provisions of the Customs Act, 1962 as he conditions prescribed in Hazardous Waste (Management , Handling and Tran boundary Movement) Rules, 2008 were not fulfilled complied with.

In view of above, it is clear that the impugned goods i.e. Heavy Alckeys and Grease were liable for confiscation under the provisions of Section 111 (d) & 111(m) of the Customs Act, 1962 and for their acts of omission and commission. M/s Goyal petrochem, H-3, Shivaji Park, Punjabi Bagh, New Delhi and Shri Jeevan Jain. Prop. of M/s. Om Udyog, E-403, Phase-VI, Focal Point, Ludhiana are liable for penalty under Section 112 and 114 AA of the Customs Act, 1962, therefore he O-I-O is just and proper.

12. We are in agreement with the findings of the Ld. Commissioner as above.

13. Once it is established that the impugned goods are in the nature of hazardous waste they become prohibited goods and hence have been rightly confiscated absolutely. In view of the above, the penalty imposed on Shri Ashok Goyal is also upheld. Impugned order is upheld and appeals are rejected.

[Order Pronounced in the open court on 16.02.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu