CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD REGIONAL BENCH –
COURT NO – I

Customs Appeal No. 455 of 2012

Caravel Logistics India Pvt Ltd **Appellant**
Unit II, 5th Floor, 502, AMSRI Classic
S D Road,
Secunderabad 500010

VERSUS

Commissioner of Customs **Respondent**
L B Stadium Road,
Basheerbagh,
Hyderabad 500004

Coram:
Present for the Appellant: Mr Derrick Sam Advocate
Present for the Respondent: Mr Bhanu Kiran, Authorised Representative

FINAL ORDER No. A/30052/2022

DATE OF HEARING/ DECISION: 10.03.2022

We have heard Shri Derrick Sam, learned advocate for the appellant and Shri Bhanu Kiran, learned departmental representative for the respondent. When goods are shipped in containers, the shipper hires a container from the owner of the container and transports the goods and pays a rent to the owner of the container. While the ship sails away, the container will be offloaded in the port and often, after clearance from the Customs, it is loaded on to a train or truck and carried to the importer's premises where it is de-stuffed and thereafter the owner of the container will rent it to another suitable customer. Thus, the goods which are exported, the containers in which they are stuffed and the ships move, to some extent, independent of each other. The containers come in standard sizes which can be carried in various types of conveyances such as ships, trains and trucks thus enabling seamless movement of the imported goods across various forms of transportation from the factory/warehouse of the exporter to the premises of the importers. They also serve the purpose of storing the goods until they are cleared. The owners of the containers are usually independent of the owners of the ships. The shipping lines arrange for space on ships while the container agents provide for suitable containers as required. Thereafter, the owner of the container rents it out to any other customer who may need it. The owner of the container does not control it once it is rented out to a customer until it is returned to it.

2. The appellant rented out its containers to an exporter M/s. Kamal Footwear, Vijayawada in which rubber slippers were exported. Receiving intelligence that the export goods were removed and red sanders which is a prohibited good was stuffed in the container before the export, the container was recalled by the Customs authorities and on examination, red sanders was found in the container which was seized and confiscated. The container belonging to the appellant was also confiscated under section 115(2) and an option was given to the appellant to redeem it on payment of fine of Rs. 20,000.

3. Learned counsel for the appellant submits that the order is not sustainable for two reasons. Firstly, there is nothing on record to show that the appellant had any role, whatsoever, in the export of the prohibited red sanders. Once the container is rented out, it

has no control over it until it is returned by the exporter. The appellant also had no knowledge that red sanders was being exported in it. Secondly, he submits that section 115 is meant for confiscation of conveyances and not containers. A container is not a conveyance by itself. The goods are stuffed in it and then the container is carried in any conveyance such as ship, truck or train. Therefore, the confiscation of the container is beyond the scope of section 115. He relies on the following case laws:

a) Government of India Revision order no. 1258 of 1978[1]
b) Asstt. Forest Conservator vs Shard Ramachandra Kale[2]
c) Maheshwari Rocks India Pvt Ltd. Vs Commissioner of Customs, Chennai[3]
d) Arebee star Maritime Agencies vs Commissioner of C.EX. Rajkot[4]

4. Learned departmental representative supports the impugned order.

5. We have considered the arguments on both sides. Section 115 of the Customs Act reads as follows:

> **Section 115. Confiscation of conveyances.-**
>
> (1) The following conveyances shall be liable to confiscation :-
>
> (a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;

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[1] **1982(10) ELT 535A (GOI)**
[2] **2000(121) ELT 14 (SC)**
[3] **2010 (262) ELT 574 Trib.Chennai**
[4] **2004 (173) ELT 185 (Tri-Mumbai)**

(b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;

(c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;

(d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal:

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation . - In this section, "market price" means market price at the date when the goods are seized.

6. Evidently, containers are not covered by section 115 as their function, as the name suggests, is to contain the goods being exported and NOT to carry them from one place to another. The container is akin to a suitcase used to carry personal effects by any traveler. The suitcase is not a means of conveyance but is put in any means of conveyance such as a car, bus, train or a plane to carry the goods. Both suitcases and containers serve the purpose of

facilitating easy carrying of goods but themselves do not carry the goods. It has been held in **Arebee Star Maritime Agencies** by a bench of this Tribunal that container is not a conveyance. We also find that there is nothing on record to show that the appellant had any role, whatsoever in the smuggling of red sanders in the containers.

7. For both these reasons, the impugned order cannot be sustained and needs to be set aside. The impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant.

(Operative part of the order pronounced in open court on 10.3.2022)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)