

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86523 of 2022

(Arising out of Order-in-Appeal No. 480(GR-V)2022(JNCH)/Appeals dated 27.05.2022 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.)

M/s MIRC Electronics Ltd.
Onida House, G-1, MIDC
Off Mahakali Caves Road,
Andheri (East), Mumbai – 400 093

.....Appellant

VERSUS

Commissioner of Customs, Nhava Sheva
JNPT, Customs House,
Nhava Sheva, Raigad,
Maharashtra – 400 707

.....Respondent

APPEARANCE:

Shri C.M. Sharma, Consultant for the Appellant
Shri Ram Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86192 / 2022

Date of Hearing: 07.10.2022

Date of Decision: 14.12.2022

Imposition of late fee of Rs.2,26,437/-, i.e. equivalent to duty of the imported goods, under Section 46(3) of the Customs Act, 1962 for filing of Bill of Entry after the stipulated time and its confirmation by the Commissioner of Customs (Appeals), Mumbai-II,

JNCH, Nhava Sheva on 27.05.2022 vide above referred order is assailed in this appeal.

2. Facts of the case, in brief, is that imported goods namely Remote Control for TV Brand Onida arrived at Nhava Sheva under IGM No. 2235149 on dated 24.09.2019. Bill of Entry No. 5051519 was filed on the next day i.e. on 25.09.2019 through ICEGATE System maintained by the Respondent-Department and required fee in the form of BCD and SWS of Rs.66,846/- was debited through MEIS scrip. No challan got generated in the system for which after a couple of days Appellant tried to ascertain the reason and observed that Bill of Entry got purged before payment of duty through IGST. Accordingly, Appellant requested vide its letter dated 07.11.2019 and 22.11.2019 to the concerned Deputy Commissioner of Customs, Gr.-V, NS-V, JNCH, Nhava Sheva, Mumbai-II to retrieve the Bill of Entry but Department informed them in writing that such retrieval is not possible from the system. Appellant was also informed that a fresh Bill of Entry was required to be filed and accordingly it did the same on 02.12.2019 but the same resulted in imposition of late fee. Appellant requested through several letters between 03.12.2019 and 12.02.2020 for waiver of late fee charges but received back reply from the Assistant Commissioner, Group- VA, NS-V, JNCH vide his letter dated 27.12.2019 to the effect that their request was rejected as the late fee was liveable under Section 46(3) of the Customs Act, 1962 for filing Bill of Entry after the specified period and there would be no waiver of late fee. Being aggrieved by such a decision,

Appellant filed an appeal before the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva who also refused relief to the Appellant and denied to interfere in the order communicated vide the impugned letter dated 27.12.2019. Hence the appeal.

3. I have heard for a considerable time from both the sides on the issue and perused the written notes submitted subsequently by both the sides. The dispute concerning filing of previous Bill of Entry and its getting purged is not denied by the Respondent-Department nor by the Commissioner (Appeals) in his order but as has been argued by the learned Counsel for the Appellant Mr. C. M. Sharma, Bill of Entry was in fact filed by the end of next day of arrival of the goods at Mumbai Customs but it has been observed by the Commissioner (Appeals) that on arrival of vessel, Bill of Entry filed prior to it did not get finalised through system with IGM inward entry. It is a common knowledge that for various technical reasons and system error or upon laps of time in rectifying the error shown in the ICEGATE system after submission Bill of Entry, it gets purged. This is unrelated to the issue on hand since compliance/non-compliance of Section 46(3) of the Customs Act, 1962 is required to be scrutinised for the purpose of confirmation of payment of late fee that was being imposed on the Appellant. Bare text of Section 46(3) of the Customs Act, 1962 reads as follows:-

"(3) The importer shall present the bill of entry under subsection (1) before the end of the next day following the day (excluding holiday) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which

such goods are to be cleared for home consumption or warehousing:

.....

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed."

Bare reading of the provision by any prudent man would reveal that Bill of Entry is required to be filed by the next day of landing of goods in Indian Customs territory and if the same is not filed/presented within the time, so specified and the proper officer is satisfied that there was no sufficient cause for such delay the importer shall pay fees for late presentation of Bill. This being the dictate of law, gross violation of the same could be noticeable in the conduct of proper officer namely Assistant Commissioner, Group VA, NS-V, JNCH as he disregarded the filing of Bill of Entry that purged/cancelled subsequently in their system even after debit of required BCD and SWS and such purging out, which could be due to an errors committed by either side, has not been specifically attributed to the negligence/mistake of the Appellant. Furthermore, satisfaction of the proper officer about the reason for such delay in filing of Bill of Entry has to be a judicial/rational satisfaction which has to be manifestively free from arbitrariness or *mala fide*. It is surprising that even after admitting in writing on the request letter dated 07.11.2019 that retrieval of Bill of Entry is not possible and despite the fact that discretion was available with the said Assistant Commissioner not to charge late fee on sufficient ground. Further

satisfaction of the proper officer being a judicial satisfaction has to be dependent on the facts which were admittedly tilted in favour of the Appellant.

4. Learned Counsel for the Appellant has rightly pointed out that except communicating the decision of the proper officer namely the Assistant Commissioner in imposing the late fee in a non-speaking order and through only a letter dated 27.12.2019 despite several request made seeking the copy of reasoned order even through RTI application nothing was done by the Assistant Commissioner to ensure natural justice and fair trail to the appellant. Be that as it may, it is not understood as to why the first Bill of Entry dated 25.09.2019, copy of which is annexed to the appeal memo at page No. 64 that clearly established the proof of filing of Bill of Entry by the next date of arrival of the goods at JNCH Nhava Sheva, was not at all considered by the Proper Officer or the Commissioner (Appeals). Astonishing features of the orders passed by the Assistant Commissioner, which are treated as Order-in-Original and the order of the Commissioner (Appeals) are that both of them have not cited any reason as to why the Bill of Entry dated 25.09.2019 is not to be accepted as the Bill of Entry filed under Section 46(3) of the Customs Act, 1962 except noting the submissions of Appellant that it got purged/erased in the system. More importantly, it is an indication of arbitrariness to say in the Order-in-Appeal at para 7 that Appellant had failed to provide any documentary evidence confirming any system related error due to which the delay in filing

the Bill of Entry had taken place. This is something impossible and beyond the reach of the Appellant to get evidence from the computer system that is under the control of the Respondent-Department and operated by their Officials. Moreover, it is a blatantly false statement noted in the Order-in-Appeal and highlighted in the written statement submitted on behalf of the Respondent-Department that prior Bill of Entry was filed and on arrival of the vessel the same did not get finalised through system with the IGM inward entry since documents available on record clearly indicated that Bill of Entry was filed on the next day of arrival of the vessel. It is also submitted by the learned Counsel for the Appellant that they have cited the judgment of *Lakshmi Dall Mill Vs. Assistant Commissioner of Customs (Group-I), Customs House, Tuticorin* reported in 2018 (360) *ELT 307 (Mad.)*, that had not been considered by the learned Commissioner of Customs.

5. It is, noteworthy, to mention here that before pronouncement of the order by Commissioner (Appeals), the issue has been settled with much clarity by the Hon'ble High Court of Madras of 9th November, 2021 in the case of *M/s. Heilsa Meditec LLP Vs. Commissioner of Customs, Chennai-II* reported in 2021-TIOL-2338-HC-MAD-CUS. the relevant portion which reads:-

"15. Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Procession) Regulations, 2018 has been framed to implement Section 46(3) of the Customs Act, 1962. The practice of purging of Bill of Entry appears to be based on the practice adopted in various ports on account of the architecture of the ICEGATE. There is

however no provision either under the Customs Act, 1962 or under the provisions of Regulation which contemplates purging of the Bill of Entry.

This is a fit case where the second respondent ought to have exercised the discretion judiciously by granting waiver as this is a case where petitioner had not filed a fresh Bill of Entry for the first time but has filed a new Bill of Entry as the old Bill of Entry got purged and was erased in the ICEGATE. The provisions of the Customs Act and the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 does not contemplate purging of the Bill of Entry. In fact, the expression purging is neither found in the Act nor in the aforesaid Regulation. Therefore, question of imposing late fee charges merely because an importer files a second Bill of Entry on account of the factors mentioned above would not justify the levy of late fee charges on the petitioner."

6. Therefore, imposition of late fee itself and its confirmation by the Commissioner (Appeals) by erroneously holding that there was no dispute of the fact that Bill of Entry was filed beyond the time limit prescribed under Section 46(3) of the Customs Act, 1962, was irregular and unsupported by any legal provision. It has also caused considerable hardship to the Appellant by burdening the Appellant with further unnecessary litigation and by burdening the Tribunal in showing scanty respect to the law of the land for which, in view of the decision reported in 2015 (318) ELT 150 (Tri.-Del.) in the case of *Sunil Sponge Pvt. Ltd. Vs. Commissioner of Central Excise & Service*

Tax, Raipur, the Respondent is also liable to compensate the Appellant by way of cost. Hence the order.

THE ORDER

7. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva vide Order-in-Appeal No. 480(GR-V)2022(JNCH)/Appeals dated 27.05.2022 confirming late fee of Rs.2,26,437/- is hereby set aside with consequential relief of refund. Respondent-Department namely the concerned Commissioner of Customs, JNCH, Nhava Sheva is directed to pay a minimum litigation cost of Rs.20,000/- to the Appellant within a period of three months from the date of communication of this order.

(Order pronounced in the open court on 14.12.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad