# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

## CUSTOMS APPEAL No. 85445 of 2020

(Arising out of Order-in-Appeal No. 1568 (Gr.II H-K)/2019(JNCH)/Appeal-II dated 04.12.2019 passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Customs Zone, Mumbai)

**Jajoo Exim Private Limited** **.... Appellants**
D-42, Ambabari
Jaipur – 302 016, Rajasthan.

VERSUS

**Commissioner of Customs** **.... Respondent**
**Nhava Sheva-I Customs Commissionerate**
Jawaharlal Nehru Customs House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

APPEARANCE:

Shri Arun Goyal, Advocate for the Appellants
Shri Ranjan Kumar, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/87578/2024**

Date of Hearing: 16.10.2024
Date of Decision: 16.10.2024

**PER: M.M. PARTHIBAN**

This appeal has been filed by M/s Jajoo Exim Private Limited, Rajasthan (herein after, referred to as 'the appellants', for short,) assailing the Order-in-Appeal No. 1568 (Gr.II H-K)/2019(JNCH)/Appeal-II dated 04.12.2019 (referred to, as 'the impugned order') passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Customs Zone, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 M/s Interasia Shipping Lines India Private Limited, Mumbai, a shipping company had brought imported goods through container vessel *E.R. Denmark Voyage 041W* from port of Xingang, China to Nhava Sheva port in India. Necessary Import General Manifest (IGM) No. 2182200 dated

14.12.2017 was filed covering various Bills of Lading (BL) covering the entire imported goods in such vessel. In respect of 3 BLs having numbers A637A00236, A637A00243 and A637A00244, the imported goods viz., 'Ferro Silicon' in six containers were imported by a notify party named M/s Shriram Steels, Ambabari, Jaipur from the supplier abroad M/s Ningxia Minmetals Science Industry and Trade Co. Ltd., Ningxia, China. On the basis of IGM filed by the said shipping lines, the vessel was given 'entry inwards' by the customs authorities, enabling importers to file B/Es for customs clearance of their respective imported goods. In respect of 3 BLs, since the importer M/s Shriram Steels did not file requisite B/E for clearance of imported goods, the supplier abroad contacted one another person viz., M/s Jajoo Exim Private Limited, the appellants herein, who were willing to buy the goods. Accordingly, the shipping lines had filed amendment request to IGM in respect of 3 BLs covered by Line Nos. 361, 364 and 265 vide their three letters, all dated 15.02.2018, before the Assistant Commissioner of Customs, Import Department, JNCH Customs. After verification of the same, the proper officer of customs had approved on 28.02.2018, such amendment in the name and address of the consignee and notify party, in order effect the amendment in respective line numbers of the BL in the name of the appellants. On the above basis, the appellants had filed necessary B/Es for clearance of imported consignment of 'Ferro Silicon' for trading and filed warehouse B/Es no. (i) 5442414 dated 05.03.2018, (ii) 5442447 dated 05.03.2018 and (iii) 5442449 dated 05.03.2018.had

2.3 During assessment of the said three B/Es, in terms of the Bill of Entry (Electronic Integrated Declaration) Regulations, 2011 as amended by Notification No.26/2017-Cus. (N.T.) dated 31.03.2017, the Customs EDI System had calculated the charges for late presentation of the B/Es filed by the appellants; accordingly, the appellants had paid an amount of Rs. 7,45,000/- per bill of entry amounting to a total of Rs. 22,35,000/- for 3 B/Es, while clearing the goods for warehousing. Subsequently, the said imported and warehoused goods were exported out of India, vide three Shipping Bills (S/Bs) No. 4245943 dated 16.04.2018; 4261520 dated 17.04.2018 and 4864143 dated 15.05.2018. Since, the imported goods were cleared without payment of duty by availing notification No.10/92-Customs (N.T.) dated 17.02.1992 as amended, for warehousing and ultimately exported out of India, and subsequent to IGM amendment permitted on 28.02.2018, and 02.03.2018 being holiday on account of 'Holi' followed by weekend holidays of Saturday, Sunday on 03.03.2018 &

04.03.2018, the appellants were able to file the B/Es on 05.03.2018. Further, the JNCH Standing Order No.04/2018 dated 07.02.2018 provide clarification on the charges to be paid on late presentation of B/Es, which also include waiver on the grounds that there was no willful delay in filing the B/E. On the above basis, the appellants had requested for waiver of payment of charges for late presentation of B/Es in the context in which such delay had occurred. The issue was adjudicated by the learned Joint Commissioner of Customs vide Order-in-Original dated 12.10.2018 by rejecting the request for waiver for payment of charges for late filing of B/Es. Being aggrieved with the said order, the appellants had filed an appeal before the Commissioner of Customs (Appeals) who in disposing of the case had rejected the appeal filed by the appellants and upheld the order of the original authority vide Order-in-Appeal dated 04.12.2019. Feeling aggrieved with the above said impugned order, the appellants have filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submissions made in the form written paper books in this case was also perused carefully.

4. The short issue for determination before the Tribunal is whether the imposition of charges for late filing of Bill of Entry under Section 46 of the Customs Act, 1962 read with the Bill of Entry (Electronic Integrated declaration) Regulations, 2011, on the appellants, is legally sustainable or not?

5. In order to appreciate the issue under dispute, specific legal provisions of the Customs Act, 1962 as it existed during the disputed period, read with relevant regulations, are extracted and given below for ease of reference:

**Customs Act, 1962**

> ***"Entry of goods on importation.***
> ***Section 46.*** *(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:*
> *….*
> *Provided that a bill of entry may be presented* ***within thirty days of*** *[1][at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:*

[1] Substituted for 'within thirty days of' by the Finance Act, 2018 (Act 13 of 2018) w.e.f. 29.03.2018 with the words at any time not exceeding thirty days prior to.

*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.*

***Delivery of arrival manifest or import manifest or import report***
***Section 30.*** *(1) The person-in-charge of—*

*(i) a vessel; or*
*(ii) an aircraft; or*
*(iii) a vehicle,*

*carrying imported goods or export goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in such form and manner as may be prescribed and if the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees:*

*Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.*

*(2) The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.*

*(3) If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented."*

**Bill of Entry (Electronic Integrated declaration) Regulations, 2011**

***"Regulation 4.*** *(1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) 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.*

*(2) The bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.*

*(3) Where the bill of entry is not filed within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges*

*for late presentation of the bill of entry at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter :*

*Provided that where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to sub-section (3) of section 46 of the Customs Act, 1962 (52 of 1962)…"*

6. Plain reading of the above legal provisions clearly indicates that there is a requirement under Section 46 ibid for filing a bill of entry by an importer within 30 days of expected arrival of the vessel. In case, there is a delay in filing of B/E, on account of sufficient grounds, then the proper officer of customs may waive the charges; otherwise, if there is no sufficient cause for delay, then the importer is required to pay the charges for late filing of B/E. Further, under Section 30 ibid, the person in charge of the vessel is required to file an import manifest prior to the arrival of the vessel; and if there is any incorrect or incompleteness in such manifest, necessary amendment for rectification of the same can be filed by the person in-charge of the vessel or other authorised person on their behalf, and if there is no fraudulent intention, the request for such amendments shall be approved by the proper officer of Customs. Further the Regulations of 2011 also specify that the charges for late filing of B/E can be waived under the proviso to Regulation 4(3) ibid.

7. It is a fact on record, that in the present case, the shipping lines i.e., M/s Interasia Shipping Lines India Private Limited, Mumbai had filed an IGM amendment request and the same was approved by the proper officer of Customs on 28.02.2018, upon satisfying himself that there is no fraudulent intention for such request for change in the name and address of the importer, and allowed the amendment in IGM for the relevant Line Nos. 361, 364 and 265 from 'M/s Shriram Steels….' to "M/s Jajoo Exim Private Limited…". It is also a fact known to customs, that only after such amendment, the appellants can be allowed to file B/Es as an importer. As explained by the learned Advocate, the appellants duly filed 3 B/Es on the next available working day after holidays i.e., on 05.03.2018.

8. The detailed explanations offered by the appellants and the facts submitted during the proceedings before the original authority and the appellate authority, have been examined and these have been handled in the following manner by the authorities below:

The original authority, in his order had mentioned about it as follows:

> *"6.1 In this case the IGM date is 14.12.2017 and the party has submitted B/E only on 05.03.2013. Since, there was no problem with the Customs system in filing B/E and no evidence have been shown by party regarding failure to file B/E due to problems with ICEGATE or Customs. Hence, waiver of late filing charges was not considered….*
>
> *6.3 Party in its letter dated 22.06.2018 have mentioned that no waiver of late filing charges was considered/waived or reduced to the tune of Rs. 25,000/- as per notification no 26/2017 dated 31.05.2017 and standing order 04/2018 dated 07.02.2018 issued by Commissioner of Customs (Nhava Sheva-I) JNCH, Nhava Sheva. In this regard, I find that as per Para 3(iii) of Standing Order No. 4/2018, late fine charges is restricted to 25,000/- only in cases where there is tariff exemption notification or advance authorization /EPCG/EOU scheme, The present case is not covered under this, hence party's plea is not acceptable.*
>
> *6.4 Party in its submission has mentioned that they have cleared the three imported shipment under Bond Bill Of entry and exported to third country under sec-69 with due value added. I find that even if the party wants to re-export the goods, filing of B/E is mandatory under Bill of Entry (Electronic Integrated Declaration) Regulations, 2017.*
>
> *ORDER*
>
> *6. In view of the above facts and findings of the case, I reject the waiver of the late filing charges under Bills of entry no.(i) 5442414 dtd 05.03.2018, (ii) 5442447 dtd 05.03.2018, (iii) 5442449 dtd 05.03.2018…"*

The learned Commissioner (Appeals) had dealt with these issues by providing his observation as follows:

> *"10. The OA in the impugned order has dealt with all these grounds and have arrived at a decision as per Standing Order and therefore repetition of these grounds in appeal is devoid of merits and therefore I find no reason to interfere with the impugned order.*
>
> *11. In view of the above, the Order/Letter No. S/26-Waiver-99/2017-18 Gr.II (H-K) dated 16.04.2018 and Order No.285/2018-19/JC/NS-I/CAC/ JNCH dated 01.06.2018 are upheld and the Appeal Nos.1435/2018 filed by M/s Jajoo Exim Pvt. Ltd. are rejected."*

9. The facts of the case as discussed in the preceding paragraphs, clearly provide that the IGM indicating the name of the appellants as importer was approved by the proper officer of Customs only on 28.02.2018 and immediately thereafter on 05.03.2018, the appellants have filed the 3 B/Es as required under Section 46 ibid. The appellants have filed these B/Es within the prescribed time limit, once their name having been changed in the IGM line numbers, enabling them to file the B/Es in the Customs EDI System. It is also seen from the records, that the original party to whom the goods was initially intended to be notified/supplied i.e., "M/s Shriram Steels", did not file the B/E within 30 days of filing IGM by the shipping lines, and the goods in terms of Section 48 ibid, were taken up for further action i.e., sale/auction of the goods lying uncleared after

giving notice to the importer, in the absence of any importer filing necessary B/E within 30 days of unloading of the imported goods. However, for a specific query by the Customs officer before allowing the appellants to file the B/Es, whether the imported goods are auctioned or yet to be auctioned?, the Assistant Commissioner had replied that the imported goods have not been auctioned; further the containers having imported goods are required to be scanned for 100% examination; however, due to congestion, subject containers have not yet been scanned, and therefore the amendments sought for change in IGM be allowed. These facts clearly bring out that there is no fraudulent intention on the part of the shipping lines in seeking for amendment in IGM and the appellants, at the earliest opportunity had filed the B/Es after the proper officer of customs had approved the IGM amendment. Hence, the delay caused in filing the B/E from the date of filing of IGM by shipping lines, is not on account of the appellants, and this was beyond their control. Therefore, I am of the view that in the context of the present case, there is no ground for imposition of charges for late filing of B/E on the appellants.

10. Further, the Standing Order No.04/2018 dated 07.02.2018 issued by JNCH Customs provide for certain clarification on the charges to be paid on late presentation of B/Es. This inter alia include the following:

> *"(iii) Late charge for delay of a Bill of Entry shall be restricted to the total duty charged/chargeable. However, in the cases where the duty chargeable is 'NIL", due to tariff exemption notification or advance authorization/EPCG/EOU/scheme, the charge for the late presentation of Bill of Entry would be Rs. 5,000/- per day, subject to maximum of Rs. 25,000/-."*

It is also a fact on record, that the entire quantity of 149.61 MTs of imported 'Ferro Silicon' have been exported vide three S/Bs No. 4245943 dated 16.04.2018; 4261520 dated 17.04.2018 and 4864143 dated 15.05.2018. Since, the entire imported 'Ferro Silicon' were firstly warehoused without payment of customs duty and subsequently exported out of the country, there is no question of payment of any import duty on the impugned goods. Therefore, on this ground also, the appellants are not liable to pay the charges for late filing of B/Es as clarified in the above Standing Order of JNCH.

11. In this regard, I also find that the Central Board of Excise & Customs (CBEC) had issued Circular No.44/2005-Customs dated 24.11.2005, facilitating the amendment of IGM, in cases where there is no fraudulent intention or substantial revenue is involved, and the proper officer shall

allow all amendments irrespective of it being major or minor, in terms of Section 30(3) ibid to enable IGM complete in all respects. In fact, the basic purpose of IGM is to enable determination of short landing of imported goods etc. for the purposes of monitoring and closure of manifest by the Manifest Clearance Department. The extract of the said circular is given below for ease of reference:

***"Circular No. 44/2005-Cus., dated 24-11-2005***
***F. No. 450/66/2004-Cus.IV***
*Government of India*
*Ministry of Finance (Department of Revenue)*
*Central Board of Excise & Customs, New Delhi*

***Subject : Delayed, incomplete or incorrect filing of Import Manifest or Import Report - Regarding.***

*I am directed to invite your attention to Board's Circular No. 13/2005-Cus., dated 11-3-2005 [2005 (181) E.L.T. T15]. The intention of the prevailing Circulars/instructions is to ensure correct filing of Import General Manifest/report, complete in all respects, so as to reduce overall dwell time of cargo. Further, the nature of amendments were also classified in two broad categories 'major' and 'minor' to enable for immediate approval.*

*2. It has been brought to the knowledge of Board that all cases requiring "major amendments" in import manifest are being put up to proper officer for adjudication. The process of adjudication entails delay in the clearance of goods as a proper hearing has to be given and a speaking order has to be issued after taking into account full facts of the case and submissions made by the concerned agencies. Ministry of Shipping and various Industry Associations have represented on this issue. It has been suggested that major amendments which do not affect the Customs revenue* ***substantially****, should be permitted by the proper officer according to the merits of the case.*

*3. The matter was re-examined. It has been decided by the Board that all amendments to the Import General Manifest (IGM) may be considered on the basis of the provisions contained in section 30(3) of the Customs Act, 1962. The said section (sub-section 3) provides that if the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented. Hence the need for adjudication will arise only in cases where there are major amendments involving fraudulent intention or* ***substantial*** *revenue implication arising from the amendments. Further it is possible that in certain special situations such as mother/daughter vessel operation for lighterage on account shortage of draft, congestion of port, natural calamity, the final quantity of goods covered by the IGM would be known only after completion of such lighterage operation, requiring am in quantity originally declared at the time of filing IGM. These exceptional situations need to be taken care so that penal action is not initiated mechanically in such situations.*

*4. The Board's Circular No. 13/2005-Cus., dated 11-3-2005 should be read as amended to the above extent. The above instructions may be brought to the notice of the Trade immediately through appropriate Public Notice."*

In the present case, there was no revenue implication arising on account of the amendments sought by the shipping lines; and once the IGM amendment was allowed by the Customs authorities, the appellants had filed the B/Es immediately. Hence, I am of the view that there is no case of any intentional delay on the part of the appellants, in the present matrix of the case.

12. In view of the above discussions, I am of the considered view that the penal charges imposed on the appellants for late filing of bills of entry in the present case of warehoused goods without payment of import duty, which were ultimately exported out of the country, in the original order dated 12.10.2018 and confirmed in the impugned order dated 04.12.2019, is legally not sustainable.

13. In the result, by setting aside the impugned order dated 04.12.2019, the appeal filed by the appellants is allowed in their favour, with consequential relief, as per law.

(Operative portion of the Order pronounced in open court on 16.10.2024)

**(M.M. Parthiban)**
**Member (Technical)**

*Sinha*