

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86221 OF 2024

[Arising out of Order-in-Original No: 19/24-25/COMMR/NS-I/Bond(I)/CAC/JNCH dated 17th April 2024 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Akshay Logistics

Survey No.63/3, Vill: Veshvi, Gavan Phata,
Chirner Road, Tal - Uran, Raigad-400702.

... Appellant

versus

Commissioner of Customs

Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Shri Anurag Mishra and Ms Sreya Bharati, Advocates for the appellant

Shri DS Maan, Joint Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 86058/2025

DATE OF HEARING:	28/04/2025
DATE OF DECISION:	07/07/2025

PER: C J MATHEW

A substantial portion of the dispute agitated before us in this appeal of M/s Akshaya Logistics, a public warehouse licenced under

section 57 of Customs Act, 1962, pertains to nine consignments of imported goods that, having been confiscated under section 111 of Customs Act, 1962, were allowed to be redeemed under section 125 of Customs Act, 1962 and in the hands of the licensee, to boot, for being in the wrong place at the wrong time; the remains of the dispute are about penalties imposed under section 117 of Customs Act, 1962 from customs authorities purportedly being in right place at the right time. The *minutiae* of the detriments under challenge are not of substance; for, if the order¹ of Commissioner of Customs (NS-I), Nhava Sheva had, indeed, invoked the provisions of Customs Act, 1962 in proper empowerment, only mitigating circumstances must need be ascertained in the interest of proportionately.

2. The proceedings were premised on statutory oversight inhering in the licensor in furtherance of authorization to licensee as ‘receiver’ and ‘custodian’ of ‘imported goods’ pending clearance, contingent on adherence to section 68 of Customs Act, 1962 by discharge of duty liability as assessed and on not being prohibited for import, implying the continued interests of the exchequer in ‘as is where is’ condition of the goods. There is, thus, both statutory mandate and contractually binding obligation intended to achieve such purpose with corresponding penalties for breach. The proceedings arose from visit of the premises of the appellant by officers of the respondent between 28th

¹ [order-in-original no.19/24-25/COMMR/NS-I/Bond(I)/CAC/ JNCH dated 17th April 2024]

August 2023 and 5th September 2023 and the alleged infractions noticed then prompted invoking of section 58B(2) of Customs Act, 1962 for suspension of the licence effective from 7th September 2023 that was followed by show cause notice which was adjudicated, on both aspects, to bring this appeal before us.

3. Even insofar as goods valued at ₹ 9,36,12,500 in relation which section 111(j) of Customs Act, 1962 was invoked is concerned, the cause thereof is attributed to having been found outside the designated area with potential for loss of revenue. The impugned goods do not belong to the appellant, either as owner or as importer, and responsibility for discharge of duty liability, restricted only to fraction of the investment, is inextricably enmeshed with such locus; loss of goods – either physically or by depletion in value – befalls both exchequer and owner and, while the latter has access to civil action against the warehouse keeper, revenue interests are assured not only by the bond executed by importer as prescribed in section 59 of Customs Act, 1962 that may be enforced for improper removal but also doubly so from the prescription in section 73A of Customs Act, 1962 fastening responsibility on warehouse licensee for improper removal. It is in these circumstances of obligation to pay fine and penalties that Learned Counsel for appellant contended that there was no illicit removal as the goods are accounted for and that proceedings itself was unnecessary as the placement of goods was effected with permission of customs

officials. Learned Authorized Representative argued that the goods, covered by nine bills of entry, were, admittedly not in the licenced area of the warehouse comprising 4352 m² in the customs station. He relied upon the decision of the Hon'ble High Court of Madras in *Visteon Automotive Systems India Limited v. CESTAT, Chennai [2018 (9) GSTL 142 (Mad.)]*

4. The goods appear to have been confiscated for alleged violation of section 71 of Customs Act, 1962 read with Public Warehouse Licencing Regulations, 2017, The Warehouse (Custody and Handling of Goods) Regulations, 2016 and conditions stipulated in the licence issued to appellant. It was contended that, insofar as goods covered by bill of entry no. 8246274/12.04.2022 and no. 8256694/23.07.2020, the goods were peculiarly inconsonant with normal packaging and that, in any case, permission under section 49 of Customs Act, 1962 had been obtained. It was submitted that three consignments of M/s Gujarat Guardian, against bills of entry no. 7320016/12.08.2023, no. 6911418/17.07.2023 and no. 7319979/12.08.2023, could not be retained by them owing to their size and the same had been transferred with due permission to another warehouse of the importer. On the remaining four consignments, covered by bill of entry no. 7155407/02.08.2023 by M/s HLS Asian Ltd, no. 7175751/03.08.2023 by M/s Shree Shani Industries, no. 7168369/02.08.2023 by M/s Time Technoplast Ltd and no. 7176264/03.08.2023 by M/s MM9 Pooytrade

Ltd, it was submitted that clearance of goods on payment of duty in the fullness of time precluded any action against the goods.

5. The impugned goods were either available at the premises of the appellant or, having been duly cleared and not bearing taint of duty liability or prohibition then or removed to another warehouse, beyond the scope of responsibility of the appellant but were, nonetheless, subjected to confiscation under section 111(j) of Customs Act, 1962 and the appellant subjected to penalty under section 112 of Customs Act, 1962 for acts of omission or commission rendering the goods liable to such consequence. It is on record that, as on date of confiscation, the goods were either yet in the warehouse, had been cleared or no longer in the custodianship of the appellant and that all actions on the goods were preceded by appropriate permissions from customs authorities. The confiscation was founded on the allegation of

‘(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to terms of such permission;’

in section 111 of Customs Act, 1962 which, itself, may be invoked only upon removal of goods with permission of proper officer. There is nothing on record to demonstrate removal from warehouse let alone of removal without permission or breach of any condition of permission accorded by ‘proper officer’ that invited retribution thereby. The

allegation is that the goods were, at some time, kept outside the bonded area but explanations were offered and, indeed, that interest of revenue had not been prejudiced at any time. There is nothing on record to suggest that any of these has, indeed, made their way into the bonded space of the appellant at that point in time. Unless it was demonstrated that the goods had been removed after bonding, recourse to confiscation for illicit removal is not a legal option.

6. By all accounts, it appears that the goods did pose some difficulty in being accommodated in the warehouse of the appellant owing to which, these remained outside the bonded area for a time but that remedial steps were underway, and with consent of customs officials, for securing the goods. It just does not make for logic or common sense to ignore the commercial interests of both the appellant and the importer in safeguarding the goods, in their custody or belonging to them respectively, merely to jeopardize revenue (and without actually being so) that is only of peripheral significance to the commercial stakes in entirety. Surely, this is less than realistic comprehension of affairs that does not sit well with the seniority and experience of the adjudicating authority. There has been patent lack of responsible adjudication in concluding that the goods had been removed from the warehouse without sequencing the events occurring till the goods were discovered where they were not to be. There is no less of responsibility deficit in not taking cognizance of the final disposition of the goods. There is no

justification for not identifying the breach of Public Warehouse Licencing Regulations, 2017 and The Warehouse (Custody and Handling of Goods) Regulations, 2016 as well conditions in the licence that was not complied with to conclude removal in a manner other than specified in section 71 of Customs Act, 1962. There was, thus, no cause for confiscation unless the goods were established as having been removed from the warehouse and even less cause without any evidence that the goods had been entered physically into the warehouse. There is no charge of failure to warehouse and nor do we find any provision or stipulation that prohibits retention in non-bonded area temporarily while remedies were under way and, that too, with permission from customs authorities. Consequent upon impropriety of confiscation, the redemption fine and penalties are set aside.

7. Five counts of deviation were stipulated to allow the adjudicating authority to invoke section 117 of Customs Act, 1962 for imposing penalty aggregating ₹ 5,00,000 on the appellant. It was contended that The Warehouse (Custody and Handling of Goods) Regulations, 2016, and breach of which has been cited as cause, does not stipulate penalty thereof, if any, under the said Regulations. It was further submitted that between the visit of officials and imposition of penalties all the minor noticed impediments had been rectified. Reliance was placed on decision of the Tribunal in *Ramesh Transport Company v. Principal*

Commissioner of Customs (General) [final order² disposing off appeal³ against order⁴ of Commissioner of Customs (General), Mumbai Zone – I] and in Arun Raigaonkar v. Collector of Customs [1988 taxman.com 576 (CEGAT -MUMBAI)].

8. It was alleged that appellant failed to keep the goods in easily accessible location by improper stacking in non-bonded area, failed to provide ‘solvency certificate’ for four years, did not provide adequate camera coverage, failed to provide proper signage and failed to provide ‘digital signatures’ which ran contrary to paragraph (iii), (vii), (xvi (b)), (xvi (b)(iii)) and (xvi (a)) of conditions in Annexure A of Licence issued to them and which, when read with the Regulations concerned, rendered invoking of

‘117. Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding Four Lakh Rupees.’

of Customs Act, 1962 to be legal when read with

‘12. Penalty. –If a licensee contravenes any of the provisions of these regulations, or abets such contravention or fails to comply with any of the provision of these regulations, he shall

² [n. A/86761/2023 dated 4th October 2023]

³ [customs appeal no. 86442/2021]

⁴ [order-in-original CAO no. 13/CAC/PCC(G)/PS/CBS/Adj. dated 28th May 2021]

be liable to a penalty in accordance with the provisions of the Act.'

of Warehouse (Custody and Handling of Goods) Regulations, 2016.

9. These infraction are minor and, unless defiantly continued to be observed in breach, was hardly cause for recourse to penalty under section 117 of Customs Act, 1962. Indeed, in the light of

'34. I take note of the fact that after being pointed out by the department with regard to the deficiencies as mentioned above, the licensee has subsequently rectified them. However, in the present liberalized regime where the entire onus is shifted on them for proper and fair operation of the warehousing provisions, it is their primary responsibility to ensure that the statutory obligations are followed scrupulously. Further, I find that the said contraventions came to the knowledge of the department only when the verification was taken up by the Department and those discrepancies would not have been noticed but for the above verification. Therefore, I am convinced that the above acts of omissions, commissions and inactions on the part of the Licensee justify the imposition of the penalties mentioned above for each of the violations.'

it appears to us that, in a routine mode, the licencing-Commissioner fell back on a shibboleth usually resorted to for invoking the extended period of limitation without pausing to consider the grand tradition of public warehouse in the scheme of customs duty collection. He appears not to have given any thought to evolution of custodianship in the hands of customs authorities under Sea Customs Act, 1878 through statutory

custodianship under the original Customs Act, 1962 to nominated custodianship now for relieving customs authorities and statutory agencies from custodial possession while entrusting risk in the ‘liberalized regime’ of assessment to such persons as the appellant. Pettifogging, implicit in penalizing of minor infractions that are hardly of significance to revenue preservation, is not appropriate when the errors were rectified. There is no pleasure in penalty which has been designed as deterrent in systems that perceive the scheme of customs engagement with commodities holistically and in harmony with the several modules that make up the whole, with ‘warehouses’ not excluded.

10. Thus, on the facts, standing as on the date of the impugned order, there is no case for imposition of penalties under section 117 of Customs Act, 1962 while the invoking of section 111(j) of Customs Act, 1962 in the notice is with no cause for such. The impugned order does not merit affirmation and is, consequently, set aside to allow the appeal.

(Order pronounced in the open court on 07/07/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)