CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86826 OF 2022

[Arising out of Order-in-Appeal No: 486 & 487 (Import Noting)/2022/JNCH/ Appeals dated 31st May 2022 passed by Commissioner of Customs (Appeals-II), Mumbai-II.]

Blue Spring FZ
201-C, Sukh Sagar, Bhaji Gali Opp. Union Bank
Virat Nagar, Virar (W)- 401303 … ***Appellant***

versus

Commissioner of Customs
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

Shri Ranjan Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86415/2025

DATE OF HEARING: 07/04/2025
DATE OF DECISION: 07/10/2025

PER: C J MATHEW

> *'The art of taxation consists in so plucking the goods as to obtain the largest possible amount of feathers with the smallest possible amount of hissing .'*

so said Jean Baptiste Colbert but that dictum appears to have passed by, unappreciated, unnoticed and, probably, unbeknown, as the expected fracas of a commercial engagement gone away was added to with much more than hissing on the part of the jurisdictional Commissioner of Customs. The description of the goods concerned in this dispute, brought before us by M/s Blue Spring, UAE, is not of relevance in this appeal. Nor is the value of the goods or, for that matter, any exemption notification that may, at some stage, have required scrutiny if such claim had been preferred. All that can be said, with certainty, is that the goods may not be prohibited for import for, if it were, the controversy would have forayed in a different direction. But that the torturous circumstances in which the Tribunal has had to delve into the consequences of order[1] of Commissioner of Customs (Appeals-II), Mumbai – II are of import.

2. M.s Blue Spring FZ shipped goods to India. The goods, according to the import manifest, were purportedly consigned to M/s Venture Impex who, after filing bill of entry no. 7987825/27.12.2016, did not take their purported interests any further till, as reported on behalf of respondent-Commissioner of Customs, duty was paid just

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[1] [order-in-appeal no. 486 & 487 (Import Noting)/2022/JNCH/ Appeals dated 31st May 2022]

about before this appeal was filed. It is the series of occurrences betwixt these two episodic milestones, associated, usually and commonly, with import of goods, that are presented before us for ascertainment of being legal and proper. Especially, with the substantial elapse of time. For, it is precisely that which the first appellate held about the order of the 'proper officer' under section 30 of Customs Act, 1962, and at the instance of the jurisdictional Commissioner of Customs taking recourse to section 129D of Customs Act, 1962, as not being legal and proper, which is before us. Though the consequence of allowing that appeal should have been restoration of *status quo ant*e, the impugned order was not limited to that and, probably, owing to an appeal of M/s Venture Impex, too, having had to be disposed off at the same time.

3. If the conspectus of this controversy were not about the imported goods being the object in a commercial engagement straddling international borders, there would be no dispute. The controversy, having its genesis in purported reneging of the contract by one of the parties, would have not been a dispute concerning customs authorities. Except for an instruction issued, with best of intentions and in public interest, by the Central Board of Excise & Customs (CBEC) and, that too, a procedural prescription in a particular context. Prosaically, it is all about amendment of a 'line' in a particular import, under the authority of

> *'(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.'*

in section 30 of Customs Act, 1962, that the order of the first appellate authority, by appending conditional qualifications, modified to confound outright resolution.

4. The appeal of the jurisdictional Commissioner of Customs, as *well* as the impugned order, was less about the proper application of discretion by 'proper officer' and more about the fine distinctions carved out in circular[2] of Central Board of Excise & Customs (CBEC) with compliance thereto, or lack thereof, as the bedrock for preference accorded to M/s Venture Impex over M/s Amit Petrolubes Pvt Ltd in being privileged to discharge duty liability. The consequence of fastening a 'person' to duty liability on imported goods, contrary to scheme of assessment designed in Customs Act, 1962, is also of no lesser significance.

5. Doubtlessly, the circular *supra* was intended to standardize disposal of request for amendment of import manifest and manifesting legislative intent of circumstantial cause thereof as determinant in any decision to allow or disallow. The statute of 1962 was enacted when the world was one of 'bulk cargo', lengthy 'turnaround of vessels'

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[2] [no. 14/2017-Cus dated 11th April 2017]

combined with long voyages and communication emanating from agent of ‘person-in-charge of conveyance’; possibly, in these circumstances, commercial engagement could be re-deliberated and alteration of details in ‘line’ of manifests would ordinarily be sought by ‘steamer agent’ who represented only the interests of the carrier. In particular, the reference to ‘non-negotiable’ bill of lading with ‘no objection certificate’ from original consignee as essential pre-requisite has more to do with limitation on acquisition of title by endorsement and transfer of document. The circular itself is lacking elaboration of reasons for insistence on such certification as it should have in prescribing conditions that restrict exercise of discretion not envisaged in the statute. That lack, notwithstanding, any rectifiable deficiency as consequence should have been referred back for compliance or established as impossible.

6. It may not be out of place to note that, with order substituting M/s Amit Petrolubes Pvt Ltd for M/s Venture Impex as consignee, M/s Blue Spring FZ had no role insofar as processing of imported goods before or after such amendment was concerned and it was the appeal of jurisdictional Commissioner of Customs that caused entry of the appellant herein into the proceedings. These circumstances have thrown the normative neutrality of tax agency in a commercial controversy to the winds.

7. To revert to facts, M/s Venture Impex, after filing the bill of entry, remained in a state of inertia, including upto and after the stage of proceedings initiated by the 'custodian' to proceed with disposal of the goods under authority of section 48 of Customs Act, 1962. It was only the objection of the appellant through legal notice that brought the process to a standstill. The appellant herein, and purportedly motivated by alleged non-fulfillment of contractual obligation, did search for and did obtain alternative consignee, M/s Amit Petrolubes Pvt Ltd, but want of consummation of substitution thereof sought in application of 18^{th} November 2022 prompted recourse to writ proceedings as the only means to progress in closure of commercial transaction. The 'proper officer' allowed the amendment which apparently aggrieved M/s Venture Impex, and mystifyingly, despite their indifference to fulfilment of obligations under section 47 of Customs Act, 1962, as well as the jurisdictional Commissioner of Customs, presumably having no with no interest in the goods except that duty liability be discharged within the frame prescribed by law, from the proper officer not having insisted on documentation prescribed in the impugned circular.

8. Thus it was that M/s Venture Impex, who may have had interest in the goods but not in discharge of duty liability, and the jurisdictional customs authorities, who had interest in duty liability being discharged but none whatsoever in ownership of the goods, converged in disputing amendment that enabled M/s Amit Petrolubes Pvt Ltd to pay the duty

and clear the goods. The first appellate authority had, before it, no proceedings other than one among retention of the original consignee in the manifest, affirming substitution of the consignee as ordered by the 'proper officer' or restoration before the 'proper officer' for re-determination in factual circumstances brought on record for the first time. It was held that the prescriptions in the circular setting out guidelines had not been conformed with and the amendment rolled back in consequence but, not stopping there, made conditional upon compliance with obligation under section 47(2) of Customs Act within a specified period. With the original consignee having reportedly complied thereto, the only issue remaining for consideration is the correctness of having inserted a condition that neither has sanction of section 30 of Customs Act, 1962 nor within scope of appellate jurisdiction.

9. We have heard Learned Council for the appellant and Learned Authorized Representative at length.

10. The first appellate authority held thus

> *'18. In view of the above discussions and findings I am of the considered view that the impugned Order-in-Original No. 933/2021-22/DC/NS-G/JNCH dated 30.11.2021 passed by the OA is not in accordance with law and hence, I set aside the same and allow the appeal no. 326/2022 filed by the department and appeal no. 127/2022 filed by M/s Venture Impex (1st consignee) with consequential relief as per law.*

> *However, considering the fact that the impugned goods are lying for clearance for home consumption since December, 2016 blocking the Government revenue, this situation cannot be allowed to continue indefinitely on the pretext of dispute between the shipper and shipping line or importer as this would tantamount to abuse of law. Hence, I further order that the 1st consignee M/s Venture Impex should clear the goods after complying with the relevant laws, rules and regulations within three weeks from the date of receipt of this order failing which the department will be at liberty to deal with the goods as deemed fit in accordance with law including allowing amendment in the name of the consignee in the IGM as requested by the supplier/shipper M/s Blue Spring FZE, UAE.'*

with the consequence that a relief, if it could be called that and not sought for in either of the appeals under consideration, was ordered.

11. M/s Venture Impex has discharged duty liability as obligated under section 47(2) of Customs Act, 1962 and only clearance remains which is issue between custodian and them. The amendment was set aside on grounds of procedural non-compliance; it is not in question that such 'no objection certificate' was ever available. Together, closure has been rendered to involvement of customs authority in the matter and the conditional allowing of the appeal has since attained finality. But the question of prescription having been properly applied unbinds the presumption which influenced the first appellate authority and the removal of the presumption brings into question the grounds for erasure of the amendments. For the sake of wholesomeness, we take up both

for consideration.

12. The documentary deficiency upon which interference with amendment ordered by 'proper officer' was sought for by the jurisdictional Commissioner of Customs, and allowed by first appellate authority, was the 'non-negotiable' bill of lading against which the consignment had purportedly been shipped. In cross-border transactions, the financial interest of the shipper is secured *vis-à-vis* the buyer through negotiating banks releasing documents of title only on mutually agreed terms of finality and 'non-negotiable' copy of bill of lading is provided for fulfillment of landing and customs formalities. We are unable to ascertain from the contents of the impugned order if the prescription of 'no objection certificate' was premised on such document or on ascertainment that 'non-negotiable' bill of lading characterized the shipment; a conclusion that did not consider this distinction jeopardizes the erasure of the amendment. That jeopardy has not been overcome and, to that extent, the reversal of amendment is not conclusive.

13. M/s Venture Impex had, by filing bill of entry under section 46 of Customs Act, 1962, held itself out to be importer and should have, under the terms of section 47(2) of Customs Act, 1962, discharged the self-assessed duty liability immediately or, if delayed, with appropriate interest. That duty liability has been discharged is on record in the

submission of Learned Authorized Representative. This, then is not the situation envisaged in section 48 of Customs Act, 1962 though that is, at best, between ‘custodian’ and M/s Venture Impex. However, it is not clear from the submission of Learned Authorized Representative if interest liability has been discharged; if not, the compliance with directions of first appellate authority, such as it is, is in doubt and section 48 of Customs Act, 1962 may be activated. That such action, once initiated, was aborted is on record. Section 49 of Customs Act, 1962 requires permission for deemed warehousing of imported goods that are pending for clearance under section 47 of Customs Act, 1962 and, till disposal of appeal by first appellate authority, the validity of claim of importer on goods rests on the foundation of such saving.

14. Such permission is not on record despite which the first appellate authority took it upon itself to accord deferment of duty payment, a necessary precursor to clearance, to regularize retention of claim over the goods, lying uncleared since filing of bill of entry on 27th December 2016, that, under section 49 of Customs Act, 1962, after initial permission is to be exercised only by Commissioner of Customs. Neither was relief to that end sought nor was the first appellate authority within his competence to allow such deferment. In the absence of evidence of such permission by competent authority, the *locus standii* of M/s Venture Impex *vis-à-vis* the bill of entry should have been determined; their entitlement to file appeal against any order pertaining

to the goods is questionable. It did not strike the first appellate authority that jurisdiction should have been decided first.

15. In these circumstances, the rejection of amendment in the impugned order should not be allowed to stand; accordingly, the impugned order is set aside and the dispute remanded to the first appellate authority for determination of competence to entertain the appeal and on the factum of nature of bill of lading as 'non-negotiable' or otherwise.

16. Appeal is allowed by way of remand to first appellate authority.

(Order pronounced in the open court on 07/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*