(2021) 05 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 60038 Of 2021, Customs Cross Objection No. 60084 Of 2021

Commissioner Of Customs, Ludhiana APPELLANT

Vs

M/s. Overseas Warehousing P.Ltd. RESPONDENT

Date of Decision : 13-05-2021

Acts Referred:
Customs Act, 1962 — Section 45, 47, 48, 28AA

Citation : (2021) 05 CESTAT CK 0007

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : M.S.Dhindsa, R.K.Hasija

Final Decision : Dismissed

Judgement

BE No.9072508 dated 19.01.2013

Total duty along with interest paid by importer â?" Rs.719068-Rs.7,74,100/-

Payment date-03.08.2013 by the importer

Amount of interest for the period 03.08.2013 to 31.03.2016 (@ 18% p.a. â?" Rs.3,70,677/-

Amount of interest for the period 01.04.2016 to 22.02.2020 @ 15% - Rs.4,42,509/-

Interest liability â?" Rs3,70,677+Rs.4,42,509 =Rs.8,13,186/-

on substantially eased conditions for provisionally release. The litigation ended vide order dated 26.2.2018 of Honâ??ble High Court and Customs

authorities cleared the goods for home consumption on 21.3.2018 since the duty had already been paid long ago in August 2013. However, before

taking delivery from the respondent, the importer refused to pay detention/

demurrage to the respondent which were due after repeatedly urging the

importer either to move the goods out of CFS or risk their sale for recovery of the warehouse dues through 19 letters from 3.3.2013 to 22.5.2018, the

respondent had finaly given public notice of sale to get warehouse charges waived off from the respondent custodian. However, the department vide

letter dated 18.5.2018 pointed out to the importer of his own failure to take options given to him earlier for saving demurrage.

7. It is his submission that however neither sought any stay against the proposed sale of the goods, for which the respondent had issued public notice.

In the absence of any stay and the importerâ??s unwillingness to even negotiate the demurrage payable, the respondent sold the goods on 12.10.2018

for 60 lakhs. On 17.10.2010, in Civil Writ Petition filed by the importer, Honâ??ble High Court vide order dated 21.11.2019 directed the customs

authorities â??Customs authorities shall consider the refund of the duty paid along with interest on the declared value of the seized goods way back in

2013.â? Therefore, direction to refund duty with interest was given to the Commissioner of Customs, Ludhiana. Thereafter department took U turn on

its own consistent and lawful stance. It is noteworthy that the said proceedings against the respondent were initiated only after the customs authorities,

having consistently taken lawful stand right up to the Honâ??ble High Court, supporting the respondentâ??s legitimate claim of warehouse charges

due to the importerâ??s failure to take provisional release, took an about-turn in the contempt proceedings. They asserted that the said sale of goods

by the respondent was in violation of section 45 and 48 of CA read with Regulation 6(1) (I) of Handling of Cargo in Customs Area Regulations, 2009

till that time as the department already initiated penal proceedings against the respondent by issuing a show cause notice on 27.6.2019.

8. It is the contention that the said sections applied only to the imported goods as defined in section 25 ibid and the importerâ??s good had ceased to

be imported goods after their clearance under section 47 ibid by the Customs on 21.3.2018, the invocation of said section 45 and 48 was incorrect at

best and misleading at worst. As a matter of fact, the notice intended, instead of defending the Departmentâ??s own consistent an lawful stand to

scapegoat the respondent and escape contempt proceedings. Ironically, the importerâ??s own culpability towards high demurrage bill, which was the central issue in this litigation, has been totally ignored. Instead, he is being rewarded for his own wrong of not accepting Honâ??ble Tribunalâ??s

order dated 30.12.2014 for provisional release of the goods with conditions substantially diluted.

9. It is his submission that the Commissioner of Customs vide order dated 5.2.2020 confirmed the duty liability of the respondent. However, this order

was soon thereafter set aside by Honâ??ble Tribunal vide Final Order dated 4.3.2020. Nevertheless, the AC Customs, vide OIO dated 6.8.2020,

determined the amount of interest of Rs.16,26,555/- on the duty liability, that had not been determined, and ordered its recovery. This order too was set

aside by the Commissioner of Customs and GST (Appeals) vide impugned order dated 3.11.2020, holding the same as legally untenable. It is this order

of the Commissioner (Appeals) which has been assailed by the Department.

10. It is his submission that the appeal is not maintable as per High Courtâ??s order dated 21.11.2019 had directed the Commissioner that

â??Customs authorities shall consider the refund of the duty paid along with interest on the declared value of the seized goods way back in the year

2013â?. This direction had been given to the Customs authorities because, having been paid to the Customs in 2013, the duty could be refunded with

interest only by the Customs. However, the Customs authorities have been coercing the respondents to refund to the importer the said duty with

interest. The impugned order-in-Appeal has partly corrected that attempted illegally. However, this appeal before the Tribunal is another attempt to

restore it.

11. It is his submission that only issue in departmentâ??s contention that only issue to be decided was quantum and not whether interest is payable or

not is again misleading inasmuch as the interim order dated 10.1.2020 of Honâ??ble High Court clearly spells out for the competent authority to

determine the question of admissibility of interest and its rate.

12. Ld.AR vehemently argued that they have been following orders of the Honâ??ble High Courts regarding duty payable by the respondent given

out of charge in 2018, on which duty already paid by the importer in 2013. The Honâ??ble High Court vide interim order dated 10.1.2020 had

directed the competent authority to determine the question of admissibility of interest and its rate if any after adjudicating the dispute with recovery off duty from petitioner (respondent herein). There is no order of the Honâ??ble High Court that the duty is payable by the respondent. Further, there

was no order of determination of duty payable by the respondent as on date of passing OIO on 6.8.2020.

13. In view of this, it is his submission that the appeal is to be dismissed.

14. Heard the parties and considered the submissions.

15. On hearing both sides, I am of the view that whether the demand of interest confirmed by way of adjudication order is to be maintained or not?

16. The facts of the case are in dispute are that the duty has been received by the appellant from the importer way back in 2013 by the importer and

with the Revenue. It is also the fact on record that on 31.3.2018 out of charge was given to the department to the respondent for the delivery of the

goods to the importer. However, it is also fact on record that the goods have already been cleared for home consumption by way of auction by the

respondent. In that circumstance, the dispute arose whether the Honâ??ble High Court has directed to the appellant vide order dated 21.11.2019 to

consider the refund of duty paid and quantum of duty on declared seized goods way back in 2013. Thereafter the department woke up and quantum of

recovery of duty from the appellant and till date no order has been issued or no show cause notice has been issued for recovery of duty on the subject

goods. Admittedly, it is fact on record that the duty of the said goods already been recovered by the appellant in 2013 itself and it is in the knowledge

of the department. The appellant never received duty from the importer.

17. The appellant is taking shelter of the order dated 10.1.2020 wherein High Court has directed â??In the circumstances, it is directed that the

petitioner would (herein respondent) to put an amount Rs.25 lakhs in escrow account on its part, the competent authority would determine the question

of admissibility of interest and its rate, if any, after adjudicating the dispute with regard to recovery of duty from the respondent after giving

opportunity of hearing to the petitionerâ??

18. On going through the direction of High Court, it is the duty of the appellant to determine the dispute with regard to recovery of duty from the

appellant if any, giving an opportunity to the petitioner and thereafter to decide the issue of admissibility of interest and its rates. The Revenue is taking

shelter of the Final Order No.60358/2020 dated 4.3.2020 wherein in para 4.7, this Tribunal observed

â??4.7. Since we have held that duty in respect of the goods in custody of the custodian if not cleared for home consumption as provided

for by in terms of Section 47, needs to be paid by the custodian, amount of Rs 25 lakhs deposited by the appellant in escrow account to be

maintained with the Custom Authority will continue to be in deposit in the said escrow account till finalization of these proceedings in

remand.â??

18. According to the spirit of the order of this Tribunal, there was no goods in question were in the custody of the custodian in terms of section 47 of

the Act then the duty is payable by the custodian but no such notice has been issued to the respondent by the appellant to determine the liability on the

respondent. Moreover, it is fact on record that the appellant has enjoyed duty paid way back in 2013 on the goods in question. Therefore, the question

mark on the person who has received duty, who can duty, who is liable to pay interest thereon and duty has been enjoyed by the appellant themselves

how can demand interest from the respondent without determine liability. In that circumstance, The Revenueâ??s appeal is only an abuse of process

of law as the adjudicating authority has determined duty liability against the respondent. The duty has been enjoyed by the appellant themselves how

can demand interest from others. Therefore, I do not find any infirmity in the impugned order and the same is upheld. The appeal filed by the Revenue

is dismissed. The cross objections are also disposed in the above terms.

(Pronounced in the open Court on 13.05.2021)

