
(2021) 07 CESTAT CK 0030

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40035 Of 2021

M/s. AIR India Ltd.,

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 16-07-2021

Acts Referred:

Handling of Cargo in Customs Area Regulations, 2009 — Regulations 5, 5(n), 6, 6(f), 12(8)

Citation : (2021) 07 CESTAT CK 0030

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : Manoj Arora, T. Usha Devi

Final Decision : Allowed

Judgement

1. Brief facts are that M/s. Air India Ltd., was granted custodianship permission for export of cargo. As a custodian, they are bound to comply with the provisions of Customs Act, 1962 and allied Rules and Regulations being issued from time to time. As per the handling of Cargo in Customs Area Regulations, 2009 [hereinafter referred to as "HCCAR, 2009"], the custodian is duty bound to be diligent in discharging their duties under the prevailing Customs laws and HCCAR, 2009. During surprise check conducted by officers of the department at the export shed on 01.08.2019, some shipping bills were picked up randomly and the movement of the goods was closely followed in respect of these shipping bills. It was observed that in case of Shipping Bill No.5981482, dated 01.08.2019, the "Let Export Order" [LEO] was given by Customs at 17:27 hrs. However, cargo was allowed for scanning by the appellants at 16:45 hrs itself as seen from the register maintained by them. Thus, the appellants had allowed the cargo to

move into the sterile area without checking the status of Customs clearance i.e., without checking whether LEO was given or not. It is also noticed by

the department that similar process of flow of goods was made in respect of few other shipping bills on 01.08.2019. There were some shortcomings in

the function of the appellants as custodian, earlier in few cases of smuggling which led to seizure of â??Star Tortoisesâ?? on 07.11.2018 and seizure

of â??Red Sandersâ?? on 29.07.2019.

2. Again, the cargo service provider having custody of imported or exported goods in Customs area, has to provide security and there should be

control to prohibit unauthorised access into the premises. It was observed by the officers during the visit that security personnel are not properly

verifying the ID cards of the persons entering into the Customs area so as to prevent unauthorised persons from entering into the premises. Further,

the list of authorised persons, who have been issued ID cards have not been furnished to the Customs by the appellant. There were several instances

where â??Yellow ID cardsâ?? issued by the Custodian have been forged and misused. Besides this, the list of persons, whose ID cards have been

revoked, was not furnished to the Customs by the appellants. Showcause notice was issued alleging violations of Rules 5 and 6 of HCCAR, 2009

regulations and proposing to revoke the appointment as custodian and proposing to impose penalty. After due process of law, the original authority

imposed penalty of Rs.50,000/-on the appellant under Regulations 12(8) of HCCAR,2009. However, the appointment as custodian of cargo was not

revoked. Aggrieved by the penalty imposed, the appellants are now before the Tribunal.

3. The learned counsel Shri Manoj Arora appeared and argued for the appellants. He adverted to Paras 3 and 4 of the showcause notice and

submitted that the allegation in the show-cause notice that appellants violated the Rules in earlier cases, which led to smuggling of Star Tortoises on

07.11.2018, is totally false and untrue. The appellants were never connected with any such smuggling case leading to seizure of â??Start

Tortoisesâ??. The appellants were indeed issued show-cause notice with regard to seizure of â??Red Sandersâ?? on 29.07.2019. Though in the said

mater penalty was imposed, the same was challenged before Commissioner (Appeals) and vide Order-in-Appeal No.288/2020, dated 07.12.2020, the

Commissioner (Appeals) held that there is no contravention on the part of the appellants and the penalty imposed under section 117 of the Customs

Act, 1962 was set aside, discharging the appellants of the allegation.

3.1 With regard to the allegation that the appellants had allowed the cargo to move for scanning before sanction of LEO in respect of Shipping Bill

No.5981482, dated 01.08.2019, the learned counsel adverted to the X-Ray Register maintained for scanning purposes. He pointed out that the said

shipping bill had come up for scanning at 16:45 hrs but since it was noticed that the LEO was not issued, the same was obtained and the scanning was

done later only at 17:30 hrs, after obtaining the LEO. The appellant has been very careful in not doing the scanning without obtaining LEO. Though,

several shipping bills were taken up for checking, the error was noticed by the department only in one shipping bill. There is not much time difference

from the time of issuing the LEO and time of the cargo being allowed into the premises. The appellants have not allowed the goods to be exported

without proper documents and without proper scanning. He submitted that there is no violation of Rule 6 of HCCAR, 2009 on the part of the

appellants.

3.2 With regard to the allegation that the appellants have allowed unauthorised persons to enter the premises, the learned counsel submitted that these

are merely allegations without any evidence. The department has not requested the appellants to furnish the list of persons who have been issued ID

cards or the list of persons whose ID cards have been revoked. Had any request been made, the appellants would have furnished the same. He

prayed that the penalties may be set aside.

4. The learned Authorised Representative Ms. T. Usha Devi supported the findings in the impugned order. With regard to the Shipping Bill

No.5981482, dated 01.08.2019, it is pointed out by her that the LEO was issued by Customs only at 17:27 hrs. The scanning was done at 16:45 hrs,

which is almost half-an-hour before sanction of LEO. This is clear violation of Regulations 6(f) of HCCAR, 2009 Regulations. A copy of the LEO

attested by the Customs officer has to be presented to the ramp staff to confirm that the Customs process is completed. The custodian's security

has to verify the LEO and only then the goods can be allowed for scanning. Without obtaining the LEO, the appellants have allowed the goods to enter

into the scanning premises, which is clear violations of the provisions and, therefore, the penalty imposed is legal and proper.

4.1 The appellants have allowed access to unauthorised persons into the premises. This is violation of Regulations 5(n) of HCCAR, 2009. Several times such shortcomings were notices in the function of the appellants as a custodian. Earlier, such shortcomings led to the case of smuggling of seizure of "Star Tortoises" on 07.11.2018 and seizure of "Red Sanders" on 29.07.2019. Such shortcomings are grave in nature and have to be viewed seriously. She prayed that the appeals may be dismissed.

5. Heard both sides.

6. On perusal of records and hearing the submissions made by both sides, it is seen that allegations made against the appellants that shortcomings as a custodian lead to smuggling of "Star Tortoises" on 07.11.2018 is without any basis. There is no evidence to show that the appellants have in any connection to such seizure of "Star Tortoises". A show-cause notice was issued to the appellants with regard to seizure of "Red Sanders" on 29.07.2019. The adjudication proceedings on such seizure have culminated in imposition of penalty on the appellants. The said order of the adjudicating authority was challenged by the appellants before Commissioner (Appeals), who vide order dated 07.12.2020 set aside the penalty observing that there were no shortcomings on the part of the appellants.

7. The allegations in show-cause notice now narrows down to the Shipping Bill No.5981482, dated 01.08.2019, wherein the LEO was given by

Customs at 17:27 hrs. It is the case of the department that the appellants allowed the cargo for scanning at 16:45 hrs much before sanction of LEO.

On perusal of the X-Ray Register, it is seen that though the cargo had reached for scanning at 16:45 hrs, the same was detained without conducting

the X-Ray scan. It was again scanned only at 17:27 hrs, after the sanction of LEO. The department does not allege that the appellant has done the

same with any wrongful intention. There is no allegation with regard to the goods exported under the shipping bill. Therefore, the small time difference

which is a shortcoming indeed made by the Government of India carrier, in my view, is a condonable lapse. During visit, the officers subjected various

shipping bills for scrutiny, the time difference has been noticed only with regard to this one shipping bill.

7.1 The second allegation is that appellants have violated Regulation 5(n), by allowing unauthorised persons to enter into the area. Though, it is stated in the show-cause notice that the appellants have allowed unauthorised persons to access the premises, there is no evidence to support the same. The details of such unauthorised persons seen in the premises are not furnished by department. The allegation without support of any evidence cannot sustain.

8. From the discussions made above, I am of the view that the penalty imposed upon the appellants cannot sustain and is not warranted. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.
(Pronounced in open court on)