



30

lgc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOM APPEAL (L) NO.28294 OF 2024

Commissioner of Customs,]
Nhava Sheva-I.]
Having address at]
NS-1, INCH, Nhava Sheva, Taluka-Uran]
District Raigad 400 707]... Appellant

Versus

Ganesh Benzoplast Limited]
A public company incorporated under]
the Companies Act, 1956, having]
address at Bat No.7 & 13, Bulk Road,]
Opp. Pert User Building User Building]
JNPT, Sheva, Navi Mumbai- 400 707]... Respondent.

WITH
INTERIM APPLICATION (L) NO.28666 OF 2024
IN
CUSTOM APPEAL (L) NO.28294 OF 2024.

Commissioner of Customs
Nhava Sheva I ...Applicant.

In the matter between

Commissioner of Customs
Nhava Sheva I ...Appellant.

Versus

Ganesh Benzoplast Limited ...Respondent

Mr Satyaprakash Sharma a/w Ms. Niyati Mankad (Through V.C.), i/by Niyati Mankad for the Appellant/Applicant.

Dr. Sujay Kantawala a/w Anurag Mishra (Through V.C.),
Samsher Garud, Bharati Indulkar & Rohit Jain i/by
Jaykar & Partners for the Respondent.

**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**
DATED: 17 October 2024

ORAL JUDGMENT – (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. This is an Appeal under Section 130 of the Customs Act 1962 challenging the Customs Excise and Service Tax Appellate Tribunal (“CESTAT”) order dated 22 April 2024, allowing the Respondent’s Appeal against the Principal Commissioner’s order in original dated 08 January 2024./ By the order in original dated 08 January 2024, the Principal Commissioner had revoked the suspension of the warehousing operation of the Respondent, but this was subject to payment of redemption fine and penalty. The impugned order has now set aside the fine and penalty.
3. Mr. Sharma, the learned counsel for the Appellant, submits that the following substantial questions of law arise in this Appeal.
 - (I) Whether the Hon'ble CESTAT correct in law in setting aside Order in Original solely on the ground that permissions were issued by Customs Department for unloading/storing of goods and/or such activities were done under the supervision of Customs Department without looking into factual aspects and conditions of each such permissions/supervisions_of activities of the Respondent?

- (II) Whether in the facts and circumstances of the case, the Hon'ble CESTAT was correct in law in overlooking the procedures outlined in JNCH Public Notice No. 155/2016 and the Board's Circular No. 08/2021 regarding advance discharge permission and the mandatory filing of Bills of Entry before the vessel's arrival?
- (III) Whether in the facts and circumstances of the case, the Hon'ble CESTAT was correct in law in setting aside the imposition of penalties under Sections 117 and 112(b)(ii) of the Customs Act, 1962 for violations including non-reporting of time-expired bonds, storage of non-bonded goods in bonded tanks, and lack of audit trail facilities?

4. The other substantial questions of law referred to in paragraph 5 of the Appeal Memo are virtually repetitions, and in any event, they were not pressed.

5. Mr. Sharma submitted that the Respondent breached the conditions of the licence for operating a public bonded warehouse, and accordingly, the goods stored in breach of such conditions were liable for confiscation. He submitted that in such circumstances, the Principal Commissioner was justified in suspending the licence and imposing a redemption fine and penalty.

6. Mr. Sharma submitted that the Tribunal misinterpreted the so-called permissions issued by the Customs Department. He submitted that the permissions were granted only to assist the Respondent in the rapid unloading of the goods. However, such permissions did not entitle the Respondent to breach the conditions of the licence to operate a public bonded warehouse and store the goods in breach of such conditions.

7. Dr. Kantawala, the learned counsel for the Respondent, submitted that there was no breach of any of the conditions of

the licence. He submitted that, in all, there were 82 tanks in a fenced area, which was duly notified. He pointed out that out of these, 79 were public bonded tanks, and the remaining 3 were private bonded tanks. He pointed out that the Respondent was dealing with edible oils, etc., that had to be discharged from a vessel through a high-pressure pipeline. He submitted that such discharge cannot be stopped midway to avoid accidents. He, therefore, submitted that necessary permissions were sought and obtained to facilitate this process.

8. In such circumstances, Dr Kantawala submitted that there was no breach of any of the conditions of the licence. In any event, he submitted that the issue of the breach was a question of fact and the Tribunal, on considering the entire material on record, has answered this question of fact favouring the Respondent. He submitted that there was not even an allegation of perversity regarding such a finding of fact. Accordingly, he submitted that none of the substantial questions of law as proposed or even otherwise arise in this Appeal.

9. Dr. Kantawala relied upon the decisions of the Hon'ble Supreme Court in **BISCO Limited Vs. Commissioner of Customs and Central Excise**¹ and **Commissioner of Customs (Import), Mumbai Vs. Flinesse Creation Inc.**² in support of his contentions.

10. In rejoinder, Mr. Sharma submitted that the decision in *BISCO Limited* (Supra) was distinguishable because the facts

¹ 2024 SCC OnLine SC 340

² 2009 SCC OnLine Bom 2269

in the said case were not comparable. Mr. Sharma also relied on **Visteon Automotive Systems India Limited vs. CESTAT, Chennai**³ and **Synergy Fertilchem Pvt. Ltd vs. State of Gujarat**⁴ to submit that the availability of the goods is unnecessary for imposing the redemption fine or penalty.

11. Rival contentions now fall for our determination.

12. Admittedly, an Appeal under Section 130 of the Customs Act can be entertained only if the High Court is satisfied that the case involves a substantial question of law.

13. In this appeal, the central allegation concerns the alleged breach of conditions for operating a public bonded warehouse. The record bears out, and the Tribunal, in its detailed order, has held that there was no breach of any of the conditions of the licence. This is purely a finding of fact, and such finding is supported by the material on record. Accordingly, not even a ground alleging perversity or otherwise to assail this finding of fact was even proposed in this Appeal.

14. The CESTAT has not only taken due note of the circumstances in which the goods are discharged through a high-pressure pipeline from the vessel directly into the tanks but has taken cognisance of the permissions granted by the Customs Authorities from time to time. The allegation that such permissions have been misinterpreted or misconstrued is without basis. We have seen the applications made by the Respondent giving full particulars and the permissions granted by the authorities by way of endorsements on the

³ 2018 (9) C.S.T.L.142 (Mad.)

⁴ 2020 (33) G.S.T.L. 513 (Guj.)

very said applications. On a conjoint reading of the applications made by the Respondent and the permissions granted thereon, we do not think there is any case of breach of the licence's conditions made out by the Appellant.

15. There is a detailed discussion of this crucial aspect in paragraphs 6.1 to 6.4, 8.1, 9 and 10 of the CESTAT order. The findings of fact recorded therein are well supported by the material on record, and there is no question of any perversity in the record of such findings.

16. Accordingly, we are satisfied that the first substantial question of law, as proposed by Mr. Sharma, does not arise and, in any event, if the same arises, will have to be held against the Appellant and favouring the Respondent.

17. Regarding the second question proposed, we find that such a question was not even raised before the CESTAT. Therefore, it is incorrect to state that the procedure outlined in the JNCH Notice and Board's Circular regarding advance discharge permission or the mandatory filing of Bills of Entry before the vessel's arrival was "overlooked" by the CESTAT. A substantial question of law has to arise from the proceedings. Such a question does not arise. In any event, whether the procedures were complied with or not also involves a factual element. Without any precise particulars, such a question cannot be entertained at this stage. As noted earlier, an Appeal under Section 130 of the Customs Act can be entertained only if it involves a substantial question of law.

18. The third substantial question of law is only consequential. Once it is held that there was no breach of any

of the terms and conditions of the licence and that the goods themselves were not liable for confiscation, there was no question of imposing any fines or penalties. Besides, we disapprove of the approach of the Principal Commissioner in invoking the residual provisions of Section 117 of the Customs Act upon realising that no fines or penalties could be imposed under Sections 111 and 112 of the Customs Act. In any event, the Tribunal has recorded the findings that there were no breaches, and consequently, there was no case of inferring any improper importation or confiscation of goods. In such circumstances, it is not necessary to go into the question of whether a redemption fine could be imposed even if the goods were not available.

19. In *BISCO Limited* (supra), the Hon'ble Supreme Court noted that the Customs Authorities granted specific permissions to unload the portion of the cargo outside the open space, which was notified as a public bonded warehouse but within the factory premises. The Hon'ble Supreme Court noted that such permissions were neither cancelled nor revoked, and the unloading exercise was undertaken under the supervision of the Superintendent.

20. The discussion in paragraphs 49 and 50 of the decision is quite clear. In the said case, the Superintendent endorsed the permission on the body of the letter so that the cargo would not get damaged due to the outside soggy condition. In such circumstances, the Hon'ble Supreme Court held that a view could reasonably be taken that the Appellant, as the owner of the goods, had exercised its right under Section 64(d), which the Superintendent endorsed.

21. The circumstance that in *BISCO Ltd.* (Supra), the permission was granted because the soil had become very sluggish due to heavy rains and lack of space within the notified open area cannot be a factor to distinguish the decision of the Hon'ble Supreme Court. The permissions were undoubtedly granted in the present case for different reasons. That will not be grounds for distinguishing the judgment of the Hon'ble Supreme Court.

22. For all the above reasons, we are satisfied that no substantial question of law arises in this Appeal, and accordingly, this Appeal is liable to be dismissed. This Appeal is accordingly dismissed.

23. The Interim Application does not survive given the dismissal of the main Appeal, and consequently, it is also dismissed.

24. There shall be no order for costs.

(Jitendra Jain, J)

(M.S. Sonak, J)