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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CUSAA 53/2024

CONTAINER CORPORATION OF INDIAAppellant

Through: Mr. Rishi K. Awasthi, Mr. Amit
Awasthi & Mr. Rahul Raj
Mishra, Advs.

versus

THE COMMISSIONER OF CUSTOMSRespondent

Through: Mr. Aakash Srivastava,
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **09.09.2024**

CM APPL. 29576/2024 (11 Days delay in filing the Appeal)

Bearing in mind the disclosures made, the delay of 11 days in filing the appeal is condoned.

The application stands disposed of.

CUSAA 53/2024 & CM APPL. 29573/2023 (Stay)

1. The instant appeal has been preferred against the final order rendered by Customs Excise & Service Tax Appellate Tribunal [“CESTAT”] dated 10.10.2023 and which has affirmed the imposition of duty and penalty on the appellant in terms of Section 45 of the Customs Act, 1962 read with Regulation 6 of Handling of Cargo in Customs Area Regulations [“HCCAR”], 2009.
2. Shorn of unnecessary details, the facts as are essential for the holistic view of the entire matter are as follows.
3. M/s. Pico Trading Co. had filed Bill of Entry dated 27.10.2011 for clearance of goods imported in a container. The goods were declared as “steep glass bowl” and “deep cut glass bowl” with



declared valued of Rs. 8,12,745.6/-. Based on the specific intelligence, the container was examined on 02.11.2011/03.11.2011, in the presence of independent witnesses/Panchas, and the Proprietor of M/s. Pico Trading Co. and the representative of the CHA and on examination, it was found that in addition to declared goods, there were 45 other different kinds of branded products including ladies purses, branded liquor etc., the total value of which was assessed at Rs. 3,24,93,750/-. The container containing the goods was sealed with the Customs Seal No. 594385 and was then seized and handed over to the appellant for safe custody.

4. The container was later inspected on 01.06.2012, when it was found to be affixed with the seal of 344378. Appellant was then asked to explain the change of seal. Appellant feigned ignorance and made a request for joint survey of the container, which was done on 15.10.2012. During joint survey, the container was found to contain goods worth only Rs. 2,35,000/-, while the rest of the goods were pilfered. Appellant then lodged an FIR with the police on 17.10.2022 reporting loss/theft of the goods from the container.

5. Show Cause Notice was issued to the appellant. Commissioner, Customs vide order dated 23.11.2017, imposed customs duty amounting to Rs. 1,00,36,067/- on the pilfered goods in terms of Section 45 of the Customs Act read with Regulation 6 of 'HCCAR' and levied a penalty of Rs. 1,00,000/- on the appellant under Section 117 of the Customs Act.

6. Appeal against the order of Commissioner of Customs was dismissed by the CESTAT vide impugned judgment dated 10.10.2023. Feeling aggrieved, appellant has preferred the present appeal, posing the following questions for our consideration:-



- i) Whether the Appellant/CONCOR was liable for any payment duty under Section 45 of the Customs Act read with Rule 6 of Handling of Cargo in Custom Area Regulation, 2009?
- ii) Whether any reliance be placed on the panchnama which was seen prepared without the presence of officials of Appellant/CONCOR?
- iii) Whether liability can be thrust upon Appellant/CONCOR merely because Appellant/CONCOR is the Custodian of Goods?
- iv) Whether the liability of Appellant/CONCOR is made out after the investigation made by Police as well as CISF exonerated the Appellant/CONCOR?
- v) Whether the Hon'ble Appellate Tribunal failed to consider the cross examination of witnesses and passed the order in a mechanical manner?
- vi) Whether the valuation of the mis-declared goods were actually carried out by the customs?
- vii) Whether the General Business Practice during the preparation of Panchnamas at the Terminal entails the presence of the Custodian of Goods?
- viii) Whether penalty could be imposed upon custodian under Section 45 of the Customs Act, 1962 read with Rule 6 of Handling of Cargo in Custom Area Regulation, 2009 when the custodian was not even made party to the panchnamas so prepared for such goods?
- ix) Whether the Hon'ble Appellate Tribunal did not consider the fact that when the said cargo was found to be mis-declared, why the customs officials had not confiscated the cargos and only did the panchnamas?



x) Whether the Hon'ble Appellate Tribunal failed to consider the fact that the Inspector of Customs in his cross examination admitted that fact that no copy of Panchnama was given to the Appellant and also admitted that the letter dated 02.11.2011 given to the Appellant did not have any annexure of the seized goods and that throughout the examination of the container and its resealing the Appellant was not involved in it?

7. The principal contention of the appellant is that the appellant was not a party to the Panchnama and security of the container was the prime responsibility of the CISF deployed at ICD Tughlaqabad. It has also been submitted that Section 45 of the Customs Act is not applicable, inasmuch as, the payment of duty under this provision is related to cases of unloading of imported goods in the Customs Area and not in case where the goods have been seized by the Customs Officers.

8. We find ourselves unable to sustain the challenge for the following reasons.

9. As is manifest from a plain reading of Section 45(2)(b) of the Customs Act, 1962, the custodian is duty bound to not permit such goods to be removed from the customs area, except under and in accordance with the written permission of proper officer or otherwise dealt with. Section 45(3) of the Act provides that the custodian of the imported goods having been in custody is liable to pay duty in case they are pilfered while in custody. "Imported Goods" are defined in Section 2 (25) as goods brought into India from a place outside. 'HCCAR', provides for a comprehensive mechanism for handling of goods in a customs area and also prescribes the conditions and responsibilities of the persons handling in import and export cargo in



Inland Container Depot (ICD). Regulation 6 thereof specifically lays down the responsibilities of Customs Cargo Service Provider. Regulation 6(1)(f) lays down that such service provider shall not permit the goods to be removed from the customs area except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser. Regulation 6(i) provides that Customs Cargo Service Provider shall be responsible for the safety and security of the imported and export goods under its custody. As per Regulation 6(j) Customs Cargo Service Provider shall be liable to pay duty on goods pilfered after entry thereof in the customs area.

10. Admittedly, appellant is a Customs Cargo Service Provider. Admittedly, the goods in question had entered the customs area as defined under the Act and were placed in the custody of the appellant. Undisputedly, the container was initially sealed with the customs seal of 594385, which was later found to have been replaced with seal No. 344378, with goods pilfered, while the container was in the safe custody of the appellant. In terms of Section 45 of the Act and the 'HCCAR', being the custodian of imported goods, appellant was burdened with the responsibility of safe custody of the imported goods. Appellant cannot escape such burden by shifting its responsibility upon the CISF and has therefore been rightly held liable to pay customs duty and penalty as prescribed under Section 45(3) of the Act and Regulation 6(1)(j) of HCCAR, 2009.

11. The contentions raised by the petitioner have been duly addressed in Paras No. 15 to 19 of the CESTAT order dated 10.10.2023. The order does not suffer from any impropriety. We find that appeal does not raise any substantial question of law.



12. Accordingly and for the aforesaid reasons, we find no merit in the instant appeal. The appeal shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

September 09, 2024

RM