

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI**

Lumix Export & Import

Versus

Commissioner of Customs, Chennai

Appeal Nos. C/EH/274-276/12, 54-56/2012

[Arising out of Order-In-Appeal No.7-9/2012 dt. 10.1.2012 passed by the Commissioner of Customs (Appeals), Chennai]

Lumix Export & Import

Appellant/s

Versus

Commissioner of Customs,

Respondent/s

Chennai

Apperance:

Sri Sudhanraj, Advocate

For the Appellant/s

Shri V.V. Hariharan, JCDR

Forthe Respondent/s

CORAM:

Dr. ChittaranjanSatapathy, Hon'ble Technical Member

Mr. D.N. Panda, Hon'ble Judicial Member

Date of hearing: 7.6.2012

Dateof decision: 7.6.2012

Mircorderd no. 486 to 488/12

Final Order No. 628 to 630/12dt 7/6/12

Per Dr.ChirranjanSatapaty

1. Heard both sides. Considering the fact that the impugned consignments are pending clearance, we allow all the MISC application for early hearing and take up the appeals for hearing today itself.
2. We find that the adjudicating authority has confiscated the impugned goods for the contraventions of misbranding and adulteration under Prevention of food AdulterationAct,1954 holding that such goods are prohibited for importation into India. However, he has allowed the impugned consignments to be re-exportedon payment of redemption fine and penalty. The appellants have not challenged the

confiscation of the goods or the order for re-export on payment of redemption fine and penalty. They had filed an appeal before the lower appellate authority for waiver of the demurrage and detention charges. The lower appellate authority has rejected the appeals holding that the Customs department cannot be asked to bear the demurrage and detention charges. He has based his decision on the Hon'ble Supreme Court's judgments in the following two cases:-

- 1) *International Airports Authority Vs Grand Slam International of India-1995 (77) ELT 753 (SC)*
 - 2) *Trustees of Port of Madras Vs Nagavedu Lungi & Co. - 1995 (80) ELT 241 (SC)*
3. The Ld. Advocate appearing for the appellants states that the demurrage and detention charges should be waived under Regulation 6 (1) of the Handling of Cargo in Customs Areas Regulation, 2009. We find that this contention has been duly examined by the lower appellate authority and rejected. We also find that the said regulation 6(1) merely lists the responsibilities of Customs cargo service provider. It does not require the Customs authorities to bear demurrage and detention charges.
4. Ld. Advocate has also further contended that under Section 126 of the Customs Act, 1962, the confiscated cargo vests with the central Government and therefore the Customs department should bear the demurrage and detention charges. This contention of the Ld. Advocate is also not acceptable. The said section 126 merely states that after confiscation of any impugned goods, the same vests with the Central Government. However, in this case, the appellants have been allowed to redeem the confiscated goods on payment of redemption fine and they have also been allowed to re-export the impugned goods. Against such order of redemption and order of re-export, appellants have no grievance nor have they filed any appeal. Hence, the goods vesting with the government does not arise when the appellants are seeking to redeem and re-export the impugned goods. In any case, Section 126 of the Customs Act, 1962 does not require the customs authorities to pay for demurrage and detention charges which has arisen because of the impugned goods having been imported contrary to prohibitions in force under the Food Adulteration Act, 1954.
5. Further, we find that the lower appellate authority has rightly relied on the above cited decision of the Hon'ble Supreme Court. In the case of *Grand Slam* (supra), the Hon'ble Supreme Court has held that even if the goods are detained for no fault of the importer, demurrage charged are payable by the importers to the custodian of the cargo namely, Port Trust/IAAI/CWC etc. In the other cited case of *Nagavedu Lungi* (supra), the Hon'ble Supreme Court has held that demurrage charges and other incidental charges for goods detained in the customs area are required to be paid by the exporter consignor even if such goods were illegally detained. In the present case, the detained of the impugned goods were illegally detained. In the present case, the detention of the impugned goods were for genuine reasons as the same had contravened the law of the land. As such lower appellate authority has rightly held that the customs authorities cannot be asked to pay demurrage and detention charges. We further find that the impugned order to redeem and re-export the goods was issued on 3.10.2001 by the original

authority in respect of the importations made in July 2011 The delay in redemption and re-export till date has been entirely caused on account of the appellants filing appeals first before the lower appellate authority and then before the Tribunal. It would be in the interest of the appellants that they pay the redemption fine and penalty and re-export the impugned goods at the earliest so as not to increase their burden on demurrage and detention charges further as we find no merit in their appeals. All the three appeals are dismissed.

(Operative part of the order pronounced In open court on 7.6.2012)