

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85350 of 2024

(Arising out of Order-in-Original No. 201/2023-24/COMMR/NS-I/Bond/JNCH dated 08.01.2024 passed by the Commissioner of Customs, NS-I)

M/s. Ganesh Benzoplast Limited

Plot No. 7 & 13, Bulk Road,
Opp. Port User Building, JNPT,
Sheva, Navi Mumbai- 400 707.

.... Appellants

Versus

Commissioner of Customs, Nhava Sheva-I

NS-I, JNCH, Nhava Sheva,
Taluka-Uran, District Raigad 400 707.

.... Respondent

Appearance:

Shri Anurag Mishra, Ms. Nisha Bineesh, Ms. Bharati Indulkar, Advocates &
Ms. Sanya, Chartered Accountant for the Appellant

Shri Adeeb Pathan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85423/2024

Date of Hearing: 22.03.2024

Date of Decision: 22.04.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein were issued with a Public Bonded Warehousing License by the jurisdictional Customs authorities at Jawaharlal Nehru Custom House (JNCH), Nhava Sheva. In total, there were 79 public bonded storage tanks located in the premises of the said warehouse. The said license was issued to the appellants in terms of Section 57 of the Customs Act, 1962. The license has provided various conditions to be fulfilled/observed by the license holder, the appellants herein. On 01.02.2023, a team of officers from the Import Bond section, JNCH visited the warehouse of the appellants and upon verification of the warehouse and various records, they observed that non-bonded

goods had been stored in the bonded tanks, whereas bonded tanks are meant for storage of only customs bonded goods; that the bonded goods covered under Bill of Entry (B/E) No. 6749977 dated 06.07.2023 had been stored in non-bonded tanks in the month of July' 2023, which is a clear violation of Section 60 ibid read with Section 71 ibid; that due to absence of the technical staff at the warehouse, the software maintained by the appellants could not be verified to ascertain, whether it is having audit trail facility as prescribed in para 2(c) of Circular No.25/2016 dated 08.06.2016. On the basis of investigation, the officers found that the appellants had failed to comply with the provisions of the Customs Act, 1962; Public Warehouse Licensing Regulations, 2016 and Warehouse (Custody and Handling of goods) Regulations, 2016 as well as the licensing conditions. For carrying out detailed investigation and to stop any further violations of the licensing conditions, the license of public bonded warehouse issued to the appellants was suspended on 07.12.2023 by the department as per the provisions of Sub-section (2) of Section 58B ibid. On detailed investigation into the matter, the department had submitted the inquiry report, based on which the Principal Commissioner of Customs vide the Order-in-Original No. 201/2023-24/COMMR/NS-I/Bond/JNCH dated 08.01.2024 (for short, referred herein as 'the impugned order'), has adjudicated the matter and passed the following order:

"ORDER

i. I hold the goods mentioned in Table-C, valued at Rs. 48,43,70,293/- (Rs. Forty-Eight Crores Forty-three Lakhs Seventy Thousand Two Hundred Ninety-Three only) and having duty involvement of Rs. 11,66,21,043/- (Rs. Eleven Crores Sixty-Six Lakhs Twenty-One Thousand Forty-Three only), liable for confiscation under Section 111(j) of the Customs Act, 1962 for storing bonded goods in non-bonded tanks on 05 occasions. As the goods are not available for confiscation, I impose a redemption fine of Rs. 5,00,00,000/- (Rs. Five crores only) in respect of these goods in lieu of confiscation under Section 125 of the Customs Act, 1962. I impose penalty 50,00,000/- Fifty lakhs only) on the Licensee M/s. Ganesh Benzoplast Ltd. (NSA1U116) under Section 112 b(ii) of the Customs Act, 1962. Also, I impose a penalty of Rs. 1,00,00,000/- (Rs. One crore only) on the Licensee M/s. Ganesh Benzoplast Ltd. (NSA1U116) under Section 114AA of the Customs Act, 1962.

ii. I hold the goods covered under 02 Warehouse Bill of Entries i.e. 3786599 and 3787816 both dated 01/05/2021, valued at

Rs. 3,58,84,240/- (Rs. Three crores, fifty-eight lakhs, eighty-four thousand, Two Hundred Forty only) and having duty involvement of Rs. 69,81,438/- (Rupees Sixty-nine Lakhs, Eighty-one Thousand, Four hundred Thirty-Eight only), liable for confiscation under Section 111(h) of the Customs Act, 1962, for storing the goods imported by the Licensee M/s. Ganesh Benzoplast Ltd. in their IEC and storing the same in their own public bonded warehouse. As the goods are not available for confiscation, I impose a redemption fine of Rs. 40,00,000/- (Rs. Forty lakhs only) in respect of these goods for their redemption under Section 125 of the Customs Act, 1962. I also impose a penalty of Rs. 3,50,000/- (Rs. Three lakhs fifty thousand only) on the Licensee M/s. Ganesh Benzoplast Ltd. (NSA1U116) under Section 112 a(ii) and 112 b(ii) of the Customs Act, 1962.

- iii. I impose a penalty of Rs. 4,00,000/- (Four lakhs only) on the Licensee M/s. Ganesh Benzoplast Ltd. (NSA1U116) under Section 117 of the Customs Act, 1962 read with Regulation 12 of Warehouse (Custody and Handling of Goods) Regulations, 2016, for non-reporting of time expired bond for one consignment in their warehouse.*
- iv. For storing non-bonded goods in their bonded tanks 31 times, I impose a penalty of Rs. 1,00,000/- (Rs. One lakh only) on the Licensee M/s. Ganesh Benzoplast Ltd. (NSA1U116) for each count, totaling Rs. 31,00,000/- (Rs. Thirty-one lakhs only), under Section 117 of the Customs Act, 1962, read with Regulation 12 of Warehouse (Custody and Handling of Goods) Regulations, 2016.*
- v. I impose a penalty of Rs. 50,000/- (Rs. Fifty thousand only) on the Licenses M/s. Ganesh Benzoplast Ltd. (NSA1U116) under Section 117 of the Customs Act, 1962, read with Regulation 12 of Warehouse (Custody and Handling of Goods) Regulations, 2016, for not having an Audit trail facility in their software.*
- vi. I impose a penalty of Rs. 50,000/- (Rs. Fifty thousand only) on the Licensee M/s. Ganesh Benzoplast Ltd. (NSA1U116) under Section 117 of the Customs Act, 1962, read with Regulation 12 of Warehouse (Custody and Handling of Goods) Regulations, 2016, for storing the goods in their warehouse by exceeding the approved duty limit.*
- vii. I order for revocation of suspension of warehousing operation of M/s. Ganesh Benzoplast Ltd. (NSA1U116), subject to payment of all the fines and penalties imposed in this order."*

Feeling aggrieved with the impugned order dated 08.01.2024, the appellants have filed this appeal before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that in respect of the five numbers of B/Es dated 19.06.2023 (2 B/Es), 27.06.2023, 18.07.2023, and 22.09.2021, discharge permission was

granted by the Customs department and the unloading of the consignment was done under their supervision. Thus, he submitted that when the permission has been granted by the competent authority, permitting the storage of bonded goods in non-bonded tanks, there is no violation or contravention on the part of the appellants. Learned Advocate further submitted that out of the said five B/Es, in case of two B/Es dated 27.06.2023 and 18.07.2023, the appellants had already applied for the bonding of non-bonded tanks prior to storing of the non-bonded goods. Accordingly, it has been pleaded on behalf of the appellants that the disputed goods cannot be confiscated, when subsequent permission for bonding of tanks was given by the department. With regard to two B/Es both dated 19.06.2023, the learned Advocate submitted due to operational reasons, the goods were stored in the non-bonded tanks and the importer had also paid the entire duty on the goods stored in the non-bonded tanks. As regards the B/E dated 22.09.2021, learned Advocate submitted that the department vide letter dated 17.09.2021 had accorded permission for discharging the goods i.e., refined palm oil. He further submitted that since the appropriate duty liability on the goods had already been discharged, there is no loss of revenue to the government exchequer and the appellants cannot be said to have contravened the provisions contained in the statute. With regard to remaining 31 B/Es, learned Advocate submitted that the goods covered thereunder cannot be confiscated inasmuch as requisite discharge permission was granted by the department prior to discharge of imported goods from the vessels. With regard to two B/Es both dated 01.05.2021, Learned Advocate submitted that the goods covered thereunder were discharged from the vessel through high pressured pipe lines, which cannot be stopped mid-way during the process of discharge to avoid accidents and as such the same were stored in the public bonded tanks after discharging from the vessel by obtaining due discharge permission dated 30.04.2021 of the department. On the basis of the above submissions, learned Advocate prayed for setting aside the impugned order, more particularly the charges levelled against the appellants for confiscation of goods, imposition of redemption fine and penalties etc.

3. On the other hand, learned Authorised Representative (AR) appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and examined the case records, including the written note of submissions filed by the appellants during the course of the hearing of the appeal.

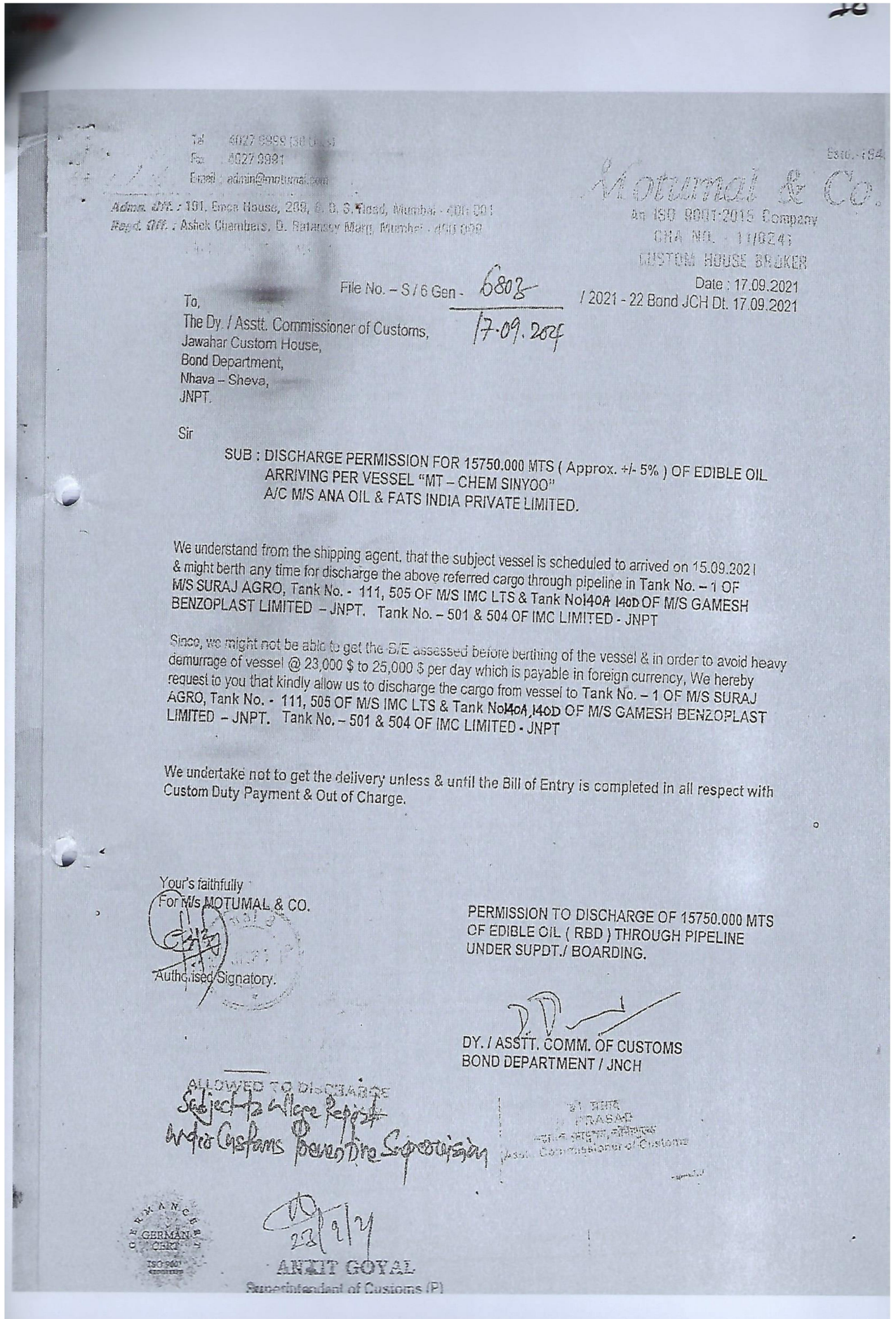
5. We find that in support of the impugned order, the learned adjudicating authority has mainly dealt with the issues, concerning storage of bonded goods in non-bonded tanks, non-bonded goods being stored in bonded tanks, storage of goods imported by the licensee (appellants) in their own public bonded warehouse, storage of bonded goods in excess of approved duty limits etc. The original authority has held that the requirement of the provisions of the Customs Act, 1962; Public Warehousing Regulations, 2016; and the Warehouse (Custody and Handling of goods) Regulations, 2016 and the licensing conditions have not been fulfilled by the appellants. He has also discussed various provisions under the Customs Act, 1962 for confiscation of goods, imposition of redemption of fine and penalties on the appellants.

6.1 We have perused the copies of the relevant Bills of Entries and the discharge permissions granted by the competent officer of the department available in the case record. The details are itemized herein below in a tabular form:

S. No.	B/E No. & date	Description	Tank No.	Discharge Permission Date
1	5541098/ 22.09.2021	Refined Palm Oil	140D	17.09.2021
2	6597102/ 27.06.2023	Base Oil 500	316	28.06.2023
3	6932435/ 18.07.2023	Base Oil	311	17.07.2023
4	6484543/ 19.06.2023	Palm Olein	312	Duty Paid by importer
5	6476830/ 19.06.2023	Palm Olein	312	Duty Paid by importer

We find that in respect of the B/Es listed at Sl. No. 1 to 3 above, the Customs department had accorded due permission for unloading of the consignment and such activities were undertaken under the customs supervision in the non-bonded tanks. When the

permission had already been granted by the competent authority, in permitting the storage of bonded goods in non-bonded tanks, it cannot be said that the conditions under the warehousing license were violated by the appellants. Sample copy of discharge permission with regard to the B/Es No. 5541098 dated 22.09.2021 (appearing at Sl. No.1 above) is extracted herein below:

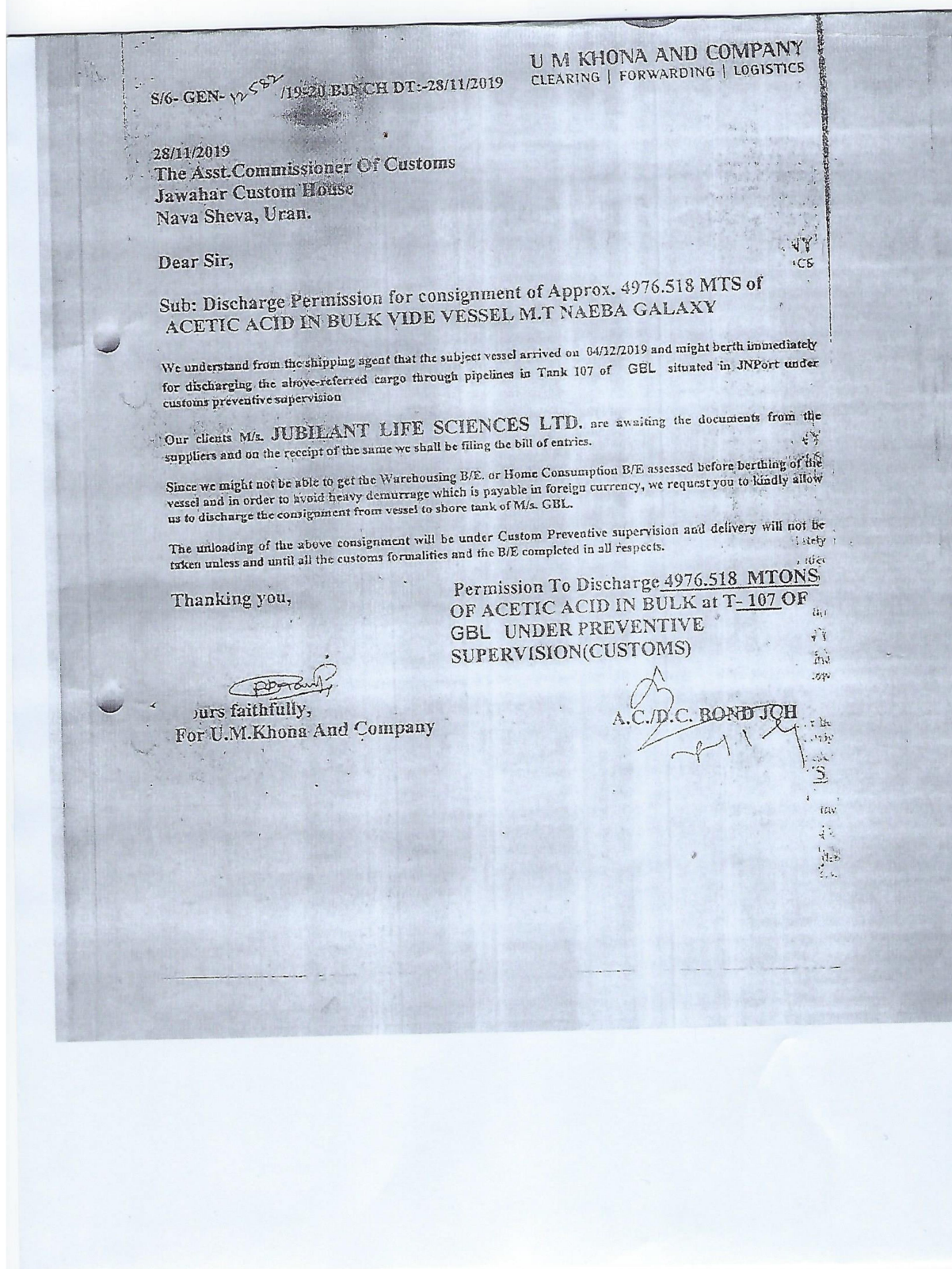


6.2 In case of the remaining two B/Es listed at Sl. No. 4 and 5 above, we find that the bonded goods as per the said B/Es were stored in the licensed bonded tanks upon obtaining due permission from the department. The appellants have pleaded that at the time of discharge of the goods, there was some issues with valve of the tanks which was not operating and that at the advice of the appellants, the importer had paid the customs duty. Payment of duty in respect of those two B/Es were not disputed by the department. We also find that payment of duty through the challans was acknowledged by the department and out of charge was issued for removal of the goods from warehouse.

6.3 In respect of 31 B/Es, where the bonded goods were stored in non-bonded tanks, we have perused the said B/Es and the respective permission letters issued by the department, in permitting discharge of imported consignments from the vessel and loading of the same in bonded tanks. Such activities were also monitored by the customs department. The table given below along with sample copy of discharge permission letter for B/E No.5910654 dated 02.12.2019 (Sl. No.1 in the table) shows the details of B/Es along with the respective discharge permissions given by the Department:

S. No.	B/E No. & date	Description	Tank No.	Discharge Permission Date
1	5910654/ 02.12.2019	Acetic Acid	107	28.11.2019
2	6722000/ 17.12.2021	Butyl Acrylate	119	17.12.2021
3	6747599/ 08.12.2021	Styrene Monomer	133	16.12.2021
4	4579345/ 06.07.2021	Orthoxylene	114/130	05.07.2021
5	5133481/ 21.08.2021	Mixed Xylene	106	18.08.2021
6	7926823/ 21.09.2023	Phenol	111	20.09.2023
7	7264400/ 09.08.2023	Methyl Methacrylate Monomer	119	08.08.2023
8	6890215/ 15.07.2023	Propylene Glycol (Industrial)	114	14.07.2023
9	6850928/ 13.07.2023	Mono Ethanol Amine	117	14.07.2023
10	6955662/ 20.07.2023	Toluene	103	20.07.2023

S. No.	B/E No. & date	Description	Tank No.	Discharge Permission Date
11	6964752/ 20.07.2023	Mixed Xylene	102	20.07.2023
12	7949405/ 22.09.2023	Mix Xylene	102	22.09.2023
13	7949403/ 22.09.2023	Toluene	103	22.09.2023
14	8242664/ 11.10.2023	Acetic Acid	107	11.10.2023
15	6840895/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
16	6840894/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
17	6841073/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
18	6829742/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
19	6827836/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
20	6837481/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
21	6832098/ 12.07.2023	RBD Palm Olein	208/140B	07.07.2023
22	7497067/ 24.08.2023	Acetic Acid	107/109	24.08.2023
23	7497065/ 24.08.2023	Acetic Acid	107/109	24.08.2023
24	6384431/ 13.06.2023	Acetic Acid	107/109	13.06.2023
25	8452915/ 25.10.2023	Methylene Chloride	209	23.10.2023
26	8703543/ 09.11.2023	Phenol	111	06.11.2023
27	8629898/ 04.11.2023	Crude Glycol	210	03.11.2023
28	6502952/ 21.06.2023	Acetic Acid	107	27.06.2023
29	8096632/ 30.09.2023	Toluene	103	30.09.2023
30	6445328/ 16.06.2023	RBD Palm Olein	140A/140B	14.06.2023
31	8191625/ 07.10.2023	Toluene	T103	06.10.2023



6.4 On reading of the permission letter dated 28.11.2019, we find that before arrival of the consignment at the port of import, the clearing agent had specifically sought for permission from the competent authority for discharge and storing of the bulk liquid cargo in the specific tank(s) and upon grant of permission, the activities were undertaken thereafter.

6.5 With regard to B/Es No. 3786599 and 3787816 both dated 01.05.2021, we find that the submissions made by the appellants are acceptable that the goods covered thereunder were discharged from the vessel through high pressure pipe lines, which could not be stopped mid-way during the process of discharge to avoid accidents; and that when the consignments were discharged from the vessel, a quantity of 262.983 MTs of Mixed Xylene and 314.061 MTS of Toluene were stored in the public bonded tanks. On perusal of the case records, we find that the importer in respect of the goods under the said two B/Es were appellants themselves and prior to discharge of the imported goods from the vessel, the permission under the cover of letter dated 30.04.2021 were obtained from the Customs department. The said permission letter was issued on the condition that the discharge activity should be done under the Customs preventive supervision. Hence, we are of the view that there is no contraventions of the provisions under the statute.

7. The provisions under the Customs statute, relevant for consideration of the present dispute are quoted herein below:

"Unloading and loading of goods at approved places only.

Section 33. Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

Licensing of public warehouses.

Section 57. The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.

Permission for removal of goods for deposit in warehouse.

Section 60. (1) When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse:

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

(2) Where an order is made under sub-section (1), the goods shall be deposited in a warehouse in such manner as may be prescribed.

Goods not to be taken out of warehouse except as provided by this Act.

Section 71. *No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or export, or for removal to another warehouse, or as otherwise provided by this Act."*

8.1 It is an admitted fact on record that the appellants have obtained the public bonded warehousing license from the competent authorities for carrying out the activities therein. Whenever the imported goods were required to be stored in the warehouse, the appellants have taken necessary permission from the competent authority for movement of goods from the customs station for the purpose of depositing in the warehouse. The activities of removal of goods from one warehouse to the other were always within the knowledge of the department and such activities were undertaken by the appellants with due permission from the department. Reading of the above statutory provisions vis-à-vis the activities undertaken by the appellants as the warehouse licensee, we find that none of the said provisions have been contravened or violated by the appellants inasmuch as in respect of all the B/Es listed above, the activities were carried out with the approval and necessary permission given by the department as well as under supervision of Customs.

8.2 Section 33 *ibid* mandates that unloading and loading of goods only should be done at the approved places with the permission of the proper officer of Customs. Interpreting the said statutory provisions, concerning import of liquid bulk cargo and storage of same in bonded warehouse, the Central Board of Excise & Customs (CBEC) have issued the instructions from File F. No. 473/19/2009-LC dated 09.05.2011 to the field formations in the following manner:

"2.3 A harmonious reading of the above provisions indicates that imported goods may be unloaded only in a Customs area which is located in a Customs Station or a proper place approved under Section 8 in a notified Customs port, airport etc.

3. However, as per Section 33, "Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of Section 8 for the unloading or loading of such goods". Thus, with the prior permission of the proper officer, imported goods can be unloaded at a place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

4. Therefore, unloading of liquid bulk cargo from the ship to the bonded storage tanks through pipe lines may be allowed under the provisions of section 33 of Customs Act, 1962 subject to the conditions that the cargo is liquid bulk in nature; the premises where the goods would be received through pipe lines should be a bonded warehouse under Section 58 or 59 of Customs Act, 1962; permission of the proper officer is obtained for such unloading prior to discharge of such cargo and other requirements under the Customs Act are fulfilled. In case the bonded tanks are located outside the jurisdiction of the port Commissioner, permission may be granted by port Commissioner subject to concurrence by Commissioner in whose jurisdiction the bonded tanks are located, and other safeguards as necessary."

In view of the statutory provisions regarding the warehoused goods and the instructions issued by the CBEC, it is amply clear that movement of goods within the bonded warehouse is permissible, subject to the condition that such activities should be within the knowledge of the department and necessary approval for such activities should be obtained by the warehouse licensee. In the present case, as discussed herein above, it is amply clear that the appellants have complied with such statutory provisions in carrying out the activities within the warehousing station(s). Therefore, it cannot be said that the goods dealt with by the appellants are liable for confiscation and accordingly, the appellants cannot be exposed to penal consequences provided under the statute.

9. We find that the impugned order dated 08.01.2024 has invoked the provisions of Section 111(h) and 111(j) *ibid* for confiscation of the goods and for imposition of the redemption fine on the appellants. The provisions of Section 111(h) *ibid* are attracted for confiscation in the eventuality, when any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of Section 33 *ibid* or Section 34 *ibid*. It is not the case of Revenue that the appellants had not obtained the permission from the department for carrying out the activities within the bonded area. Thus, in our considered view, the provisions of Section 111(h) *ibid* shall not be applicable in the case in hand. Section 111(j) *ibid* deals with the situation for confiscation of any dutiable or prohibited goods, removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such

permission. It is a fact on record that the bulk liquid cargo dealt with by the appellants are not prohibited for importation and that the appellants had obtained due permission from the customs department for carrying out the activities within the warehousing premises, which is evident from the above tables, mentioning the date of permissions issued by the department including the specific tank numbers for which such permissions were being issued by them. Therefore, we are of the opinion that the provisions of Section 111(j) *ibid* are not attracted for confiscation of goods in the circumstances of the present case.

10. Since there is no improper importation of goods and more specifically, the goods are not liable for confiscation as per the provisions under Section 111 *ibid*, in our considered view the provisions of Section 112 *ibid* shall not be attracted for imposition of penalty on the appellants. Further, the provisions of Section 114AA *ibid* cannot also be invoked in the present case, inasmuch as there is no mis-declaration, nor any forged documents were presented by the appellants with the intent to evade payment of customs duty. On the contrary, all the imported bulk liquid cargo brought in the vessels were unloaded, stored and handled in bonded or non-bonded tanks with requisite and due permission of the department and that too, on payment of duty thereon, wherever required. There is nothing on record in the form of any evidence to show that proper accounting for receipt, transfer or removal of the goods in the warehouse was not maintained by the appellants in terms of extant Regulations dealing with warehousing of goods. Furthermore, all the activities were under the direct supervisions and control of the customs officers posted in the warehouse. Similarly, the penalty clause contained in Section 117 *ibid* cannot also be attracted in the case in hand, inasmuch as no licensing conditions were violated by the appellants.

11. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order dated 08.01.2024, insofar as it has ordered for confiscation of goods, imposed redemption fine and penalties on the appellants. Since we do not find any substance in confirmation of the adjudged demands towards fine

and penalties, the impugned order passed for revocation of suspension of warehousing operation shall also not be sustained. Therefore, the impugned order dated 08.01.2024 is set aside in its entirety and the appeal is allowed in favour of the appellants, with consequential relief, if any, as per law.

(Order pronounced in open court on 22.04.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM