

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10007 of 2022 - DB

(Arising out of OIO-AHM-CUSTOM-000-COM-004-21-22 dated 03/09/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

ONGC PETRO ADDITIONS LIMITED

Plot No Z/1 And Z/83 Dahej Sez Taluka Vagra
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.-AHMEDABAD

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri Sujit Ghose, Shri Shubh Dixit & Shri Ajinkya Tiwari, Advocate for the Appellant
Shri Rajesh Nathan, Assistant Commissioner(AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 12735/2023

DATE OF HEARING: 10.11.2023
DATE OF DECISION: 11.12.2023

RAMESH NAIR

This appeal is directed against impugned order-in-original dated 03.09.2021 whereby the Adjudicating Authority namely Commissioner has rejected the application for remission of duty in respect of imported raw-material destroyed in fire, in the appellant's SEZ unit. The Commissioner while rejecting the application given the following reasons:

- I. The Customs provision of Section 23 in respect of remission of Customs duty is not applicable to the SEZ unit, as the SEZ unit is governed by SEZ Act, which overrides all other Acts.
- II. The appellant have not taken proper precaution to avoid the fire incident.
- III. The appellant, while taking the insurance policy have not covered the Customs duty but only Principle value of the goods is insured.

Thus, the appellant have not taken care about the customs duty, which is public money.

Being aggrieved by the Order-In-Original, the appellant filed the present appeal.

2. Shri. Sujit Ghose, Learned Counsel with Shri. Shubh Dixit, and Shri. Ajinkya Tiwari, Learned Advocates appearing on the behalf of the appellant submits that Section 23 of the Customs Act, is clearly applicable in the present case for the reason that as regard the overriding effect of SEZ Act, it only applies to the provision of other Act, which are not in consistent with the provision of other Act. In the present case the appellant has sought for remission of Customs Duty. As regard the levy of Customs Duty the Customs Act is applicable. Therefore, for remission of duty also provision for remission provided under Section 23 shall apply. Which is not inconsistency with the provision of SEZ Act.

2.1 As regard, the contention of the learned Commissioner that the appellant have not taken precaution to avoid the fire incident. It is his submission that from the survey report, it is clear that the fire incidence has taken place all of a sudden and beyond the control of the insured. Therefore, the thorough survey conducted for the purpose of insurance clearly established that there is no carelessness or any negligence on the part of the appellant, due to which the fire incident could not be avoided.

2.2 He also submits that as regard the insured value i.e. without the including of customs duty the insurance is done only on the basis of invoice value and the element of customs duty does not exist. Therefore, the insurance company will not insure any amount which is not the part of the value of the goods. Therefore, the appellant have rightly insured the only

value of the goods. For this reason the remission cannot be denied. In support, he placed reliance on the following judgments:-

- M/s Satguru polyfab Pvt. Ltd V/s CC, Kandla reported as 2011 (267) ELT 273 (Tri.- Ahmd)
- M/s Jindal International v/s CC, kandla reported as 2013 (290) ELT 729 (Tri.- Ahmedabad)
- Sami Labs Ltd V/s. The Commissioner of Customs (February 28th 2007)
- State of Haryana V/s. Dalmia Dadri Cement Ltd., 2004 (178) ELT 13 (SC)

3. Shri. Rajesh Nathan, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute that the fire incident has taken place in the appellant's factory located in SEZ units. As per survey report, it is clear that there is no negligence on the part of the appellant as the fire broken out suddenly beyond the control of the appellant. Therefore, the allegation that the appellant have not taken the proper precaution to avoid fire incident is absolutely baseless and imaginary. Moreover, it is the appellant who has to be most careful about their goods as it is not only the duty but the huge stake of value of the goods is involved. Therefore, it cannot be imagined that the appellant was careless and negligent due to which fire incidence has taken place. It is also fact that the extensive survey was conducted by the survey officer for the insurance purpose. However, there is no such inspection or analysis done by the

Customs department to arrive at a conclusion that the appellant have not taken the proper precaution.

4.1 We find that once after carrying out thorough inspection and survey, the insurance company has satisfactorily granted the insurance claim that itself is evidence to establish that the fire incidence was beyond the control of the appellant. Therefore, the ground that the appellant was negligent in the matter of fire incident cannot be accepted.

4.2 As regard, the contention of the Learned Commissioner that the Section 23 shall not apply for remission of duty in the SEZ unit. We find that since the entire assessment of customs duty is done under the Customs Act. The provision for remission of custom duty shall automatically apply. We agree with the submission of the learned counsel that only those provisions of other Act shall not apply, which are inconsistency with the provision of the SEZ Act. In the present case the grant of remission in respect of customs duty in terms of Section 23 does not contradict any of the provision of the SEZ Act. Therefore, the contention of the Adjudicating Authority about non-applicability of the Section 23 of the Customs Act, is not sustainable.

4.3 As regard the contention that the appellant have not insured the customs duty along with the value of the goods, we find that it is obvious that only the value of the goods is liable to be insured, which is appearing in the invoices. If the invoice contain any taxes or duties, obviously the gross value inclusive of all these elements shall be taken for the purpose of insurance. However, in the case of SEZ, when the goods are imported and entered into SEZ, the value of goods remain the only principle value and since no duty was payable, question of inclusion of duty does not arise. However, this cannot be the reason for denying the remission of duty. The judgment relied upon by the learned counsel directly applies to the effect

that in SEZ unit the remission of customs duty is applicable in terms of Section 23 of the Customs Act. Therefore, we are of the view that appellant has made out very strong case of remission of customs duty in respect of the destroyed goods in fire.

5. Accordingly, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in the open court on 11.12.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha