IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. Nos.33896, 15791, 15795, 15798, 15802, 15807, 15808, 15819, 15821, 15822, 15825, 15827, 15828, 15830, 15832, 15833, 15834, 15835, 15838, 15839, 15842, 15843, 15844, 17262, 17268, 17272, 17423, 17426, 17432, 17435, 17437, 17438, 17439, 17440, 17460, 17464, 17470, 23009, 23016, 23018, 23020, 23023, 23026, 23027, 23030, 23031, 23033, 23035, 23036, 23039, 23049, 23051, 23052, 23054, 23061, 23063, 23064, 23067, 23069, 23070, 23073, 23074, 25578, 30713, 30717, 30720, 30722, 25585, 33897, 33899, 33901, 33903, 33904, 33905, 33906, 33907, 33908, 33909, 33911, 33912, 33913, 33914, 33916, 33917, 33918, 33920, 33921, 33922, 33923, 33925, 33928, 33929 and 33931 of 2019 and W.P.Nos.442, 8261 and 8264 of 2021

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W.M.P.Nos.34436, 34437, 15611, 15617, 15619, 15622, 15623,15626, 15638, 15641, 15642, 15643, 15645, 15646, 15647, 15651, 15653, 15654, 15655, 15657, 15659, 15661, 15663, 15664, 16801, 16802, 16806, 16809, 16905, 16911, 16912, 16916, 16917, 16920, 16923, 16922, 16940, 16942, 16947, 22682, 22691, 22693, 22695, 22697, 22703, 22706, 22709, 22713, 22716, 22721, 22723, 22725, 22736, 22741, 22743, 22745, 22757, 22759, 22761, 22763, 22767, 22768, 22772, 22775, 30796, 30798, 30802, 30805, 25119, 25124, 34441, 34440,34443, 34444, 34447, 34450, 34446, 34448, 34451, 34452, 34454, 34455, 34456, 34459, 34457, 34458, 34460, 34463, 34461, 34462, 34468, 34469, 34466, 34467, 34470, 34474, 34471, 34472, 34473, 34475, 34476, 34479, 34489, 34493, 34480, 34481, 34485, 34486, 34490, 34495, 34487, 34488, 34491, 34494, 34500, 34503, 34501, 34502, 34504 and 34505 of 2019 and W.M.P. Nos.517, 8802 and 8803 of 2021

W.P.No.33896 of 2019:

Bengal Tiger Line (India) Pvt. Ltd.

Rep by its Senior General Manager
M.A.Chidambaram Building
3rd Floor No.6, Esplanade Chennai 108

…. Petitioner

Vs.

1 The Commissioner of Customs
(Appeals II) Office of the Commissioner of
Customs (Appeals II) No. 60 Rajaji Salai
Custom House Chennai -600 001

2 The Deputy Commissioner of Customs
(EGM Cell) Office of the Deputy
Commissioner of Customs (EGM Cell) No.60
Rajaji Salai Custom House Chennai-600 001

3 The Central Board of Indirect
Taxes and Customs Rep by its Chairman
Department of Revenue Ministry of Finance
Government of India North Block
New Delhi -110 001

…Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records in Order - in - Appeal Seaport C. Cus.II No. 524/ 2019 passed by the first respondent dated 15.11.2019 and quash the same.

In all W.Ps

For Petitioner : Mr.Mukund Rao
Mr.P.Giridharan
Mr.S.Venkata Subramaniyan

For Respondents : Mr.A.P.Srinivas
Mr.Umesh Rao K.
Mr.Pramod Kumar Chopda

Senior Standing Counsels

COMMON ORDER

All petitioners before me are vessel operators. The petitioners in one batch challenge orders-in-original levying penalty on the ground that the petitioners had not filed Export General Manifest (EGM) in respect of certain specified shipping bills. Though the error had been rectified by the petitioners, such rectification was only post the issuance of show cause notices, and thus, penalty had been imposed under Section 117 of the Act, for contravention of the provisions of Section 41 of the Customs Act, 1962 (in short 'Act').

2. Quite apart from the violation itself, the respondent would point to the fact that the non-filing of EGM has resulted in delayed processing of claims for export incentives by the exporters. This is cited as an additional reason for the imposition of penalty.

3. In the second batch of Writ Petitions, while the primary facts as noticed in the aforesaid matters remains identical, the petitioners had, as against the orders-in-original, approached the first appellate authority who rejected the appeals. As against such rejection, though a second statutory appeal is provided to the Customs, Excise and Service Tax Appellate Tribunal, those petitioners, fortified by interim protection

obtained by the petitioners in the first batch, have approached this Court under Article 22 6 of the Constitution of India.

4. The facts, barring the sole difference as noticed above, are common and set out below:

(i) Carriers who are visited with various responsibilities under the provisions of the Customs Act and in terms of Section 29, are the named 'person in-charge' of the Vessel.

(ii) Section 30 deals with furnishing of an EGM and Section 148 permits the person in-charge of a conveyance to appoint an agent to carry out its functions with simultaneous liability.

(iii) Cargo transportation has been containerised and may either comprise of a Full Container Load (FCL) or a Less Container Load (LCL).

(iv) FCL refers to a situation where the cargoes stuffed relate to a single shipper/exporter/consignee. LCL on the other hand, relates to a situation where the container contains cargo relatable to several shippers/exporters/consignees. The activity of stuffing is executed by a consolidator.

(v) A bill of Lading (B/L) is issued by the petitioners in respect of cargo. Where the cargo comprises of FCL, the B/L is issued in the name of the shipper. Where the cargo comprises of LCL, the B/L contains the name of shipper as well as of the consolidator. This is called a Master Bill of Lading (MBL) and in turn a Bill of Lading is issued by the Consolidator to the individual shippers whose cargo has been stuffed in that container.

(vi) This procedure is not a statutorily recognised procedure, but one that has withstood the test of time.

(vii) Under Section 50 of the Act, the exporter is required to file a shipping bill for obtaining customs clearance for shipping and in terms of Section 41, the Carrier is required to furnish a declaration of all goods loaded upon a Vessel in a prescribed form. This comprises the EGM.

(viii) Since we are, in these Writ Petitions, concerned with compliance or otherwise with the provisions of Section 41, the same is extracted in full below:

> ***"Section 41.*** *Delivery of export manifest or export report - (1) The person-in-charge of a conveyance carrying export goods shall, before departure of the*

conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest by presenting electronically, and in the case of a vehicle, an export report, in the prescribed form:

[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver the export manifest by presenting electronically, allow the same to be delivered in any other manner.]

(2) The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented."

(ix) The EGM comprises proof of shipment and is required to scrupulously adhere to, and reveal the details of the cargo that have been stuffed into each container. The contents of the EGM are regulated and bound by the Export Manifest (Vessels) Regulations, 1976, which require that the EGM contain details of a) goods shipped, b) goods transshipped at the port and c) goods lying in the vessel but not landed or transshipped (referred to as bottom cargo).

(x) In terms of Section 41, it falls upon the Liner to ensure that the EGM filed makes a full and true disclosure as to the contents of every container, i.e., that it contains the details of the shipping bills of each of the exporters. There must be a 100% match between the contents of the EGM and the contents of the vessel. This is critical to ensure the integrity of the contents of a vessel.

(xi) With the upgradation in technology, it has become possible for the petitioners to avail of computerized systems, wherein all documents required for the purpose of ensuring a match between the EGM and the load, may be uploaded, such as the shipping bill and other relevant documents.

(xii) A specific system has been designed for this purpose, referred to as ICEGATE (Indian Customs Electronic Commerce/Electronic Data Interchange (EC/EDI) Gateway).

(xiii) Inputs are obtained from all stakeholders and fed direct into the system. While it is the responsibility of the petitioners as Carriers to file a true and complete EGM, it is also necessary for the shipper/exporter to upload every shipping bill in the system. A shipping bill may relate to either an FCL or an LCL container.

(xiv) In the present batch of cases, the admitted position is that the Carriers have filed EGMs that are deficient, omitting to mention one or more shipping bills. There is no dispute on this position.

(xv) In some of the cases, the petitioners have, upon receipt of the show cause notices, rectified the errors ensuring that the defective EGMs were rectified, by including full details of the shipping bills.

5. The arguments of the petitioners as against the issuance of show cause notices are that the show cause notices are themselves belated, seeing as in all cases, they have been issued close to or more than 2 years from date of the admitted lapse. That apart, the stuffing has been done at a Container Freight Station (CFS) or an Inland Container Terminal (ICD), which is a customs bonded area, by the consolidator under the supervision of customs officials.

6. The petitioners thus argue that since ICEGATE system contains all shipping bills as well as the stuffing report containing minute details of the contents of each container, the responsibility for ensuring the integrity of the container must not rest

entirely upon them. Alternatively, they must be afforded access to the ICEGATE system to enable a cross-verification of the input from the other parties.

7. They argue that if only they were furnished access to the ICEGATE system, such errors would not occur, since a minute comparison of each of the shipping bills with the EGM could be conducted at their end to ensure that no shipping bill is omitted. In any event, since the entire process of stuffing and thereafter transportation of the containers from the CFS/ICD to the Port is done under customs supervision, the petitioners can hardly be solely responsible, so as to be visited with penalty. They also complain that they have been singled out for the punitive action, as nowhere else in the Country have carriers been visited with the levy of penalty.

8. That apart, they would also rely on Facility Circular No.44/2018 issued by the Commissioner of Customs, Chennai –IV dated 01.10.2018. This Facility Circular was issued specifically for the purpose of smooth functioning of IGST refund on export for which purpose, the filing of a EGM was crucial. At paragraph 2 of the Circular, the authorities note that the non-filing of EGMs was prevalent mostly in the case of LCL shipping bills. They record the grievance of the Steamer Agents to the effect that this lapse arises on account of the non-furnishing of a complete list of shipping bills of consignments stuffed in a container by the consolidator.

9. In fact, an earlier Facility Circular bearing No.6/2018 had been issued requiring the CFS/custodian to forward a complete set of the tally sheets for each container stuffed in their CFS to the shipping lines. The authority records that this procedure was not being followed. A revised set of guidelines thus came to be issued in the following terms:

> *"3. Due to such non-filing or incomplete/wrong filing of EGMs, sanction of IGST / Drawback claims gets held up for a long time. As per Section 41 of the Customs Act, 1962, "it is the responsibility of the Shipping Line / Steamer Agent to file the EGM correctly". Hence, in partial modification of the guidelines contained in the aforesaid Facility Circular No.26/2018, the following revised guidelines are hereby prescribed.*
>
> *a) Since the Shipping Line/ Steamer Agent is responsible for filing of the EGM correctly. The concerned steamer agent/shipping line has to obtain the copy of tally sheets prepared by the CFS/ICD custodian for each container stuffed in their CFS/ICD, containing the details of the shipping bills for the goods that were stuffed in the subject container, from the CFS/ICD custodian immediately after completion of the stuffing.*
>
> *b) The concerned CFS should send/handover the same to the Shipping Liner/Steamer Agent immediately. The steamer agent has to file the EGM for all the shipping bills that are stuffed in the subject container on the basis of the tally sheets within the stipulated time period, in terms of Section 41 of the Customs Act, 1962.*
>
> *c) The Shipping Line, 'Steamer Agent may contact the Deputy/Assistant Commissioner of the concerned CFS in case there is any difficulty in getting the tally sheet from the CFS.*

d) The Deputy/Assistant Commissioner in charge of the respective CFS/ICD has to ensure that the above procedure is followed by the CFS/ICD Custodian.

10. In Circular No.1/2019 – Customs F.No.450/119/2017-Cus-IV dated 02.01.2019, the Board dealt with resolution of various errors that have crept into the question of IGST export refund. The issue of non-filing/late filing of online local and gateway EGM has been dealt with at paragraph 2 along with a suggested method for resolution of such errors.

F.No.450/119/2017-Cus-IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes and Customs)
*****

Room No.227B, North Block,
New Delhi
Dated 2nd January, 2019.

To
All Principal Chief Commissioners/Chief Commissioners of Customs/Customs (Preventive)
All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise
All Principal Commissioners/Commissioners of Customs/Customs (Preventive)
All Principal Commissioners/Commissioners of Customs & Central Excise.

Subject: IGST Export Refunds-resolution of errors – reg.

……….

2. <u>Non-filing/Late filing of Online Local and Gateway EGM: -</u>

(i) The processing of IGST refund gets hampered either because the local EGM has not been filed online or has been filed late. There are instances where the cargo originating from the hinterland ICDs reached the gateway port without the local EGM having been filed online. Earlier vide Circular No. 42/2017-Cus., dated 7.11.2017 it was explained that due to manual filing of EGM in respect of Shipping bills originating from ICDs, system is unable to match the gateway EGM and the local EGM. Therefore, it was instructed that all the custodians / carriers/shipping lines operating at ICDs/ Gateway ports should file EGM online. It is re-iterated that the first step would be that the concerned stakeholders at the originating ICDs file the local EGMs online.

(ii) Where the export goods are directly moved by truck to the gateway port, in such cases, filing the local EGM timely should not pose any problem. At inland ICDs/CFSs connected by train, the local EGM shall be filed before the goods actually move out of ICD/CFS. In ICDs/CFSs not connected by train but where the movement of export goods begins from the nearest train-based ICD/CFS, it has been observed that local EGM is not being filed as the Train Number is not known to the custodian for the want of Rail receipt. In such cases, it must be ensured that local EGM is filed by the custodian immediately after getting Train details in which containers are moving to Gateway port but in any case, before the train leaves for the Gateway port. Officers at these stations shall constantly monitor to check the pendency and take necessary action.

(iii) Non-filing of EGM clearly hints at non-compliance by the custodian/person in charge of the conveyance carrying export goods. Section 41 of the Customs Act authorizes the customs officer to take action against such non-filers. However, more than invoking the penal sections, jurisdictional Commissioners need to constantly monitor the activity of timely filing of the EGM and take necessary steps to ensure the same.

(iv) Board expects its jurisdictional officers to take all necessary steps to ensure that all EGMs of cargo related to past cases are filed before 31 January 2019. As a measure of facilitation, penal provisions may not be invoked for EGMS filed till 31st January. 2019. However, continued non-compliance beyond 1" February, 2019 may be dealt strictly by taking recourse to penal provisions in accordance with the law."

<u>3. Mismatch in Local and Gateway EGM:</u>

....

(v) Customs officers in charge of CFSs shall provide list of Shipping Bills having SB006 error i.e EGM errors to the concerned CFSs at gateway ports. The custodians shall in turn provide details as mentioned in Tally Sheets or CDP/CLP (containing container details) relating to the said SBs to the Customs officers. Simultaneously, Gateway port officers shall coordinate with the officers of the originating ICDs/ CFSs to obtain relevant particulars in accordance with the procedure in para (iv) above. It shall be the responsibility of the officers in charge of CFSs at Gateway ports to obtain necessary details from the stakeholders which establish the linkages between the goods received from inland ICDs/ CFSs and those exported out of India except in cases where the local EGM has not been filed

in which case the responsibility would be of the officers manning the inland ICD/CFS.

11. The aforesaid Circular also deals in detail with the procedure that is to be followed and suggests possible resolutions under the head 'Mismatch in Local and Gateway EGM'. Sub-para (v) states that the customs officer in charge of CFS must provid a list of shipping bills containing EGM errors to the concerned CFS in the Gateway Ports. This, in turn, is to be provided to the Customs Officers and other links in the export chain to ensure smooth transition of the goods as well as processing of the export refund.

12. The on-going effort thus appears to be to a work-in-progress to ensure a simultaneous upgradation of system as well as continuing education of all the stakeholders concerned to improve the facility/infrastructure, as well as the services available.

13. Learned Standing Counsels for the Department have strenuously defended the impugned orders. The crux of their submission is that the burden of ensuring accuracy of the EGM falls entirely upon the person–in-charge of a conveyance carrying export goods, i.e., the Liners/petitioners and in the present case, since the faults/omission in the EGMs are admitted, there is no way out for the petitioners.

They have, in a detailed fashion in the counter, reiterated the responsibility that falls upon the petitioners as Carriers.

14. My attention is also drawn to the Indian Carriage of Goods by Sea Act, 1925 (in short '1925 Act') as well as the United Nations Convention on the Carriage of Goods by Sea, 1978 (referred to as Hamburg Rules), to emphasise that it is the Carrier who must assumes primary and sole responsibility for the integrity of the consignments that it carries. Neither the 1925 Act, the Hamburg Rules nor the Customs Act refer to or define 'Consolidator' or its/his role in the scheme of export.

15. The Consolidator assists the Carrier in the activity of stuffing of the containers, and notwithstanding that the activities of a Consolidator are overseen to some extent by the customs authorities, the primary responsibility that falls upon the Carriers to ensure a correct and complete EGM, cannot be shifted under any circumstances to the customs officials.

16. While they do accede to the position that their officers are, indeed, present, both at the CFS as well as at various other locations in the chain of export, the statutory burden cast upon the Liners by Section 41 is theirs and theirs alone. Since the role of the consolidator is merely to facilitate the activity of stuffing and that too at the behest of the petitioners, it is for the petitioners to liaise with the Consolidator

and ensure proper channels of communication, so that errors or omissions do not arise in the EGM.

17. They oppose vehemently the request of the petitioners for access to the ICEGATE system pointing out that the design of the system is to receive inputs from all stakeholders, consolidate and integrate the same. The system would thus contain information/material that the all stakeholders cannot be made privy to. Thus, the petitioners cannot, as a matter of right, ask for access to the system and must, on the other hand, ensure that the documents and information that they upload are correct, complete and true in all respects.

18. I have heard learned counsels in details and perused the files.

19. As rightly pointed out by the petitioners, the impugned orders are significantly delayed. The orders, though of the year 2019 relate to shipping bills of the year 2017. It was incumbent upon the authorities to have raised the issue in a timely fashion, all more for the reason that with the passage of time, the necessary bills and documents would be difficult to locate and collate.

20. Having said so, the petitioners cannot shy away from the responsibilities cast upon them by Section 41. No doubt, neither Section 117 in terms of which penalty has been levied upon the petitioners nor Section 124 deal with any time

frame within which a show cause notice may be issued or an order passed levying penalty.

21. Notwithstanding that, punitive action must be taken in a timely fashion and the issue of a show cause notice for a violation that occurred two years earlier is, in my view, unacceptable. Given below is the tabulation of the dates of shipping bills, show cause notices, orders-in-original and dates of orders-in-appeal that reveal that delay has occurred in the cases of all the petitioners. In my considered view, this delay is fatal to the case of the respondents.

S. No.	Writ Petition	Order in Original/ Penalty Order	Date of Show Cause Notice	Date/Year of Shipping Bill	Date of Appeal
1.	33896/2019	28.03.2019	07.03.2019(26)	2017	15.11.2019
2.	15791/2019	06.05.2019	04.03.2019 12.03.2019	2017 (10)	-
3.	8261/2021	-	26.10.2020	12.05.2020	-
	8264/2021	-	26.10.2020	30.05.2020	-
4.	33914/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
5.	33916/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
6.	33913/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
7.	33917/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019

8.	33918/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
9.	33920/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
10.	33921/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
11.	33922/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
12.	33923/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
13.	33925/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
14.	33928/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
15.	33929/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
16.	33931/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
17.	33899/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
18.	33897/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
19.	33904/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
20.	33903/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
21.	33901/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
22.	33906/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
23.	33905/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019

24.	33907/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
25.	33912/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
26.	33911/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
27.	33909/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
28.	33908/2019	28.03.2019 (26)	07.03.2019 (26)	2017 (26)	15.11.2019
29.	17460/2019	24.05.2019	20.02.2019	29.09.2018	-
30.	17464/2019	24.05.2019	12.02.2019	26.09.2018	-
31.	17470/2019	23.05.2019	04.03.2019	19.09.2018	-
32.	23009/2019	29.05.2019	04.03.2019	16.04.2017	-
33.	23016/2019	29.05.2019	04.03.2019	10.04.2017	-
34.	23018/2019	29.05.2019	04.03.2019	24.04.2017	-
35.	23020/2019	29.05.2019	12.03.2019	30.05.2017	-
36.	23023/2019	29.05.2019	12.03.2019	18.05.2017	-
37.	23026/2019	29.05.2019	12.03.2019	16.05.2017	-
38.	23027/2019	29.05.2019	12.03.2019	16.05.2017	-
39.	23030/2019	29.05.2019	12.03.2019	06.05.2017	-
40.	23031/2019	29.05.2019	12.03.2019	23.05.2017	-
41.	15822/2019	06.05.2019	12.03.2019	30.05.2017	-
42.	15825/2019	29.05.2019	12.03.2019	15.06.2017	-
43.	15827/2019	29.05.2019	12.03.2019	19.06.2017	-
44.	15828/2019	29.05.2019	12.03.2019	23.02.2017	-
45.	15830/2019	29.05.2019	12.03.2019	25.02.2017	-
46.	15832/2019	29.05.2019	12.03.2019	15.03.2017	-
47.	15833/2019	29.05.2019	12.03.2019	15.03.2017	-
48.	15834/2019	29.05.2019	12.03.2019	16.03.2017	-
49.	15835/2019	29.05.2019	12.03.2019	15.03.2017	-
50.	15838/2019	29.05.2019	12.03.2019	13.03.2017	-
51.	15839/2019	29.05.2019	12.03.2019	15.03.2017	-
52.	15842/2019	29.05.2019	12.03.2019	24.03.2017	-

53.	15843/2019	29.05.2019	12.03.2019	24.03.2017	-
54.	17272/2019	26.03.2019	12.02.2019	15.09.2017	-
55.	17268/2019	22.03.2019	06.02.2019	01.07.2017	-
56.	17262/2019	06.05.2019	12.03.2019	11.05.2017	-
57.	17432/2019	11.04.2019	04.03.2019	12.04.2017	-
58.	17426/2019	11.04.2019	04.03.2019	20.04.2017	-
59.	17423/2019	11.04.2019	04.03.2019	11.04.2017	-
60.	17440/2019	11.04.2019	11.03.2019	24.05.2017	-
61.	17439/2019	11.04.2019	11.03.2019	20.06.2017	-
62.	17438/2019	11.04.2019	11.03.2019	18.01.2017	-
63.	17437/2019	11.04.2019	11.03.2019	17.01.2017	-
64.	17435/2019	11.04.2019	11.03.2019	11.01.2017	-
65.	15798/2019	06.05.2019	04.03.2019	16.02.2017	-
66.	15795/2019	06.05.2019	04.03.2019	17.02.2017	-
67.	15802/2019	06.05.2019	12.03.2019	10.02.2017	-
68.	15807/2019	06.05.2019	12.03.2019	19.01.2017	-
69.	15808/2019	06.05.2019	12.03.2019	02.06.2017	-
70.	15819/2019	06.05.2019	12.03.2019	02.06.2017	-
71.	15821/2019	06.05.2019	12.03.2019	27.05.2017	-
72.	442/2021	29.02.2020	22.10.2018	07.05.2018 08.05.2018 09.05.2018	-
73.	15844/2019	06.05.2019	12.03.2019	20.03.2017	-
74.	30713/2019 30717/2019 30720/2019 30722/2019 25578/2019 25585/2019	21.08.2019 21.08.2019 21.08.2019 27.09.2019 24.05.2019 24.05.2019	19.12.2018 27.12.2018 01.06.2018 30.11.2018 12.02.2019 22.04.2019	04.10.2018 17.01.2018 05.09.2017 14.07.2017 26.12.2017 18.07.2017	-
75.	23074/2019	29.05.2019	12.03.2019	15.05.2017	-
76.	23073/2019	29.05.2019	12.03.2019	04.05.2017	-
77.	23070/2019	29.05.2019	12.03.2019	24.06.2017	-

78.	23069/2019	29.05.2019	12.03.2019	24.06.2017	-
79.	23067/2019	29.05.2019	12.03.2019	08.05.2017	-
80.	23064/2019	29.05.2019	12.03.2019	06.05.2017	-
81.	23063/2019	29.05.2019	12.03.2019	04.05.2017	-
82.	23061/2019	29.05.2019	12.03.2019	23.06.2017	-
83.	23054/2019	29.05.2019	12.03.2019	07.06.2017	-
84.	23052/2019	29.05.2019	12.03.2019	12.06.2017	-
85.	23051/2019	29.05.2019	12.03.2019	05.06.2017	-
86.	23036/2019	29.05.2019	12.03.2019	23.06.2017	-
87.	23049/2019	29.05.2019	12.03.2019	30.05.2017	-
88.	23039/2019	29.05.2019	12.03.2019	06.05.2017	-
89.	23035/2019	29.05.2019	12.03.2019	14.06.2017	-
90.	23033/2019	29.05.2019	12.03.2019	16.05.2017	-

22. Some of the petitioners have, upon receipt of the show cause notices, rectified the error in the EGM even prior to the passing of the impugned orders and this would also support my conclusion that levy of penalty in these cases was not justified.

23. The specific averment by the petitioners to the effect that penal action has been taken only in the present cases, and in no other charge in the country, has not been denied by the respondents. In such an event, I would subscribe to the view that a consistent methodology must be followed by customs authorities pan India. The Circulars and Instructions that have been placed before the Court also indicate

categorically that the overriding spirit in terms of which the procedure must be understood and implemented, is one of facilitation, rather than adversarial.

24. The shipping industry comprises of several stakeholders, exporters, vessels/carriers, officials of the Customs department, Port authorities and facilitators, such as customs agents, freight forwarders, transporters, consolidators, CFS and many more. It is important for the authorities to arrive at a proper methodology for capturing information from each of the stake holders. This is the attempt of the Electronic Data Interface (EDI) and the ICEGATE system. Clearly, the system requires fine tuning and the quicker the authorities respond and resolve issues that stakeholders face, as and when they arise, the smoother the functioning of the system will be.

25. The request of the petitioner for access to the ICEGATE system is rejected for the reason as stated by the customs authorities. The system is a conglomeration of materials from various sources and is meant for effective functioning of the Department and smooth management of the transactions. No one operator can be provided with access to the entirety of the system.

26. However the Court suggests a via media to the effect that the authorities might consider segregating and granting access to that portion of the system that

contains the stuffing reports and the details of the shipping bills, if at all possible. The authorities must also ensure that, in the event selective access is granted, there is no threat of tampering of the data and the material displayed would be in read-only format that does not permit for editing in any manner.

27. For this purpose, the petitioners are given liberty to make a representation before the appropriate authority setting out the circumstances in which they seek access to the electronic system and raising any/all submissions as necessary in support of the request, including but not limited to the practice followed by other Ports and Commissionerates in other States in the Country as well as Circulars and Instructions of the Board, as appropriate. Such representations, if and when filed, shall be disposed expeditiously, after hearing the representatives of all stakeholders, including Carriers/petitioners in this batch.

28. The impugned orders, for the reasons contained in paragraph Nos. 19 to 23 are set aside. Though the second batch of Writ Petitions challenges appeal orders, my decision in regard to the first batch will apply equally to those orders as well, which are also set aside. The request of the petitioners for access to the ICEGATE system is rejected.

29. All the Writ Petitions are disposed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

30.08.2022

Index: Yes/No
Speaking order/Non-speaking order
Sl

To

1 The Commissioner of Customs
(Appeals II) Office of the Commissioner of
Customs (Appeals II) No. 60 Rajaji Salai
Custom House Chennai – 600 001

2 The Deputy Commissioner of Customs
(EGM Cell) Office of the Deputy
Commissioner of Customs (EGM Cell) No.60
Rajaji Salai Custom House Chennai- 600 001

3 The Central Board of Indirect
Taxes and Customs Rep by its Chairman
Department of Revenue Ministry of Finance
Government of India North Block New Delhi
110 001

Dr.ANITA SUMANTH, J.

sl

W.P. Nos.33896, 15791, 15795, 15798, 15802, 15807, 15808, 15819, 15821, 15822, 15825, 15827, 15828, 15830, 15832, 15833, 15834, 15835, 15838, 15839, 15842, 15843, 15844, 17262, 17268, 17272, 17423, 17426, 17432, 17435, 17437, 17438, 17439, 17440, 17460, 17464, 17470, 23009, 23016, 23018, 23020, 23023, 23026, 23027, 23030, 23031, 23033, 23035, 23036, 23039, 23049, 23051, 23052, 23054, 23061, 23063, 23064, 23067, 23069, 23070, 23073, 23074, 25578, 30713, 30717, 30720, 30722, 25585, 33897, 33899, 33901, 33903, 33904, 33905, 33906, 33907, 33908, 33909, 33911, 33912, 33913, 33914, 33916, 33917, 33918, 33920, 33921, 33922, 33923, 33925, 33928, 33929 and 33931 of 2019 and W.P.Nos.442, 8261 and 8264 of 2021

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W.M.P.Nos.34436, 34437, 15611, 15617, 15619, 15622, 15623,15626, 15638, 15641, 15642, 15643, 15645, 15646, 15647, 15651, 15653, 15654, 15655, 15657, 15659, 15661, 15663, 15664, 16801, 16802, 16806, 16809, 16905, 16911, 16912, 16916, 16917, 16920, 16923, 16922, 16940, 16942, 16947, 22682, 22691, 22693, 22695, 22697, 22703, 22706, 22709, 22713, 22716, 22721, 22723, 22725, 22736, 22741, 22743, 22745, 22757, 22759, 22761, 22763, 22767, 22768, 22772, 22775, 30796, 30798, 30802, 30805, 25119, 25124, 34441, 34440,34443, 34444, 34447, 34450, 34446, 34448, 34451, 34452, 34454, 34455, 34456, 34459, 34457, 34458, 34460, 34463, 34461, 34462, 34468, 34469, 34466, 34467, 34470, 34474, 34471, 34472, 34473, 34475, 34476, 34479, 34489, 34493, 34480, 34481, 34485, 34486, 34490, 34495, 34487, 34488, 34491, 34494, 34500, 34503, 34501, 34502, 34504 and 34505 of 2019 and W.M.P. Nos.517, 8802 and 8803 of 2021

30.08.2022