IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.09.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

Writ Petition No.18988 of 2003
and WPMP No.23785 of 2003
and WVMP No.439 of 2007

M/s.Super Chemical Corporation,
No.27, Nainiappa Naicken Street,
II Floor, Chennai – 600 001.

.... Petitioner

Vs

1. Customs, Excise and Gold (Control) Appellate Tribunal,
   South Zonal Bench, Shastri Bhavan Annexe,
   1st Floor, 26, Haddows Road, Chennai – 600 006.

2. The Commissioner of Customs,
   Customs House, 33, Rajaji Salai,
   Customs House, Chennai – 600 001.

3. The Assistant Commissioner of Customs,
   Customs House, 33, Rajaji Salai,
   Chennai – 600 001.

.... Respondents

PRAYER: PETITION under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus to quash the impugned final order No.394/2003 dated 30.5.2003 and consequently direct the third respondent to assess the goods 'Styrene Monomer' lying in Customs Warehuse by applying Section 22 or Section 23 of the Customs Act.

For Petitioner : Mr.T.Ramesh

For Respondents : Ms.Anu Ganesan
Junior Panel Counsel

O R D E R
(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner challenges the concurrent rejection of its plea for abatement of duty in terms of Section 22 of the Customs Act, 1962 (in short 'Act'), under order-in-original dated 12.08.1997, order of the first appellate dated 18.12.1997 and order of the Customs, Excise and Gold (Control) Appellate Tribunal (in short 'CEGAT'/'Tribunal') dated 30.05.2003.

2. The petitioner is an importer and had imported 80 consignments of Styrene Monomer on 02.05.1995 in Chennai Port. The petitioner was permitted to deposit the goods in a warehouse at Chromepet, Chennai. The goods imported required storage in controlled conditions, i.e., cold storage. A perusal of the impugned orders as well as the submissions of the learned counsel before us would however make it apparent that the importer had not studied the conditions for storage carefully and was clearly unaware of the fact that the storage required to be under controlled conditions.

3. Unfortunately, the warehouse at Chromepet did not possess the facility of cold storage and the goods had come to be housed under normal conditions. 20 consignments were cleared on 12.07.1995 when, for the first time, according to the petitioner, it came to be aware that all the consignments had deteriorated in entirety

and had become unusable. Even the 20 consignments which had been cleared for home consumption had been rendered unfit for use.

4. However, the petitioner had not made any move to seek the relief of abatement promptly, but had tarried till 07.03.1996, when for the first time, the claim for abatement was made. In the interim, there were several instances where demands had been computed in respect of the stored goods and had been conveyed to the petitioner. We are not privy to responses, if any, that were made to those demand notices.

5. Even after the request for abatement on 07.03.1996, the demands came to be reiterated on 07.07.1996 leading to a communication from the petitioner on 01.08.1996 to the effect that it wished to handover the unfit goods to the Department and will bear the transportation charges in this regard. On 12.08.1997, the demands were confirmed rejecting the request for abatement. The authorities directed the petitioner to remit the duty within a period of 7 days under threat of recovery under the relevant provisions of the Customs Act.

6. The petitioner filed a first appeal reiterating the claim for abatement on the ground that the imported goods had been abandoned as unfit for use. The Commissioner of Customs (Appeals) records that the petitioner, as an importer, was required to be aware of the requirement of storage in controlled temperature and thus it was incumbent upon him to have taken necessary precautions and measures for appropriate storage.

7. He points out that the law provided for sufficient leeway for an importer to have selected a private bonded storage for appropriate storage, such that the goods would be preserved. However, such measures were not taken. He thus concludes that the petitioner has acted in a wilfully, negligent manner and thus was not entitled to the benefit of abatement in terms of Section 22(1) (c) of the Act.

8. In second appeal, the CEGAT also confirmed the view taken in first appeal. Before the CEGAT, an additional plea was made that the value of the goods was to be re-determined such that the duty be computed appropriately. This plea was also rejected on the ground that when the relief of abatement was itself not possible, the necessity of invoking Section 22(2) did not arise. It is as against the impugned order of the CEGAT dated 30.05.2003 that the present Writ Petition is filed.

9. Mr.Ramesh, learned counsel, would reiterate the submissions made before the lower authorities. He would however fairly accede to the position that it was on 12.07.1995, when 20 consignments were cleared that the petitioner came to be aware that the entirety of the consignments had deteriorated and were rendered unfit. In such circumstances, we do not see the prudence in continuing to retain the chemicals in the warehouse till 07.03.1996 when the claim for abatement was made for the first time.

10. He would then argue that the damage had been caused by virtue of an accident that was beyond the control of the petitioner and that there had been no

wilful involvement of the petitioner in this regard. Alternatively, and without prejudice to the main submissions, he would reiterate that even if the plea for abatement was to be rejected, the goods ought to have been valued and only proportionate duty would be leviable in terms of Section 22(2) of the Act. In the present case, since the entirety of the goods had been rendered unfit for use, the question of levy of duty did not itself arise, according to him.

11. Ms.Anu Ganesan, learned Standing Counsel appearing for the Customs Department would defend the orders of the lower authorities highlighting the position that the petitioner had been negligent in not resorting to appropriate measures for storage of the goods in controlled temperature conditions. She relies on a decision of the Karnataka High Court in *C.C., Bangalore V.Symphony Services Corporation India Pvt.Ltd.* (275 ELT 369), drawing our attention to the observations made on the interplay between Sections 22 and 23 of the Act. She reiterates that the question of valuation was irrelevant when the goods had been rendered unfit in their entirety.

12. We have heard the learned counsel and have also studied the brief carefully. Section 22 of the Act provides for abatement of duty on damaged or deteriorated goods where the customs authorities are satisfied that there are circumstances that have been occasioned where the imported goods had been damaged or deteriorated for no fault of the importer.

13. There are three circumstances that are envisaged under Section 22, (a)

that imported goods had been damaged or had deteriorated at any time before or during unloading of the goods in India, (b) that the imported goods, other than the warehoused goods, had been damaged at any time after the unloading in India but before examination under Section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent, or c) that the warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent.

14. The first two situations do not arise in the present case and the petitioner seeks the benefit of the third limb of Section 22 (1). We are called upon specifically to interpret the word *'accident'* in Section 22(1)(c). The mainstay of the petitioner's argument in support of the plea for abatement under Section 22 is that the accident that had transpired in respect of the imported consignments was not attributable to the petitioner and hence, it should not be made to suffer the consequences of the same. There has also been a plea of double jeopardy, in that, the petitioner has now both lost the consignment and is also suffering duty liability on the same.

15. In our considered view that the term '*accident'* referred to in clause (c) has to be seen in the context of the phrase '*wilful act, negligence or default'* of the importer. Clause (c) encompasses within its ambit, both wilful as well as innocent acts, such as negligence or default. In the present case, the deterioration of the

goods has been occasioned by virtue of their storage in regular conditions. We believe this to be a direct consequence of the carelessness/negligence of the importer alone.

16. It is for an importer to be sufficiently armed with necessary knowledge of how the goods imported are to be treated and stored. Any default on its part would have a consequence on the condition of the goods itself, and such consequence can only be attributed to the importer. The present case is one such classic instance.

17. The petitioner would point out that there has been no positive act by it leading to the deterioration of the goods. However, it is the absence of necessary precautions which has resulted in the deterioration, which points to lack of necessary diligence and action. This inaction would also tantamount to negligence in terms of clause (c) of Section 22 (1) of the Act and as rightly pointed out by the respondents, the phrase '*negligence/default'* used in clause (1) would take within its ambit the failure to exercise and due care which is expected on the part of an importer.

18. In light of the fact that the plea for abatement has itself been rightly rejected by the authorities, the petitioner cannot press into service Section 22(2), dealing with valuation and computation of duty, and this argument is hence irrelevant.

19. The decision of the Karnataka High Court in the case of *Symphony Services* (supra) refers to the inter play between Sections 22 and 23 and in the

interests of completion we may highlight the distinction between the two provisions. While Section 22 operates within the ambit of man-made acts such as wilful negligence/default or innocent negligence/default, Section 23 addresses loss or destruction caused by natural causes or force majeure.

20. In the decision in *Symphony Services* (supra), the goods stored had been destroyed on account of water seepage. This was a natural disaster in which there was no role played by the importer. The defence of the Department in that case was that the loss had been caused by the assessee, since it had not taken appropriate measures to protect the goods against water seepage and they had attempted to shift the claim to fall within the scope of Section 22. That attempt was repelled by the High Court which accepted the assessee's claim for grant of remission of duty under Section 23 of the Act.

21. By way of interim order dated 16.07.2003, this Court had directed auction of the 60 consignments and on oral instructions, learned Standing Counsel would inform the Court that the process of auction had had no result in view of the complete deterioration of the goods and the total destruction of the chemicals. This is recorded.

22. In light of the detailed discussion as aforesaid, we are of the view that there is no merit in this Writ Petition and we confirm the concurrent findings of the lower authorities including the CEGAT under order dated 30.05.2023.

23. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are closed.

(A.S.M.,J) (G.A.M.,J)
04.09.2024

Index:Yes
Speaking order
Neutral Citation: Yes
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