

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 1417 of 2008**

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COMMISSIONER OF CUSTOMS (PREVENTIVE)
Versus
INDIAN OIL CORPORATION LIMITED

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Appearance:

MR CB GUPTA(1685) for the Appellant(s) No. 1

MR HARDIK P MODH(5344) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 01/10/2025

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1 Heard learned advocate Mr.C.B.Gupta for the appellant and learned advocate Mr.Hardik Modh for the respondent. By this appeal under Sec.130 of the Customs Act, 1962 (for short 'the Customs Act), the appellant - revenue has challenged the order dated 08.01.2008 passed by the Customs Excise and Service Tax Appellate Tribunal, West Zonal Branch, Ahmedabad (for short "the Tribunal") in Appeal No.C/667-669/205.



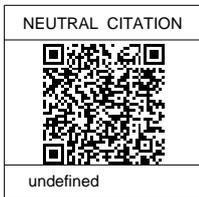
2 This Court, by order dated 21.07.2009, admitted the appeal for consideration of the following substantial questions of law:

“1. Whether in the facts and in the circumstances of the case the Commissioner of Customs, Jamnagar has jurisdiction to reassess into bond bills of entry under Section 17(4) of the Customs Act, 1962 and to demand differential duty in respect of clearances effected by the respondent-Corporation from the private bonded warehouses situated at Madura, Koyuali and Panipat ?

2. Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that when the goods are received in the warehouses at Madura, Koyali and Panipat and the duty payments are made only at the time of clearances of the goods from the warehouses, the proper officer at the port of import has no jurisdiction to demand differential duty?

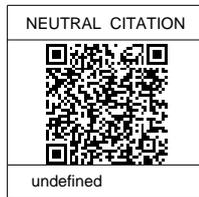
3. Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in applying ratio of the decision in case of M/s.Ferro Alloys Corporation Ltd., reported in 1995(77) ELT 302 (T) 1997 (77) ELT 310 (T)?

4. Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law by applying principles of merger in case of M/s. Ferro Alloys Corporation Ltd., reported in 1996 (88) ELT A-1267?”



3 The respondent imported petroleum products like Crude Oil during the years 1997-98 and 1998-99 at Vadinar Port, Gujarat. The respondent filed Into-Bond Bills of Entry with Customs House Vadinar, Jamnagar for warehousing the imported goods at their private licensed warehouse tanks. The Into-Bond Bills of Entry were assessed provisionally for want of original import documents like invoice, bill of lading, insurance etc., and imported goods were allowed to be kept in warehouse on execution of warehousing bonds in terms of Sec.59(2) of the Customs Act.

3.1 The respondent, subsequently, in order to transport the warehoused goods without payment of duty through pipeline to their refineries at Mathura, Koyali and Panipat, executed a bond under Sec.67 of the Customs Act, and thereafter, filed Ex-Bond Bills of Entry on payment of duty assessed by the proper officer at the respective refineries within whose

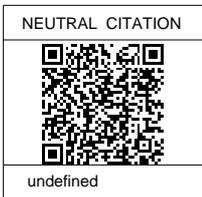


jurisdiction the respective refinery is situated.

3.2 Accordingly, the provisional assessment made at Vadinar Port was finalized by the respective Customs Authorities and differential duty recovered/refund sanction was made under Sec.1 r/w. Sec.17(4) of the Customs Act.

3.3 It appears that subsequently, in view of the investigation it was alleged that the value adopted at the time of final assessment was incorrect and the value was required to be enhanced by adding expenses like “load port survey fees”, “tank charges”, “payments made to the Shipping Corporation of India as per Contract of Affreightment (COA)”.

3.4 The Commissioner of Customs having jurisdiction over Vadinar Port passed an Order-in-Original confirming the differential duties of varying amounts along with the interest and penalty.



4 Being aggrieved, the respondent preferred an appeal before the Tribunal. The Tribunal, after considering the facts of the case and contentions raised on behalf of the respondent, to the effect that the Commissioner at Jamnagar has no jurisdiction to demand differential duty in respect of the clearance affected from warehouse situated in jurisdiction of the other Commissioner, quashed and set aside the order passed by the Commissioner levying differential duties of varying amount along with interest and penalty in lieu of the decision of the Tribunal in case of ***M/s.Ferro Alloys Corpn. Ltd.***, reported in ***[1995(77)ELT 302(T)]*** which is upheld by the Hon'ble Supreme Court reported in ***[1996 (88) ELT A-126]*** and in the case of ***Ferro Alloys Corpn Ltd*** reported in ***[1995(77) ELT 310 (T)]***.

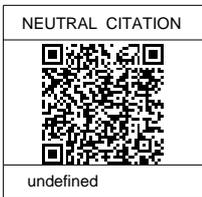
5 The Tribunal passed the following order:

"6. We have carefully considered the submissions. It is not disputed that the entire



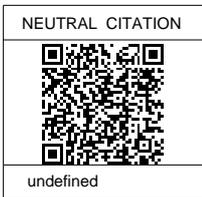
goods imported by the appellant were warehoused by filing Into-Bond bills of entries in the Vadinar Port; that they have been removed under bond without payment of duty to the warehouses at the refineries at places which are outside the jurisdiction of Commissioner of Customs, Jamnagar; that the duty on the warehoused goods have been paid at the time of clearance from the warehouses; that finalization of provisional assessment and action for demand of differential duty / refund of excess collected has been undertaken by the officers in-charge of receiving warehouses. Under these circumstances, the submissions of the ld.Advocate for the appellant that the Commissioner, Jamnagar cannot demand differential duty is valid. It is not a case where the goods removed under bond were not received at the destination i.e. at the receiving warehouses. When the goods have been admittedly received in the warehouses at Madura, Koyali, Panipat and the duty payments have taken place only at the time of clearance from the warehouses, the question of demanding differential duty on such clearances by the officers at the port of import does not arise.”

5.1 Learned advocate Mr.Gupta for the appellant - Revenue submitted that as per the provisions of the Customs Act, only the Commissioner at Vadinar would have the jurisdiction to reassess the Bill of Entries filed by the respondent. It was submitted that the Tribunal



has committed an error in relying upon the decision in case of **Ferro Alloys (supra)**, as the same is not applicable in the facts of the case of the respondent. It was submitted that the facts in the case of M/s.Ferro Alloys (supra) referred to 100% EOU unit whereas, in facts of the present case, the respondent is not an EOU and therefore the said decision would not be applicable.

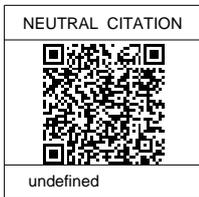
5.2 Learned Advocate Mr. Gupta also placed reliance upon the circular number 16/2004-Cus., dated 16.02.2004 issued by the Central Board of Excise and Customs, New Delhi, regarding administrative control over 100% EOU/EHTP/STP/SEZ units to show that that as per the said clarification all the cases of short levy or evasion of either customs or central excise duties or both, it would be for the Commissioner of Customs or Central Excise who would have administrative control over such EOU unit. It was



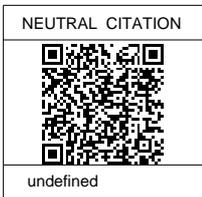
therefore submitted that as per the circular, the proper officer for EOU would be the Custom Officer within whose jurisdiction the EOU is situated. It was, therefore, submitted that in the facts of the case there is no such circular and therefore the Commissioner at Jamnagar would be the proper officer for reassessment of the duty as the respondent is not an EOU.

5.3 It was therefore submitted that the Tribunal was was not justified in holding that the Commissioner of Customs at Jamnagar has no jurisdiction relying upon the decision of the Tribunal in case of **Ferro Alloys(supra)**.

6 On the other hand learned advocate Mr.Hardik Modh, submitted that as per section 2(43), 'warehouse' is defined as public warehouse license under section 57 or a private warehouse license under section 58. It was submitted that the



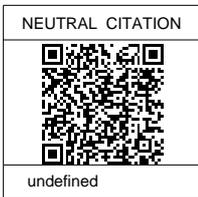
respondent, after import of the goods, transferred the same into the private warehouse license under section 58 on provisional assessment after submitting Into-Bond before the Commissioner of Customs at Vadinar Port. It was pointed out by learned advocate Mr.Modh that as per provision of section 67, the respondent obtained the permission to remove the goods to its various refineries for further processing which was permitted by the proper officer i.e. Vadinar Port and accordingly, the goods in question were transferred to the refineries situated at Koyali, Mathura and Panipat, and thereafter, the respondent filed Ex-bond as provided under section 46 for Bill of entry for wrong consumption before the proper officer having the jurisdiction over the respective refinery which was finally cleared under section 47 read with section 17(1) of the Customs Act on final assessment of the duty in accordance with section 15(1)(b) of the Customs Act.



6.1 It was, therefore, submitted that only the proper officer having the administrative jurisdiction of the respective refinery is a proper officer within whose jurisdiction respective refinery is situated can make the reassessment as per sub-section(4) of section 17 of the Customs Act.

6.2 It was further submitted that whether the importer is EOU or not is of no consequence for the purpose of filing the Bill of Entry insofar as for own consumption is concerned. Reliance was placed on the decision of the larger bench of the Tribunal rendered in case of ***PARAS FAB INTERNATIONAL vs. Commissioner of C.Ex., Kandla.***, reported in ***2010 (256) E.L.T. 556 (Tri-LB)***.

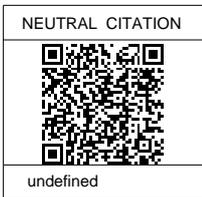
6.3 It was therefore submitted that the Tribunal has rightly followed the decision in case of ***Ferro Alloys Ltd (supra)***.



7 Considering the submissions made by the learned advocates for the respective parties, it is clear that the respondent imported the goods at Vadinar Port which was, thereafter, transferred to its private warehouse on filing of Into-Bond Bill of Entries. The respondent, thereafter, removed the goods under section 67 to its respective refinery after filing the Ex-bond Bill of entries. On such basis, the goods were finally assessed.

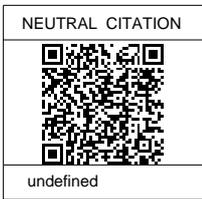
7.1 In such circumstances, the Tribunal was justified in referring to the decision of the Larger Bench rendered in case of **Ferro Alloys Corporation Ltd (supra)** to hold that the Commissioner at Jamnagar having jurisdiction over Vadinar Port could not have issued the show-cause notice and carried out the reassessment proceedings and pass the Order-in-Original or levy of varying differential duties.

7.2 The larger bench of the Tribunal in case of **Ferro**

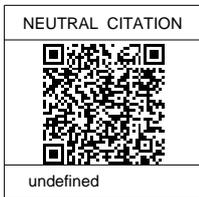


Alloys (supra) has rightly held that the jurisdiction to raise demand of duty on exempted goods found to be not utilized as per the terms of exemption by importers can be done only by the officer having jurisdiction over the warehouse.

7.3 It was held by the Tribunal in the case of **Ferro Alloys (supra)** that the jurisdiction for raising demand for short payment of duty would lie with the customs house through which the goods had been cleared and only the proper officer granting Ex-bond clearance can raise the demand for short levy or refund on reassessment of the duty. The Tribunal has relied upon the decision of Madras High Court in case of **Collector of Customs, Madras versus Tungabhadra Fibers Limited** reported in **1994 (71) ELT 655 (Mad.)** wherein, it is held that assessment of goods into bonds on a warehousing bill of entry is only tentative and such assessment being

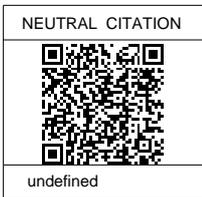


made only for the purpose of execution of warehousing bond is not conclusive. Hon'ble Madras High Court in case of **Tungabhadra Fibers Limited (supra)**, while considering the question regarding the levy and collection of enhanced auxiliary duty held that at the time of filing the Bill of Entry for warehousing for the purpose of execution of bonds, provisional assessment had been made on the basis of the duty which was applicable at the relevant time and such provisional assessment was done only for the purpose of determining the amount of duty for execution of the warehousing bonds as per section 59 of the Customs Act, 1962 for entering the goods into warehouse. When the purpose of assessment on filing of Bill of Entry for warehouse is only to secure the duty payable by the importer on the clearance of the goods later, it was held that such a valuation made for the purpose of execution of warehousing bond cannot be conclusive and it was a tentative estimate of the



liability to pay the duty.

7.4 The Hon'ble High Court held that the rate of duty would be applicable under section 15(1)(b) of the Act read with section 68 thereof. Sec.68 of the Act provides for clearance of warehouse goods for own consumption and stipulates that importer of any warehoused goods may be cleared for own consumption in the circumstances mentioned therein in clauses (a) to (c). The Hon'ble High Court has thereafter referred to and relied upon the decision of the Hon'ble Supreme Court in the case of ***Prakash Cotton Mills (P) Ltd vs. B.Sen*** reported in ***1979 (4) ELT (J241)***, wherein, also the goods were stored in warehouse and the warehouse question arose whether the custom authorities were justified in applying the rate of duty to the imported goods in question according to the rate which prevailed on the date of their removal from the warehouse. In view of



the above decision and in view of the provision of section 17 read with section 46 of the Customs Act, we are of the opinion that the Tribunal was justified in holding that proper officer having the administrative jurisdiction over the respective refineries where the goods were removed under section 67 of the Act only could have assumed the jurisdiction for reassessment and not the Commissioner, Jamnagar who can only be considered as proper officer till the goods were permitted to be warehoused on provisional assessment.

8 We, therefore, answer both the questions in favor of the assessee and against the revenue. The appeal therefore being devoid of any merit is accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

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