

SPEED POST



F. No. 373/537/SL/2019-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...9/2/23..

Order No. 39/23-Cus dated 08.02.2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. 82/2019-TRY (CUS) dated 17.09.2019, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli.

Applicant : M/s GAC Shipping (India) Pvt. Ltd., Chennai.

Respondent : The Commissioner of Customs (Preventive), Tiruchirapalli.

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ORDER

Revision Application, bearing no. 373/537/SL/2019-RA dated 20.12.2019, has been filed by M/s GAC Shipping (India) Pvt. Ltd., Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 82/2019-TRY (CUS) dated 17.09.2019, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original, passed by the Assistant Commissioner of Customs, Customs Division, Nagapattinam, bearing no. 72/2018 dated 13.12.2018, vide which penalty was imposed upon the Applicants herein, under Section 116 of the Customs Act, 1962.

2. Briefly stated, Applicants had filed Import General Manifest (IGM) No. 2153919 dated 19.12.2016 for import of 57,000 MTs of VHP Cane Raw Sugar per vessel MV Thelisis, at Karaikkal Port. However, as per the Joint Draught Survey Report dated 04.02.2017, the quantity discharged at the Port was only 56,768 MTs. Since, there was a shortfall to the tune of 232 MTs in the quantity arrived at the Port, show cause notice dated 01.02.2018 was issued to the Applicants herein for imposing penalty under Section 116 read with Section 148 of the Act *ibid*. The original authority, vide the above mentioned OIO dated 12.12.2018, imposed a penalty of Rs. 86,94,192/- on the Applicants. The appeal filed by the Applicants herein before the Commissioner (Appeals) has been rejected, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the consignee had not initiated any suit or litigation against the shipper for claiming the value of the short landed cargo and nor had lodged any complaint as regard to the short landing of cargo; that mere shortfall of 0.40% of the cargo was due to the fact that the sugar had some losses due to the moisture contents in it; and that the Hon'ble Bombay High Court in the case of *Shaw Wallace & Co. Ltd. vs. Assistant Collector of Customs {1986 (25) ELT 948 (Bom.)}* has held that the loss of 1% of the cargo is allowed as the same falls within the permissible limit.

4. Personal hearing in the matter was held on 08.02.2023, in virtual mode. Sh. V.J. Mathew, Sr. Advocate appeared for the Applicant and reiterated the contents of the revision application, with the support of compilation emailed. Upon being asked, Sh. Mathew stated that in this case during discharge there was heavy rain at the Port, in which situation wastage of just 0.4% is only natural. He further stated that though this aspect was specifically highlighted at both the stages below, the authorities did not consider the same. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is on record that a quantity of 57,000 MTs of VHP Cane Raw Sugar was imported and quantity of 56,768 MTs was unloaded at the port of discharge. Thus, there was a shortfall of 232 MTs, which is not disputed. The discharge of the goods imported was completed on 04.02.2017. Applicant has contended that at the time of discharge there was heavy rain and high water tide due to which the discharge operation had stopped from 20.01.2017 to 29.01.2017. It is their contention that sugar can easily dissolve in water and, therefore, shortage of cargo i.e., 0.40% of the quantity imported, may have occurred due to this natural phenomenon. The Government observes that this issue was raised by the Applicants before the original authority, as evident from their reply dated 26.02.2018 to the show cause notice. However, the original authority has not examined this contention of the Applicant while deciding the case. This contention has not been considered at the appellate stage as well. Since, this issue is purely factual in nature, it would in the interest of justice that the matter is remanded to the original authority for deciding the matter afresh, after following the principles of natural justice, and after duly examining the aforesaid contention specifically.

6. The revision application is, accordingly, allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

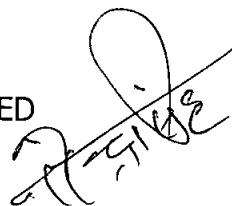
M/s GAC Shipping (India) Pvt. Ltd.,
"GAC House", No. 5, Krishna Koil Street,
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Order No. 39 /23-Cus dated 08.02.2023

Copy to:

1. The Commissioner of Customs (Preventive), Tiruchirapalli, No. 1 Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs & Central Excise (Appeals), No. 1 Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. V. J. Mathew, & Co., International Law Firm, Manikkiri Cross Road, Pallimukku, Cochin-682016.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board

ATTESTED



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