

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10881 of 2021

(Arising out of OIA-MUN-CUSTOM-000-APP-080-118-21-22 dated 30/06/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

EMIRATES SHIPPING AGENCIES INDIA PVT LTD

.....Appellant

No 232 B Okhala Industrial Estate Phase-11
New Delhi

VERSUS

C.C.-MUNDRA

.....Respondent

Office of the Principal Commissionerate of Customs, Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

WITH

- **Customs Appeal No.10882 of 2021 (EMIRATES SHIPPING AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10883 of 2021 (EVERGREEN SHIPPING AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10884 of 2021 (EVERGREEN SHIPPING AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10885 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10886 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10887 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10888 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10889 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10890 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10891 of 2021 (HAPAG LLOYD INDIA PVT LTD)**
- **Customs Appeal No.10892 of 2021 (YANG MING LINE INDIA PVT LTD)**
- **Customs Appeal No.10893 of 2021 (ONE OCEAN NETWORK EXPRESS LINE INDIA PVT LTD)**

- **Customs Appeal No.10894 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10895 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10896 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10897 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10898 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10899 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10900 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10901 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10902 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10903 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10904 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10905 of 2021 (CMA CGM AGENCIES INDIA PVT LTD)**
- **Customs Appeal No.10906 of 2021 (SIMATECH INDIA PVT LTD)**
- **Customs Appeal No.10907 of 2021 (SEA HORSE SHIP AGENCIES PVT LTD)**
- **Customs Appeal No.10927 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10928 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10929 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10930 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10931 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10932 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**

- **Customs Appeal No.10933 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10934 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**
- **Customs Appeal No.10935 of 2021 (MAERSK LINE INDIA PRIVATE LIMITED)**

APPEARANCE:

Shri Amit Laddha, Advocate for the Appellant

Shri. Vijay G. Iyengar, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10882-10917 /2023

DATE OF HEARING: 15.12.2022
DATE OF DECISION: 13.04.2023

RAMESH NAIR

The present appeals are directed against the OIA No. MUN-CUSTOM-000-APP-080-118-21-22 dated 30/06/2021 whereby the Commissioner (Appeals) held that the penalties were imposed by the original authority under section 41 of the customs Act, 1962 on the allegation that the appellants have not filed the EGM within a stipulated period of 7 days in terms of section 41 of the Customs Act, 1962. Accordingly, they were made liable themselves for imposition of penalty.

2. Shri. Amit Laddha, Learned counsel appearing on behalf of the appellant submits that the appellants invariably in every case filed the EGM within the stipulated time period. However, for some changes/ modification /typographical correction supplementary EGM was filed after 7 days. The department has taken the date of filing of supplementary EGM as the actual date of filing and construed that the appellant had violated the condition of time limit for filing EGM. It is his submission that there is no dispute that the appellant have filed EGM within the stipulated time of 7 days for which he has submitted a chart for showing the date of filing of EGM and the date of Supplementary EGM filed.

2.1 He submits that there is a statutory provision under Sub- Section 3 of Section 41 that in case of any mistake or incomplete EGM, the proper officer on his satisfaction may permit such manifest a report to be amended or supplementary , therefore the filing of the EGM within the 7 days and supplementing the same at a later date which was accepted by the proper officer, the compliance of Section 41 was made, therefore, no penalty is imposable. He placed reliance on the following circular/ judgments :-

- HAPAG LLOYD INDIA PVT LTD Vs. COMMISSIONER OF CUSTOMS, CHENNAI- 2021 (7) TMI 763- CESTAT CHENNAI
- HYUNDAI MERCHANT MARINE INDIA PVT LTD Vs. COMMISSIONER OF CUSTOMS- 2021 TIOL- 418-CESTAT MAD
- BENGAL TIGER LINE (INDIA) PVT LTD Vs. COMMISSIONER OF CUSTOMS- 2022 (10) TMI 1020-Mad High Court

3. Shri Vijay G Iyengar, Learned Assistant Commissioner, appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. In the present case limited issue to be decided is that whether the appellants have violated the condition of Section 41 and consequently liable to penalty under Section 41 of the Customs Act, 1962. The said section reads as under :-

"Delivery of SECTION 41. [departure manifest, export manifest] or export report. *[The person-in-charge of a conveyance — (1) carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees].*

] * * * * *

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

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

If the proper officer is (3) satisfied that the \$ [departure manifest, 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."

4.1 As per the Sub Section (1) of Section 41, the person shall be liable to pay penalty not exceeding Rs. 50,000/-, if he fails to deliver the departure manifest or export manifest or the export report or any part thereof within stipulated time period as prescribed under regulation 3(3) of Export Manifest (Vessel) Regulations, 1976. With this provision there is rider that the said provision shall apply in case when the proper officer is satisfied that there is no sufficient cause for such delay. In the present case there is no dispute that the appellant had filed EGM within the stipulated time period. Subsequently, the Supplementary EGM was filed. Such Supplementary EGM was accepted by the proper officer. Therefore, it is clear that the proper officer has found sufficient cause for delay by accepting the supplementary EGM.

4.2 Moreover, Sub – Section 3 clearly provides that in case of incorrect or incomplete EGM and that there was no fraudulent intention, the proper officer on his satisfaction may permit such manifest or report to be amended or supplemented. In the present case firstly, the appellants have filed EGM within stipulated time period and subsequently supplemented by filing correct Supplementary EGM which has been accepted. This shows that the appellants have complied with the provision of Section 41 in its entirety.

4.3 The Contention of the Revenue is that the date of filing of EGM is not initial filing of EGM but the filing of Supplementary EGM hence, there is delay is in clear contradiction of the statutory provision of Section 41 (1) read with sub section 3 of customs act, 1962. This view taken by the lower authority is absolutely illegal, hence not acceptable.

5. Accordingly, the impugned orders are set aside. Appeals are allowed.

(Pronounced in the open court on 13.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta