

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No.11037 of 2019

(Arising out of OIO-JAM-CUSTM-PRV-COM-010-2018-10 dated 12.03.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs & Service Tax, Jamnagar (PREV))

KPG ENTERPRISE

PLOT NO 91M SHIP BREAKING YARD ALANG
BHAVNAGAR-GUJARAT

.....Appellant

VERSUS

C.C.E. Jamnagar (prev.)

SHARDA HOUSE...BEDI BANDAR ROAD,
OPP. PANCHAVATI,
JAMNAGAR-GUJARAT

.....Respondent

WITH

(i) Customs Appeal No. 11033/2019 (Soham Internation); (ii) Customs Appeal No. 11035/2019 (Admiral Shipping Agency); (iii) Customs Appeal No. 11087/2019 (Compass Shipping And Trading Limited)

APPEARANCE:

Shri. Rahul Gajera, Advocate for the Appellant

Shri.V.G. Iyengar, Superintendent (Authorized Representative)for the Respondent

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

FINAL Order No.A/ 12260-12263 /2022

DATE OF HEARING: 16.12.2022

DATE OF DECISION: 22.12.2022

RAMESH NAIR

The present appeals are preferred against Order-In-Original No. JAM-CUSTM-PRV-COM-010-189-19 dated 12-3-2019 ("Impugned Order") by which Learned Commissioner of Customs (preventive) Jamnagar has held that Vessel MT Capricorn - International Maritime Number (IMO) : 8900878 designated by the Libya Sanctions Committee ("Committee" hereinafter) of the Security Council of United Nations ("UNSC" hereinafter) was not permitted to enter into Indian Port having been prohibited vide S.O. 2158(E) dated 20.06.2016 issued by the Ministry of External Affairs (MEA) and published in the MEA Extra Ordinary Gazette No. 1545 ("S.O." hereinafter). Appellants, M/s. KPG Enterprise is the importer of the Vessel, M/s. Campass Shipping & Trading Limited (UAE) is the seller of the vessel, M/s. Soham International,

Bhavnagar is the authorized signatory of M/s. Compass Shipping & Trading Limited (UAE) and M/s. Admiral Shipping Agency, Bhavnagar is the agent of the owner of the ship and has provided services of clearance of vessel with the various authorities in India ("Appellants" hereinafter).

2. Briefly the facts, relevant to the matter, are that M/s. KPG Enterprise imported a vessel for breaking purpose at Alang Ship Recycling Yard declaring the same as MT Capricorn - IMO 8900878 vide Bill of Entry No. 5201250 dated 14.02.2018. Old and Used Ship is covered by chapter 89080000 of the First Schedule to Customs Tariff Act, 1985 and the same is freely importable. The proper officer of customs after verifying the details in the Bill of entry, assessed duty amounting to Rs. 65,54,957/- and the same was paid by the importer on 14/15.02.2018 and thereafter proper officer of customs granted out of charge on 19.02.2018 under section 47 of the Customs Act, 1962 ("Act" hereinafter) permitting clearance of the vessel for home consumption. On 14.03.2018, Gujarat Maritime Board granted cutting/recycling permission and while the vessel was part-broken, officers of DRI on 03.04.2018 seized the same on the ground that the entry of the subject vessel was prohibited by Resolution No. 2146 (2014) of the UNSC read with S.O. dated 20.06.2016 of the MEA. By Order dated 09-05-2018 of the Hon'ble Gujarat High Court, the vessel was directed for provisional release on certain conditions. Thereafter, a show cause notice dated 12.09.2018 was issued by which it is primarily contended that the Vessel is prohibited in terms of S.O. dated 20.06.2016; after considering the reply and hearing the appellants, the impugned Order is passed by which the subject vessel is held liable for confiscation under section 111 (d) of the Act and accordingly penalty of Rs. 60,00,000/- was imposed upon the importer and Rs. 25,00,000/- penalty was imposed under section 112 (a) & (b)(i) of the Act upon the importer and other co-noticees. All the appellants except Mr. Haitham Khaddour, master of the vessel have preferred the present appeal before this Tribunal against the impugned order.

3. Shri Rahul Gajera, learned counsel appearing for the appellant submitted that S.O. dated 20.06.2016 was issued under section 2 of the United Nations (Security Council) Act, 1947 (43 of 1947) in order to implement the UNSC Resolutions on Libya Order, 2016 and to give effect to the UNSC Resolution adopted on 26 February 2011 and series of resolutions passed thereafter upto 2214 (2015) was not applicable to the subject vessel. By para 4 read with para 4(b) of the said S.O. dated 20.06.2016 it is provided that the central government shall have all the powers to take necessary measures to prevent vessels designated by the Committee from entering Indian Ports. It thus conferred powers to the central government to take measures for prevention of the vessels designated from entering Indian ports for which one such measure would be to prohibit such vessels from entering Indian ports. However, no such prohibition has been provided by the said S.O. dated 20.06.2016 nor by any notification issued under section 11 of the Act and in absence of any express prohibition by way of Order or Notification, it cannot be said there was prohibition in force attracting section 111(d) of the Act; he relied upon the judgement of Hon'ble Delhi High Court in the case of Raghbir Singh V. UOI – 1992 (59) ELT. 380 in this behalf. It was further submitted that, even otherwise, the S.O. dated 20.06.2016 can be said to be effective for the prevention of entry of such vessels only upto 31-03-2016 and did not apply to the subject vessel imported on 10/14-2-2018, and as such the subsequent resolutions of UNSC did not provide for prevention of vessel from entering ports of any member states but was applicable only with respect to vessels loading, transporting and discharging petroleum including crude oil whereas in the present case the vessel was undisputedly brought in without such cargo and solely for the purpose of breaking; finally, it is submitted that all the details were correctly declared before the customs including IMO number of the vessel and hence the allegation of mis-statement/mis-declaration alleged against the appellants is incorrect.

4. Shri V.G. Iyengar, learned Superintendent (AR) appearing for the department submitted that prohibition by the Resolution was in force upto 18.04.2018 and the vessel was imported on 10/14-02-2018 and hence on the date of importation of vessel the same was prohibited by the S.O. dated 20.06.2016; he further re-iterated the findings of the Impugned Order.

5. We have carefully considered the submissions made by both the sides and perused the records. The issue mainly involved is whether MEA S.O. 2158(E) dated 20.06.2016 prohibited the subject vessel imported for breaking purpose. The case of the department is that S.O. dated 20.06.2016 is issued in order to implement the UNSC resolutions and prohibited the subject vessel for entry into India and since it is imported contrary to the said S.O. dated 20.06.2016; the same was liable for confiscation under section 111 (d) of the Act. In this regard it would be useful to refer to the relevant paragraphs of the S.O. dated 20.06.2016. Para 4 read with para (4)(b) of the S.O. confers power upon the central government to give effect to the resolutions of UNSC on Libya: it states that central government shall have all the power to take necessary measures to prevent vessels designated by the committee from entering Indian ports. It can be seen that the S.O. only provides for enabling provisions for the purpose of prevention of the designated vessels for entry into Indian Port. In exercise of such powers, and to give effect to S.O. subject vessel could have been notified as prohibited for imports or to say least the entry could have been prevented by executive action in exercise of powers under the S.O. It, however, appears that no such steps appear to have been taken to give effect to the said S.O. for prevention of entry of vessel which was granted entry by various concerned authorities and it was only when the vessel was part-broken; the same was placed under seizure by the officers of DRI. In absence of any mechanism or modalities framed viz. to bring prohibition in force or notification issued under section 11 of the Act; Section 111(d) of the Act cannot be pressed into service particularly when the S.O. dated 20.06.2016 by itself does not expressly prohibit the entry of the vessel.

Learned commissioner clearly erred in reading para 4 read with para(4)(b) word "prohibition" which is not so as per the plain reading of para 4 but rather it is the conferment or enabling powers to prevent the designated vessel from entering Indian ports.

6. Further, it can be seen that the S.O. dated 20.06.2016 applied to the resolutions upto 2214 (2015) adopted by the Security Council of the United Nations as provided in para 2(1)(a) of the said S.O. The base resolution 2146 (2014) provides for its termination one year from the date of adoption unless extended. The said base resolution dated 19.03.2014 was set to expire on 19.03.2015 unless extended. On 27.03.2015 the said base resolution 2146 was extended till 31.03.2016 by resolution 2213(2015), and further extended upto 31.07.2017 by resolution 2278(2016). By resolution 2362(2017) although the said base resolution was further extended upto 15.11.2018, the scope of measures was however narrowed down and applied only to vessels loading, transporting or discharging petroleum including crude oil and refined petroleum products, illicitly exported or attempted to be exported from Libya. In view of above, it can be seen that, firstly, the S.O. in terms of para 3(2) did not amend extending the adoption of the UNSC resolution post 31.03.2016 by further Orders and hence cannot be said to be applicable to the subject vessel which was imported much later on 10/14.02.2018. Secondly, the subsequent resolution 2362(2017) curtailed the scope of measures and retained only one measure of para 10 (a) of base resolution viz. vessels loading, transporting and discharge of the petroleum including crude oil from Libya; this amendment was in view of positive developments in the political situation of Libya as stated in the subsequent resolutions. Therefore, the objective of the UNSC was no longer to take measures in respect of designated vessels itself but was restricted only with respect to loading, transportation and discharge of crude oil, petroleum etc from Libya; in that view, the subject vessel even when designated by committee, was entered into India for the breaking/recycling purposes only and it is nobody's

case that when it entered India, it carried crude oil, petroleum etc loaded from Libya; as per the perusal of the available records, it is not disputed fact that the vessel was, after due clearances from UAE port authorities, brought to India without cargo for breaking/recycling purposes on 10/14.02.2018; during that period and for the said purpose, there appears to be no contravention of any UNSC resolutions in force. In view of above, the case of the department in the impugned order that the subject vessel was prohibited for importation cannot be sustained.

7. As regards, the issue of mis-declaration before the customs, upon perusal of available records, it appears that IMO 8900878 of the vessel is correctly mentioned in the Bill of Entry, further, name of the vessel at the time of filing bill of entry was MT Capricorn as can be seen from the certificate of ownership dated 12.02.2018 issued by Maritime Administration of Union of Comoros. In the circumstances, there is no sufficient material to substantiate the case of mis-statement much less any such acts wilfully done by the appellants. In any event, since the vessel cannot be said to have been imported contrary to any prohibition in force, redemption fine and penalties upon the appellants imposed by the impugned order are liable to be set aside.

8. In view of above, impugned order is set aside. The appeals of the appellants are allowed with consequential relief.

(Pronounced in the open court 22.12.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha