

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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 478 of 2011-DB

(Arising out of OIO-13/BVR/COMMR/2011 Dated- 30/06/2011 passed by Commissioner of CUSTOMS-BHAVNAGAR)

C.C.E. & S.T.-Bhavnagar

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

.....Appellant

VERSUS

Modest Infrastructure Ltd

Ramsar Yard, Ferry Road,
Near Lakadia Pool, Old Port,
Bhavnagar, Gujarat

.....Respondent

APPEARANCE:

Shri. T. G Rathod, Additional Commissioner (AR) for the Appellant
Shri. Sarju Mehta, Chartered Accountant for the Respondent

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

Final Order No. A/ 11340 /2022

DATE OF HEARING:13.05.2022
DATE OF DECISION:02.11.2022

RAMESH NAIR

The present appeal is filed by the Department against the Order-In-Original No. 13/BVR/Commr/2011 dated 30.06.2011 passed by the Commissioner of Central Excise & Customs, Bhavnagar.

2. Briefly stated, the facts of the case are that, M/s Modest Infrastructure Ltd., Bhavnagar is engaged in the activities of Ship Building and repairing. The respondent has been granted licence for Public Bonded Warehouse (PBW for short) in terms of the provisions of Section 58 of the Customs Act, 1962. The respondent had been importing duty free raw materials like steel plates, ship spares/components, etc and the same were warehoused and stored in the bonded premises. The officer of DRI visited and searched the premises of the respondent under panchanama dated 04.03.2010. During the course of search, it was observed that duty free raw materials involving customs duty to the tune of Rs. 10,62,68,989/- were removed to other premises

named as Warehouse -2 without permission of the concerned Central Excise Officer and without cover of statutory documents. The said goods were placed under seizure Panchanama. Statements of Directors of respondent company were recorded. After completing the investigation, Show cause notice was issued on 31.08.2010 demanding customs duty of Rs. 10,62,68,989/- and of Rs. 2,29,095/- on ship spare parts under Section 28 of the Customs Act and proposing confiscation of goods under Section 111(j)& (o) and proposing imposition of penalty under Sections 112(a) and 114A of Customs Act. In addition the show cause notice also proposed imposition of penalty on Directors of M/s Modest Infrastructure Ltd, under Section 112(a) of the Customs Act, 1962. In adjudication process the Commissioner confirmed the customs duty demand of Rs. 2,29,095/- alongwith interest under Section 28AB of the Customs Act, 1962 and imposed penalty of Rs. 2,29,095/- under Section 114A of the Customs Act, 1962. He ordered unconditional release of the goods valued at Rs. 37,94,31,475/- and dropped the demand of customs duty to the tune of Rs. 10,62,68,989/- He has also not imposed any penalty on the directors. He held that Warehouse -2 situated on the additional land of 17415 sq. mtrs. stands included in the Public Bonded Warehouse of the assessee w.e.f. 06.02.2009 and therefore the raw materials found therein on 04.03.2010 were within the PBW and cannot be said to have been found outside the PBW or removed illegally from the bonded premises of the assessee as has been alleged in the show cause notice. Being aggrieved by the said impugned order revenue filed the present appeal

3. Shri. T. G Rathod, learned Additional Commissioner (Authorized Representative) appearing on behalf of the revenue submits that the adjudicating authority has erred in holding that permission for extension of PBW was granted under letter dated 04.03.2010 in response to the assessee's application dated 06.02.2009 in as much as the application dated 06.02.2009 did not have any request for extension of the PBW and no mention of PBW was made in the said application. Thus, the permission letter issued on 04.03.2010 by the Jurisdictional Central Excise officers was not for extension of the area approved under Section 58 and 65 of the Customs Act, 1962.

3.1. He submits that in view of the earlier permission given by the Jurisdictional Central Excise Authority for extension of PBW vide letter dated

23.01.2007 clearly pointing out the fact of extension of PBW to an area of "Length 124 Mtr X 92.42 Mtr", therein unlike in case of permission letter dated 04.03.2010. This fact was not taken into consideration by the adjudicating authority while concluding that Shed-2 was coming under PBW and central excise registered premises of the assessee. Hence, the approved area or the approved ground plan as per the permission given under Section 58 and 65 of the Customs Act, 1962 and under Rule 9 of the Central Excise Rules 2002, as on 04.03.2010 was only in terms of letter dated 23.01.2007 of the Central Excise Authorities. The adjudicating authority has overlooked that the above facts have been admitted by Shri Kevat J Vanani, one of the Directors of the respondent under his statement dtd. 20.04.2010. This has also been corroborated by Shri Mehul V Patel in his statement dated 30.07.2010, wherein he has agreed to the fact that their application dated 06.02.2009 was neither for extension of PBW nor extension of the area approved under Section 65 of the Customs Act, 1962 nor the permission granted by the Deputy Commissioner, Central Excise, City Division, Bhavnagar under letter dtd. 04.03.2010 was for the same.

3.2 He also submits that in the instant case, the assessee got the possession of such licence/ permit, in respect of Warehouse -2 on 05.03.2010 as stated by Shri Kishore Gambhani, Managing Director of the respondent in his statement dated 26.06.2010.

3.3 He also argued that merely filing application to the proper officer for grant of licence under Section 58 does not entitle the applicant to enjoy the benefits of Private Bonded Warehouse. It is only after the receipts of licence that the applicant can deposit the duty free imported goods in such warehouse. In the instant case respondent has received the licence, in respect of Warehouse -2 on 05.03.2010 whereas the duty free imported raw materials were found lying in the premises of Warehouse -2 on 04.03.2010. The facts that these goods were found in Warehouse -2 i.e outside the PBW premises on the date of panchanama leads to the conclusion that warehoused goods were removed from the premises of the PBW.

3.4 He placed reliance on the following Judgments

- (i) CC, Bangalore Vs. Comat Technologies Pvt. Ltd. – 2012(280)ELT 511 (Kar)
- (ii) Jaina International Vs. CC, Delhi –IV Faridabad

- (iii) CC Bangalore Vs. Comat Technologies Pvt. Ltd. – 2009(247) ELT 514 (Tri. Del)
- (iv) CCE Vs. Kay Bee Tax Spin Ltd.- 2017(349) ELT 451 (Guj)
- (v) Weston Components Ltd. Vs. CC, New Delhi – 2000(115) ELT 278 (SC)

4. Shri. Sarju Mehta, learned Chartered Accountant appearing on behalf of the respondent reiterates the finding given by the Adjudicating Authority in the impugned order. He submits that it is on record that the Deputy Commissioner of Central Excise vide letter dated 09.03.2010 and Commissioner of Central Excise, Bhavnagar under letter dated 23.03.2010 informed the DRI that the respondent had applied for approval of additional premises on 06.02.2009 and after getting verification report dated 17.06.2009 from the Jurisdictional Range Superintendent, the department had approved the additional premises on 03.07.2009. It is well evident that during the search on 04.03.2010 the duty free imported raw materials found by the DRI officers were within the PBW and cannot be said to have been found outside the PBW or removed illegally from bonded premises of Respondent. Therefore revenue department's appeal is liable to be dismissed.

5. Heard both sides and perused the records. We find that the issue in the present case requires an answer to the following question :-

Whether the duty free material found during the search of the premises of M/s Modest at Warehouse- 2 can be considered as lying outside the bonded warehouse and registered premises of M/s Modest, consequently liable for payment of custom duty as proposed in the show cause notice or otherwise.

In the present matter controversy arise due to the place where the disputed goods were found lying in Warehouse -2, located in the additional land of 17,415 Sq. Mtr. which has been alleged to be not a part of registered and bonded premises. The case of the department is that, since the goods were found in Warehouse -2, the said re-warehoused goods were removed illegally from PBW of Respondent since the said warehouse -2 was located in the additional land of 17,415, Sq. Mtrs.

6. We have gone through the records of the present case and find that Respondent on 16.02.2006 had initially obtained the permission for a private

bonded warehouse on an area of 118.195 sq mtrs. Subsequently, when additional land was allotted to Respondent by the Gujarat Maritime Board, they filed the revised Ground Plan with the authorities and sought permission for the additional land to be included in their existing Private Bonded Warehouse Licence and registered Central Excise premises. After the last acquisition of land, respondent filed a revised ground plan for 67,411 sq. mtrs under cover of their letter dated 06.02.2009 with the Assistant Commissioner of Central Excise Bhavnagar for approval of necessary permission and pursuant to the said application, Respondent's premises were visited by the Jurisdictional officers for verification and site inspection on 17.06.2009 and on 3rd July 2009, the Deputy Commissioner granted his approval. We also find that the Jurisdictional Deputy Commissioner vide letter dated 09.03.2010 informed the DRI that M/s Modest had filed an application on 06.02.2009 for the extension of their PBW i.e allotment of additional land of 17415 sq. Mtr. area for further expansion of Ship Building / Repairing yard. In his letter he also informed that party's request for approval and granting necessary permission was considered and accepted by him on 03.07.2009. He also informed the DRI that since the intimation to the party was not sent, it was sent on 04.03.2010. We also noticed that in the present matter Commissioner of Central Excise, Bhavnagar vide letter dated 23.03.2010 also informed the DRI that party had applied for approval of additional premises on 06.02.2008 and after getting the verification report dated 17.06.2009 from the Range Superintendent, the Deputy Commissioner of Central Excise, City Division has approved the additional premises on 03.07.2009.

10. In view of the above letters of the Jurisdictional officers itself make it clear that Warehouse -2 situated on the additional land of 17415 Sq. Mtrs stands included in the PBW of respondent w.e.f. 03.07.2009 under Section 58 of the Customs Act, 1962 and therefore the duty free imported raw materials found therein on 04.03.2010 during the search by the DRI officers were within the PBW and cannot be said to have been found outside the PBW. Accordingly, demand on these goods are not sustainable.

7. The revenue contended that respondent's application dated 06.02.2009 did not have any request for extension of the PBW and no mention of PBW was made in the said application. Thus, the permission by the Jurisdictional Central Excise officers was not for extension of the area approved under Section 58 and 65 of the Customs Act, 1962. In this regard we find that in the said application M/s Modest has submitted revised ground plan showing

entire ship yard with a request for approval and granting necessary permission. It is on record that verification of the said premises carried out by the Jurisdictional Central Excise Officers on 17.06.2009 and Respondent's request for approval and granting necessary permission was considered and accepted by the Deputy Commissioner on 03.07.2009, and the intimation letter dated 04.03.2010 mentioning that necessary permission is granted for use of additional land and revised Ground plan showing entire Ship Yard was approved by the authority. The said facts clearly leads to conclude that permission was indeed granted for the additional land even though the specific sections were not specifically mentioned therein.

8. In the present matter we also gone through the letter F.No. VIII/48-60/CUS-T/PWB License/ 2005-06 Pt. I dtd. 20.10.2010 of the Assistant Commissioner of Central Excise, City Division, Bhavnagar issued to Respondent. The contents of the said letter are reproduced below: -

" Please refer to Private Bonded Warehouse Licence No. 01/PWB/BVR/2005-06 dtd. 16.02.2006 issued to you by this office.

2. As per amendment letter No. VIII/48-60/Cus(T)Reg/05-06 dtd. 23.01.2007 issued by this office, the dimensions and other particulars of Godown/Plot was amended to " length 124 Mtrs X breadth 92.42 Mtrs.

3. As per your request letter dtd. 06.02.2009 for addition of 17,415 sqm area (215m X 81m) in your existing Private Bonded Warehouse area, this office vide letter No. VIII/48-60/Cus(T)/Reg/05-06 dtd. 04.03.2010 has granted the requisite permission.

4. Now, as per above narration it is clarified that after 06.02.2009, Bonded Area under your Private Bonded warehouse Licence No. 01/PWB/BVR/2005-06 dtd. 16.02.2006 is 67411 Sqm (length 313 Mtrs X breadth 215 Mtrs)."

The said letter of licence issuing authority also clearly state that Warehouse -2 situated on the additional land of 17,415 sq. mtr. stands included in the PWB of respondent with effect from 06.02.2009 under Section 58 of the Customs Act 1962. Since the disputed goods were found within the registered and bonded PBW on the date of search, Ld. Commissioner correctly dropped the demand.

9. In view of our above observations on the undisputed facts of the present case, we do not find any infirmity in the impugned order, consequently we do not find any merit in the Revenue's appeal. Accordingly, impugned order is upheld. Revenue's appeal is dismissed.

(Pronounced in the open court on 02.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI